

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-EIGHTH LEGISLATURE

SECOND SPECIAL SESSION
June 19, 2018 to September 13, 2018

THE GENERAL EFFECTIVE DATE FOR
SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
DECEMBER 13, 2018

ONE HUNDRED AND TWENTY-NINTH LEGISLATURE

FIRST REGULAR SESSION
December 5, 2018 to June 20, 2019

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 19, 2019

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

Augusta, Maine
2019

Effective June 19, 2019.

CHAPTER 387

S.P. 618 - L.D. 1828

**An Act To Amend the Laws
Governing Overtime**

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

Whereas, this legislation changes the law governing the payment of overtime for those state employees engaged in fire protection activities and law enforcement activities, bringing state law into compliance with federal law; and

Whereas, this legislation is necessary to resolve conflicts between controlling statute, contracts and scheduling practices; and

Whereas, it is necessary to immediately effectuate this change in law, as it relates to the ability of employers and employees to maintain current work schedules; 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. 26 MRSA §664, sub-§3, ¶F, as amended by PL 2017, c. 219, §15, is further amended to read:

F. The canning; processing; preserving; freezing; drying; marketing; storing; packing for shipment; or distributing of:

- (1) Agricultural produce;
- (2) Meat and fish products; and
- (3) Perishable foods.

Individuals employed, directly or indirectly, for or at an egg processing facility that has over 300,000 laying birds must be paid overtime in accordance with this subsection; ~~and~~

Sec. 2. 26 MRSA §664, sub-§3, ¶K, as enacted by PL 2011, c. 681, §3, is amended to read:

K. A driver or driver's helper who is not paid hourly and is subject to the provisions of 49 United States Code, Section 31502 as amended or to regulations adopted pursuant to that section, who

is governed by the applicable provisions of federal law with respect to payment of overtime.

Nothing in this paragraph may be construed to limit the rights of parties to negotiate rates of pay for drivers and driver's helpers who are represented for purposes of collective bargaining by a labor organization certified by the National Labor Relations Board or who are employed by an entity that is party to a contract with the Federal Government or an agency of the Federal Government that dictates the minimum hourly rate of pay to be paid a driver or driver's helper; ~~and~~

Sec. 3. 26 MRSA §664, sub-§3, ¶L is enacted to read:

L. Public employees employed by the executive or judicial branch of the State engaged in fire protection activities, as defined in the federal Fair Labor Standards Act, 29 United States Code, Section 203(y), or in law enforcement activities, as defined in 29 Code of Federal Regulations, Section 553.211, and who are eligible to have overtime pay calculated and paid in accordance with 29 United States Code, Section 207(k).

This paragraph may not be construed to limit the rights of parties to negotiate an agreement that provides for payment of overtime that exceeds the requirements of 29 United States Code, Section 207(k).

Sec. 4. Retroactivity. Notwithstanding any law to the contrary, this Act applies retroactively to April 1, 2016.

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

Effective June 19, 2019.

CHAPTER 388

H.P. 1053 - L.D. 1441

**An Act To Align the Laws
Governing Dental Therapy
with Standards Established by
the American Dental
Association Commission on
Dental Accreditation**

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

Sec. 1. 22 MRSA §3174-XX, as amended by PL 2015, c. 429, §5, is further amended to read:

§3174-XX. Dental therapy reimbursement

1. Reimbursement. By October 1, 2015, the department shall provide for the reimbursement under

the MaineCare program of dental hygiene therapists practicing as authorized under Title 32, section 18377 for the procedures identified in their scope of practice. Reimbursement must be provided to dental hygiene therapists directly or to a federally qualified health center pursuant to section 3174-V when a dental hygiene therapist is employed as a core provider at the center.

2. Rulemaking. The department shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

Sec. 2. 24 MRSA §2317-B, sub-§21, as enacted by PL 2013, c. 575, §4 and affected by §10, is amended to read:

21. Title 24-A, sections 2765-A and 2847-U. The practice of dental hygiene therapy by a dental hygiene therapist, Title 24-A, sections 2765-A and 2847-U.

Sec. 3. 24-A MRSA §2765-A, as amended by PL 2015, c. 429, §12, is further amended to read:

§2765-A. Coverage for services provided by dental therapist

1. Services provided by dental therapist. An insurer that issues individual dental insurance or health insurance that includes coverage for dental services shall provide coverage for dental services performed by a dental hygiene therapist licensed under Title 32, chapter 143 when those services are covered services under the contract and when they are within the lawful scope of practice of the dental hygiene therapist.

