

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**

**ONE HUNDRED AND THIRTIETH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 2, 2020 to March 30, 2021**

**FIRST SPECIAL SESSION**  
**April 28, 2021 to July 19, 2021**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JUNE 29, 2021**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**OCTOBER 18, 2021**

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

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**Augusta, Maine**  
**2021**

the commission to be for the purpose of personal financial enrichment of the immediate family member of the Legislator.

**3. Commingling of funds.** If a Legislator is a principal officer or treasurer of a political action committee or a ballot question committee or is one of the individuals primarily responsible for raising contributions or making decisions for a political action committee or a ballot question committee, the committee's funds may not be commingled with the personal funds of the Legislator or the funds of a business owned or operated by the Legislator or any other person.

**4. Penalties.** A political action committee or ballot question committee that violates subsection 1, 2 or 3 commits a civil violation for which a fine of not more than \$500 or the amount of the impermissible payment or reimbursement, whichever is greater, may be imposed by the commission according to the procedures set forth in section 1004-A. A Legislator who accepts a payment or reimbursement from a committee that is prohibited by subsection 1 or who violates subsection 3 commits a civil violation for which a fine of not more than \$500 or the amount of the impermissible payment or reimbursement, whichever is greater, may be imposed by the commission according to the procedures set forth in section 1004-A.

**5. Rules.** The commission may adopt rules as necessary to implement this section, including rules establishing mileage reimbursement rates, record-keeping requirements and reporting requirements and rules related to reimbursable travel expenses. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

See title page for effective date.

**CHAPTER 277  
S.P. 529 - L.D. 1644**

**An Act To Improve the  
Disability Retirement Program  
of the Maine Public Employees  
Retirement System**

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

**Sec. 1.** 3 MRSA §701, sub-§11-A, as enacted by PL 2017, c. 88, §1, is repealed.

**Sec. 2.** 3 MRSA §734, as amended by PL 2017, c. 88, §2, is repealed.

**Sec. 3.** 4 MRSA §1201, sub-§6-A, ¶B, as enacted by PL 1989, c. 133, §17, is amended to read:

B. Regardless of age or marital status, any other progeny certified by the medical board an independent health care provider or the medical review

service provider to be permanently mentally incompetent or permanently physically incapacitated and determined by the executive director to be unable to engage in any substantially gainful employment.

**Sec. 4.** 4 MRSA §1201, sub-§10-A is enacted to read:

**10-A. Health care provider.** "Health care provider" means an appropriately licensed, certified or registered provider of mental or physical health care, in either the public or private sector.

**Sec. 5.** 4 MRSA §1201, sub-§12-A, as enacted by PL 2017, c. 88, §4, is repealed.

**Sec. 6.** 4 MRSA §1201, sub-§12-B is enacted to read:

**12-B. Medical review service provider.** "Medical review service provider" means an entity with whom the executive director has contracted for the review of medical records and the provision of recommendations, opinions and certifications under this chapter by health care providers employed by the entity.

**Sec. 7.** 4 MRSA §1234, as amended by PL 2017, c. 88, §5, is further amended to read:

**§1234. Medical board review of disability**

A medical board of the other programs of the Maine Public Employees Retirement System established in section 17106, subsection 1 is the medical board of the Judicial Retirement Program. The medical board shall arrange for and pass upon all medical examinations required under this chapter with respect to disability retirements and shall report in writing to the Supreme Judicial Court its conclusions and recommendations upon all the matters referred to it. The board of trustees may designate other medical health care providers to provide medical consultation on judicial disability cases.

**Sec. 8.** 4 MRSA §1353, sub-§1, as amended by PL 2017, c. 88, §6, is further amended to read:

**1. Conditions.** Any member who becomes disabled while in service may receive a disability retirement allowance by order of at least 5 Justices of the Supreme Judicial Court or upon written application to the executive director, ~~review and report of the application by the medical board~~ and approval of that application by at least 5 of the Justices of the Supreme Judicial Court if that member is mentally or physically incapacitated to the extent that it is impossible for that member to perform the duties as a judge and the incapacity is expected to be permanent, as shown by medical examination or tests. A qualified medical health care provider mutually agreed upon by the executive director and member shall conduct the examinations or tests at an agreed upon place, and the costs must be paid by the Maine Public Employees Retirement System.