2. Limits; coinsurance; deductibles. A contract that provides coverage for the services required by this section may contain provisions for maximum benefits and coinsurance and reasonable limitations, deductibles and exclusions to the extent that these provisions are not inconsistent with the requirements of this section.

3. Coordination of benefits with dental insurance. If an enrollee eligible for coverage under this section is eligible for coverage under a dental insurance policy or contract and a health insurance policy or contract, the insurer providing dental insurance is the primary payer responsible for charges under subsection 1 and the insurer providing individual health insurance is the secondary payer.

4. Application. The requirements of this section apply to all policies, contracts and certificates executed, delivered, issued for delivery, continued or renewed in this State. For purposes of this section, all contracts are deemed to be renewed no later than the next yearly anniversary of the contract date.

Sec. 4. 24-A MRSA §2847-U, as amended by PL 2015, c. 429, §14, is further amended to read:

§2847-U. Coverage for services provided by dental therapist

1. Services provided by dental therapist. An insurer that issues group dental insurance or health insurance that includes coverage for dental services shall provide coverage for dental services performed by a dental hygiene therapist licensed under Title 32, chapter 143 when those services are covered services under the contract and when they are within the lawful scope of practice of the dental hygiene therapist.

2. Limits; coinsurance; deductibles. A contract that provides coverage for the services required by this section may contain provisions for maximum benefits and coinsurance and reasonable limitations, deductibles and exclusions to the extent that these provisions are not inconsistent with the requirements of this section.

3. Coordination of benefits with dental insurance. If an enrollee eligible for coverage under this section is eligible for coverage under a dental insurance policy or contract and a health insurance policy or contract, the insurer providing dental insurance is the primary payer responsible for charges under subsection 1 and the insurer providing group health insurance is the secondary payer.

Sec. 5. 32 MRSA §18302, sub-§§5, 7 and 8, as enacted by PL 2015, c. 429, §21, are further amended to read:

5. Dental auxiliary. "Dental auxiliary" means a dental radiographer, expanded function dental assistant, dental hygienist, independent practice dental hygienist, public health dental hygienist, dental hygiene therapist or denturist.

7. Dental therapist. "Dental hygiene therapist" means a person who holds a valid license as a dental hygienist issued by the board and is authorized to practice dental hygiene therapy under this chapter.

8. Dental therapy. "Dental hygiene therapy" means the delivery of dental hygiene services, including performance of certain dental procedures in accordance with this chapter.

Sec. 6. 32 MRSA §18302, sub-§29, as enacted by PL 2015, c. 429, §21, is amended to read:

29. Provisional dental therapist. "Provisional dental hygiene therapist" means a person who holds a valid license as a dental hygienist issued by the board and who is authorized to practice dental hygiene therapy under the supervision of a dentist in accordance with this chapter.

Sec. 7. 32 MRSA §18345, sub-§2, ¶¶C and F, as enacted by PL 2015, c. 429, §21, are amended to read:

C. For dental hygiene therapist authority:

~~(1) Verification of having successfully completed a dental hygiene therapy program that:~~

~~(a) Is accredited by the American Dental Association Commission on Dental Accreditation or a successor organization;~~

~~(b) Is a minimum of 4 semesters;~~

~~(c) Is consistent with the model curriculum for educating dental hygiene therapists adopted by the American Association of Public Health Dentistry or a successor organization;~~

~~(d) Is consistent with existing dental hygiene therapy programs in other states approved by the board; and~~

~~(e) Meets the requirements for dental hygiene therapy education programs adopted by board rule;~~

(2) Verification of a ~~bachelor's~~ master's degree or higher in dental hygiene, dental hygiene therapy or in dental therapy from a school accredited by the American Dental Association Commission on Dental Accreditation or a its successor organization or a master's degree in dental therapy from a program that meets the requirements adopted by board rule consistent with the accreditation standards identified by the American Dental Association Commission on Dental Accreditation or its successor organization;

(3) Verification of passing a clinical examination and all other examinations required by board rule. The clinical examination must be a comprehensive, competency-based clinical examination approved by the board and administered independently of an institution providing dental hygiene therapy education;

(4) Verification of having engaged in 2,000 hours of supervised clinical practice under the supervision of a dentist and in conformity with rules adopted by the board, during which supervised clinical practice the applicant is authorized to practice pursuant to paragraph F.