**Sec. 9. 4 MRSA §1353, sub-§4, ¶C**, as amended by PL 2017, c. 88, §7, is further amended to read:

C. The executive director may require the beneficiary to undergo annual medical examinations or tests for the purpose of determining whether the beneficiary is incapacitated. These examinations or tests must be conducted by a qualified medical health care provider, mutually agreed upon by the executive director and beneficiary, at a place also mutually agreed upon, and the costs of the examination or tests must be paid by the Maine Public Employees Retirement System. If the beneficiary refuses to submit to an examination or tests, the beneficiary's disability allowance ceases until the beneficiary agrees to the examination or tests. If the beneficiary's refusal continues for one year, all rights to any further benefits under this section terminate.

**Sec. 10. 5 MRSA §11007, sub-§3**, as enacted by PL 1977, c. 551, §3, is amended to read:

**3. Judgment.** The court ~~shall~~ may not substitute its judgment for that of the agency on questions of fact, except that, with respect to a timely appeal by an individual of a denial of a disability determination by a hearing officer pursuant to sections 17106-A and 17106-B, the court shall review the matter de novo.

**Sec. 11. 5 MRSA §17001, sub-§12, ¶B**, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

B. Regardless of age or marital status, any other progeny certified by ~~the medical board~~ an independent health care provider or the medical review service provider to be permanently mentally incompetent or permanently physically incapacitated and determined by the executive director to be unable to engage in any substantially gainful employment.

**Sec. 12. 5 MRSA §17001, sub-§18-B** is enacted to read:

**18-B. Health care provider.** "Health care provider" means an appropriately licensed, certified or registered provider of mental or physical health care, in either the public or private sector.

**Sec. 13. 5 MRSA §17001, sub-§19-A**, as enacted by PL 2017, c. 88, §8, is repealed.

**Sec. 14. 5 MRSA §17001, sub-§19-B** is enacted to read:

**19-B. Medical review service provider.** "Medical review service provider" means an entity with whom the executive director has contracted for the review of medical records and the provision of recommendations, opinions and certifications under this Part by health care providers employed by the entity.

**Sec. 15. 5 MRSA §17106**, as amended by PL 2017, c. 88, §§14 to 16, is repealed.

**Sec. 16. 5 MRSA §17106-A, first ¶**, as enacted by PL 2009, c. 322, §7, is amended to read:

~~A hearing officer employed, contracted or otherwise provided by the board~~ The board shall contract with qualified attorneys to act as hearing officers to implement the provisions of this chapter is. Hearing officers are subject to the provisions of this section. Hearing officers are not employees of the board but independent contractors who serve as neutral and independent decision makers.

**Sec. 17. 5 MRSA §17106-A, sub-§6**, as amended by PL 2017, c. 88, §18, is further amended to read:

**6. Engagement and termination.** The board shall engage contract with only qualified hearing officers, ~~who must be monitored by the board.~~ A contract with a hearing officer may be terminated for misconduct. Retaliatory action of any kind, including reprimand or termination, may not be taken against a hearing officer on the basis of that hearing officer's having issued decisions contrary to the decision of the executive director. In the event of termination, the retirement system shall set forth in writing the basis for the termination, the propriety of which may then be considered by the joint standing committee of the Legislature having jurisdiction over public employee retirement matters pursuant to subsection 5.

**Sec. 18. 5 MRSA §17106-B** is enacted to read:  
**§17106-B. Disability retirement; medical review**

**1. Disability retirement forms; assessment.** The executive director shall develop and make easily accessible to health care providers in this State a disability form that allows a health care provider to provide an assessment of a member's ability to work after taking into account the member's mental or physical disability under the standards of this Part. References in this section to "disability form" refer to the form developed by the executive director. A member seeking disability retirement shall cooperate with the executive director in obtaining the member's medical records and may obtain an assessment from the health care provider of the member's ability to work after taking into account the member's mental or physical disability, and, if the health care provider finds that the member is disabled under the standards of this Part, the health care provider, at the request of the member, may file with the executive director a disability form signed by the health care provider. The health care provider shall also provide a copy of the form to the member. The executive director may find that a member has a mental or physical disability and is eligible for disability retirement based on the information provided in the form and medical rec-

ords. The executive director may seek, receive and consider recommendations and opinions from the medical review service provider in making this determination.

**2. Medical review.** If the executive director is unable to determine whether a member is eligible for disability retirement based on the information provided under subsection 1, the executive director shall direct the member to have an independent medical examination by an independent health care provider. The member may waive the independent medical examination, in which case the executive director may determine that the member is not eligible for disability retirement. The member may appeal this determination under subsection 3.

A. The retirement system shall pay all fees of the independent health care provider. The independent health care provider may not be a state employee and may not have any association with the retirement system other than providing independent medical examinations or medical consultations and receiving payment for these services and, unless the member consents in writing, may not have previously examined or treated the member with respect to the member's mental or physical disability.

B. The member may have a representative present at the independent medical examination, who may be a union representative, an attorney, a health care provider or any individual of the member's choice. The retirement system shall reimburse the member's representative as follows:

(1) If the representative is a health care provider, the retirement system shall pay that health care provider a standard per diem rate established by the board and a reasonable mileage reimbursement; and

(2) Any other representative of the member may be paid a reasonable mileage reimbursement only.

**3. Disability determination; appeal.** After an independent medical review under subsection 2, the executive director or the executive director's designee shall make a determination of eligibility for disability retirement based upon the totality of the evidence and in accordance with subsection 4. The executive director or the executive director's designee may obtain recommendations or opinions from the medical review service provider to assist in this determination. A determination by the executive director or the executive director's designee that the member is not disabled may be appealed by the member to a hearing officer, who shall hear the appeal in accordance with section 17106-A. The board shall by rule provide for procedures for the member to participate in selection of the hearing officer

who will hear the member's appeal. Rules adopted pursuant to this subsection are routine technical rules as defined in chapter 375, subchapter 2-A.

**4. Medical evidence.** When reviewing medical evidence in making determinations of disability, the board, executive director and hearing officers shall primarily consider medical opinions in the record and whether the opinions are supported by sound medical evidence and are consistent with other medical evidence in the record.

**5. Attorney's fees.** If a member has retained services of an attorney to represent the member before a hearing officer or in a court proceeding on appeal of a board decision, the fee arrangement has been approved by the hearing officer or the court and the attorney obtains a favorable result for the member, the attorney's fees must be paid by the retirement system, up to a maximum of \$12,000. The fee arrangement may be a contingency fee, in which case the payment by the retirement system must be applied toward the satisfaction of the contingency fee.

**Sec. 19. 5 MRSA §17902, sub-§1, ¶A,** as amended by PL 2017, c. 88, §22, is further amended to read:

A. The executive director shall obtain medical consultation on each applicant for disability retirement benefits in accordance with related rules established by the board, ~~which must include provisions indicating when a case must be reviewed by a medical board and when alternative means of medical consultation are acceptable.~~ Rules adopted pursuant to this paragraph are routine technical rules as defined in chapter 375, subchapter 2-A. ~~Whether provided by the medical board or by an alternative means, medical~~ Medical consultation obtained by the executive director must be objective and be provided by a medical provider or medical providers qualified to review the case by specialty or experience and to whom the applicant is not known.