For purposes of meeting the clinical requirements of this subparagraph, an applicant's hours of supervised clinical experience ~~while enrolled in the dental hygiene therapy program under subparagraph (1) may be included as well as hours completed under the supervision of a dentist licensed in another state or a Canadian province~~ may be included, provided that as long as the applicant was operating lawfully under the laws and rules of that state or province; and

(5) A copy of the written practice agreement and standing orders required by section 18377, subsection 3; and

(6) Verification of a current advanced cardiac life support certification;

F. For provisional dental hygiene therapist authority:

(1) Verification of meeting the requirements of paragraph C, subparagraphs ~~(1) to (2)~~, (3) and (6); and

(2) A copy of the written agreement between the applicant and a dentist who will provide levels of supervision consistent with the scope of practice outlined in section 18377 and in conformity with rules adopted by the board.

During the period of provisional authority the applicant may be compensated for services performed as a dental hygiene therapist. The period of provisional authority may not exceed 3 years.

Sec. 8. 32 MRSA §18351, last ¶, as amended by PL 2017, c. 388, §12, is further amended to read:

An individual who practices under a resident dentist license or as a provisional dental hygiene therapist may not apply for inactive status.

Sec. 9. 32 MRSA §18371, sub-§5, as enacted by PL 2015, c. 429, §21, is amended to read:

5. Supervision of dental therapists. A dentist, referred to in this section as the "supervising dentist," who employs a dental hygiene therapist shall comply with this subsection.

A. A supervising dentist shall arrange for another dentist or specialist to provide any services needed by a patient of a dental hygiene therapist supervised by that dentist that are beyond the scope of practice of the dental hygiene therapist and that the supervising dentist is unable to provide.

B. The supervising dentist is responsible for all authorized services and procedures performed by the dental hygiene therapist pursuant to a written practice agreement executed by the dentist pursuant to section 18377.

C. Revisions to a written practice agreement must be documented in a new written practice agreement signed by the supervising dentist and the dental hygiene therapist.

D. A supervising dentist who signs a written practice agreement shall file a copy of the agreement with the board, keep a copy for the dentist's own records and make a copy available to patients of the dental hygiene therapist upon request.

Sec. 10. 32 MRSA §18377, as enacted by PL 2015, c. 429, §21, is amended to read:

§18377. Dental therapist

1. Scope of practice. A dental hygiene therapist may perform the following procedures in limited practice settings, if authorized by a written practice agreement with a dentist licensed in this State pursuant to subsection 3.

A. To the extent permitted in a written practice agreement, a dental hygiene therapist may provide the care and services listed in this paragraph only under the direct supervision of the supervising dentist:

- (1) Perform oral health assessments, pulpal disease assessments for primary and young teeth, simple cavity preparations and restorations and simple extractions;
- (2) Prepare and place stainless steel crowns and aesthetic anterior crowns for primary incisors and prepare, place and remove space maintainers;
- (3) Provide referrals;
- (4) Administer local anesthesia and nitrous oxide analgesia;
- (5) Perform preventive services;
- (6) Conduct urgent management of dental trauma, perform suturing, extract primary teeth and perform nonsurgical extractions of periodontally diseased permanent teeth if authorized in advance by the supervising dentist;
- (7) Provide, dispense and administer anti-inflammatories, nonprescription analgesics, antimicrobials, antibiotics and anticaries materials;
- (8) Administer radiographs; and
- (9) Perform other related services and functions authorized by the supervising dentist and for which the dental hygiene therapist is trained.

B. To the extent permitted in a written practice agreement, a dental hygiene therapist may provide the care and services listed in section 18374, subsections 1 and 2 under the general supervision of the supervising dentist.

2. Supervision responsibilities. A dental hygiene therapist may be delegated a dentist's responsibility to supervise up to 2 dental hygienists and 3 unlicensed persons in any one practice setting through a written practice agreement pursuant to subsection 3.

3. Practice requirements. A dental hygiene therapist must comply with the following practice limitations.

~~A. A dental hygiene therapist may provide services only in a hospital; a public school, as defined in Title 20-A, section 1, subsection 24; a nursing facility licensed under Title 22, chapter 405; a residential care facility licensed under Title 22, chapter 1663; a clinic; a health center reimbursed as a federally qualified health center as defined in 42 United States Code, Section 1395x(aa)(4) (1993) or that has been determined by the federal Department of Health and Human Services, Centers for Medicare and Medicaid Services to meet the requirements for funding under Section 330 of the Public Health Service Act, 42 United States Code, Section 254(b); a federally qualified health center licensed in this State; a public health setting that serves underserved populations as recognized by the federal Department of Health and Human Services; or a private dental practice in which at least 50% of the patients who are provided services by that dental hygiene therapist are covered by the MaineCare program under Title 22 or are underserved adults.~~

B. A dental hygiene therapist may practice only under the direct supervision of a dentist through a written practice agreement signed by both parties. A written practice agreement is a signed document that outlines the functions that the dental hygiene therapist is authorized to perform, which may not exceed the scopes of practice specified in subsections 1 and 2. A dental hygiene therapist may practice only under the standing order of the supervising dentist, may provide only care that follows written protocols and may provide only services that the dental hygiene therapist is authorized to provide by the written practice agreement.