**Sec. 20. 5 MRSA §17911, first ¶,** as enacted by PL 2003, c. 387, §4, is amended to read:

Upon agreement of the executive director and the person, rehabilitation services may be provided to any person who is the recipient of a disability retirement benefit under this article as a means to the person being able to return to substantially gainful activity. As a condition of entering into an agreement to provide rehabilitation services, the executive director must determine that rehabilitation is feasible, that rehabilitation is consistent with the purposes of this article, that the recipient is suitable for rehabilitation services and that rehabilitation services are likely to lead to substantially gainful activity. ~~When appropriate, determination of suitability must include consultation with the medical board to determine any medical indications that the recipient~~

~~should not engage in a rehabilitation program or to identify a recipient too severely disabled to benefit from rehabilitation services in accordance with the purposes of this article.~~ Services must be provided by private and public rehabilitation counselors, government agencies and others approved by the executive director as qualified to provide rehabilitation services. The executive director shall consider a rehabilitation counselor's rate of successfully placing rehabilitated employees in jobs relative to the placement rates of other counselors in the State as fundamental in deciding whether to approve the counselor as qualified. This section does not affect the ongoing requirement that a person remain disabled in order to continue to receive disability benefits.

**Sec. 21. 5 MRSA §17921, sub-§1, ¶B**, as enacted by PL 1989, c. 409, §§8 and 12, is amended to read:

B. That ~~it is impossible to perform the duties of the member is unable to perform the essential functions of the member's employment position with reasonable accommodation;~~

**Sec. 22. 5 MRSA §17925, sub-§1, ¶A**, as amended by PL 2017, c. 88, §25, is repealed.

**Sec. 23. 5 MRSA §17926**, as amended by PL 2017, c. 88, §26, is further amended to read:

**§17926. Examinations or tests**

Any examinations or tests ~~recommended by the medical board in accordance with~~ conducted under section 17106 ~~17106-B~~ or required by the executive director under section 17921, subsection 1, paragraph D; section 17924; section 17929, subsection 2, paragraph B; or section 17933, subsection 3, paragraph A, are governed as follows.

**1. Agreed upon ~~medical health care provider.~~** The examinations or tests must be conducted by a ~~qualified medical health care provider~~ mutually agreed upon by the executive director and the member claiming to be disabled.

**2. Agreed upon place.** The examinations or tests ~~shall~~ must be conducted at the health care provider's office or facility or at a place mutually agreed upon by the executive director and the member claiming to be disabled.

**3. Costs.** The costs incurred under subsections 1 and 2 ~~shall~~ must be paid by the retirement system.

**Sec. 24. 5 MRSA §17927, first ¶**, as amended by PL 2003, c. 387, §5, is further amended to read:

Upon agreement of the executive director and the person, rehabilitation services may be provided to any person who is the recipient of a disability retirement benefit under this article as a means to the person being able to return to substantially gainful activity. As a condition of entering into an agreement to provide rehabilitation services, the executive director must determine

that rehabilitation is feasible, that rehabilitation is consistent with the purposes of this article, that the recipient is suitable for rehabilitation services and that rehabilitation services are likely to lead to substantially gainful activity. ~~When appropriate, determination of suitability must include consultation with the medical board to determine any medical indications that the recipient should not engage in a rehabilitation program or to identify a recipient too severely disabled to benefit from rehabilitation services in accordance with the purposes of this article.~~ Services must be provided by private and public rehabilitation counselors, government agencies and others approved by the executive director as qualified to provide rehabilitation services. The executive director shall consider a rehabilitation counselor's rate of successfully placing rehabilitated employees in jobs relative to the placement rates of other counselors in the State as fundamental in deciding whether to approve the counselor as qualified. This section does not affect the ongoing requirement that a person remain disabled in order to continue to receive disability benefits.

**Sec. 25. 5 MRSA §17929, sub-§2, ¶B**, as amended by PL 2003, c. 675, §2, is further amended to read:

B. The executive director may require, once each year, that the person undergo examinations or tests, conducted in accordance with section 17926, to determine the person's disability. ~~The executive director may refer the records documenting the results of the examinations or tests and the person's file to the medical board for medical consultation regarding rehabilitation in accordance with section 17106, subsection 3, paragraph E.~~

(1) After the disability has continued for 2 years, the disability must render the person unable to engage in any substantially gainful activity that is consistent with the person's training, education or experience and average final compensation adjusted by the same percentage adjustment as has been received under section 17806. The disability retirement benefit continues if the person can effectively demonstrate to the executive director that the person is actively seeking work. For the purposes of this subparagraph, the ability to engage in substantially gainful activity is demonstrated by the ability to perform work resulting in annual earnings that exceed \$20,000 or 80% of the recipient's average final compensation at retirement, whichever is greater, adjusted by the same percentage adjustments granted under section 17806.