C. A written practice agreement between a supervising dentist and a dental hygiene therapist must include the following elements:

- (1) The services and procedures and the practice settings for those services and procedures that the dental hygiene therapist may provide, together with any limitations on those services and procedures;
- (2) Any age-specific and procedure-specific practice protocols, including case selection criteria, assessment guidelines and imaging frequency;
- (3) Procedures to be used with patients treated by the dental hygiene therapist for obtaining informed consent and for creating and maintaining dental records;

- (4) A plan for review of patient records by the supervising dentist and the dental hygiene therapist;
- (5) A plan for managing medical emergencies in each practice setting in which the dental hygiene therapist provides care;
- (6) A quality assurance plan for monitoring care, including patient care review, referral follow-up and a quality assurance chart review;
- (7) Protocols for administering and dispensing medications, including the specific circumstances under which medications may be administered and dispensed;
- (8) Criteria for providing care to patients with specific medical conditions or complex medical histories, including requirements for consultation prior to initiating care; and
- (9) Specific written protocols, including a plan for providing clinical resources and referrals, governing situations in which the patient requires treatment that exceeds the scope of practice or capabilities of the dental hygiene therapist.

D. Revisions to a written practice agreement must be documented in a new written practice agreement signed by the supervising dentist and the dental hygiene therapist.

E. A dental hygiene therapist shall file a copy of a written practice agreement with the board, keep a copy for the dental hygiene therapist's own records and make a copy available to patients of the dental hygiene therapist upon request.

F. A dental hygiene therapist shall refer patients in accordance with a written practice agreement to another qualified dental or health care professional to receive needed services that exceed the scope of practice of the dental hygiene therapist.

G. A dental hygiene therapist who provides services or procedures beyond those authorized in a written agreement engages in unprofessional conduct and is subject to discipline pursuant to section 18325.

4. Dental coverage and reimbursement. Notwithstanding Title 24-A, section 2752, any service performed by a dentist, dental assistant or dental hygienist licensed in this State that is reimbursed by private insurance, a dental service corporation, the MaineCare program under Title 22 or the Cub Care program under Title 22, section 3174-T must also be covered and reimbursed when performed by a dental hygiene therapist authorized to practice under this chapter.

Sec. 11. Board of Dental Practice to review dental practice laws and recommend changes. The Board of Dental Practice, in consultation with interested parties, shall review the Maine Revised Statutes, Title 32, chapter 143 and any rules adopted by the board and recommend changes to the statutory definitions of supervision and recommend a definition of "teledentistry" for the purpose of aligning current supervision practices and reflecting advancements in technology. The Board of Dental Practice shall submit its report and recommendations to the Joint Standing Committee on Health Coverage, Insurance and Financial Services no later than February 1, 2020. The Joint Standing Committee on Health Coverage, Insurance and Financial Services may report out a bill to the Second Regular Session of the 129th Legislature based on the board's recommendations.

See title page for effective date.

CHAPTER 389

H.P. 1063 - L.D. 1451

An Act Providing Labor Unions with Reasonable Access to Current and Newly Hired Public Sector Workers

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

Sec. 1. 26 MRSA §975 is enacted to read:

§975. Bargaining agent access

1. Bargaining agent access to employees. Public employers shall provide to a bargaining agent access to members of the bargaining unit that the bargaining agent exclusively represents. Access must include, but is not limited to, the following:

A. The right to meet with individual employees on the premises of the public employer's workplace during the work day to investigate and discuss grievances, workplace-related complaints and other workplace issues;

B. The right to conduct workplace meetings during lunch and other breaks, and before and after the work day, on the public employer's premises to discuss workplace issues, collective bargaining negotiations, the administration of collective bargaining agreements and other matters related to the duties of a bargaining agent and internal bargaining agent matters involving the governance or the business of the bargaining agent;

C. The right to meet with newly hired employees, without charge to the pay or leave time of the employees, for a minimum of 30 minutes or for an amount of time agreed upon by all parties, not lat-