(2) If the person refuses to submit to the examinations or tests under this paragraph, the disability retirement benefit is discontinued until that person withdraws the refusal.

(3) If the person's refusal under subparagraph (2) continues for one year, all rights to any further benefits under this article cease.

(4) If it is determined, on the basis of the examinations or tests under this paragraph, that the disability of a person no longer exists, the payment of the disability retirement benefit ceases.

(5) The executive director shall notify the person in writing of the decision to discontinue the disability retirement allowance under subparagraph (2) or (4).

(a) The decision is subject to appeal under section 17451.

(b) If the person appeals the executive director's decision, the disability retirement allowance may not be discontinued until all appeals have been exhausted.

**Sec. 26. 5 MRSA §17930, sub-§2, ¶C**, as enacted by PL 1989, c. 409, §§8 and 12, is amended to read:

C. If, during the first 5 years of reemployment, the person again becomes disabled, terminates employment and is not covered by any other disability program, the retirement system shall resume paying the disability retirement benefit payable prior to the reemployment with all applicable cost-of-living adjustments and shall provide rehabilitation services under in accordance with section 17927 if recommended by the medical board. If the benefit payable under the other disability program is not equal to or greater than the benefit under this article, the retirement system shall pay the difference between the amount of the benefit payable under the other disability program and the amount of the benefit payable under this article. The executive director shall require examinations or tests to determine whether the person is disabled as described in section 17921; and

**Sec. 27. 5 MRSA §17930, sub-§3, ¶E**, as enacted by PL 1989, c. 409, §§8 and 12, is amended to read:

E. If, during the first 5 years of reemployment, the person again becomes disabled and terminates employment, the retirement system shall resume paying the disability retirement benefit payable prior to the reemployment with all applicable cost-of-living adjustments, or if greater, a disability retirement benefit based upon the person's current average final compensation and shall provide rehabilitation services under in accordance with section 17927 if recommended by the medical board. The executive director shall require examinations or tests to determine whether the person is disabled as defined in section 17921; and

**Sec. 28. 5 MRSA §17932, sub-§2**, as amended by PL 2017, c. 88, §27, is further amended to read:

**2. Dispute over mental or physical capacity.** If there is a dispute between the person and the former employer over the person's mental or physical capacity to perform a specific job, at the option of the person that dispute must be resolved by a majority of 3 medical health care providers, one appointed and reimbursed by the person, one appointed and reimbursed by the employer and one appointed and reimbursed by the retirement system. If the 3 medical health care providers resolve the dispute in favor of the person, the former employer must reimburse the medical health care provider appointed by the person.

**Sec. 29. 5 MRSA §17953, sub-§3, ¶A**, as amended by PL 1991, c. 469, §2, is further amended to read:

A. A surviving spouse of the qualifying member is paid a \$150 benefit each month beginning the first month after the death occurs and continuing during the surviving spouse's lifetime, if:

(1) The deceased qualifying member had 10 years of creditable service at the time of death; or

(2) The surviving spouse is certified by ~~the medical board~~ an independent health care provider or the medical review service provider to be permanently mentally incompetent or permanently physically incapacitated and is determined by the executive director to be unable to engage in any substantially gainful employment.

A full month's benefit is paid to the estate of the surviving spouse for the month in which the surviving spouse dies.

**Sec. 30. 5 MRSA §17953, sub-§5-A, ¶A**, as amended by PL 1991, c. 469, §2, is further amended to read:

A. A designated beneficiary who is alive at the time of the death of the qualifying member is paid \$150 per month beginning the first month after the death occurs and continuing until the date of the designated beneficiary's death, if the designated beneficiary is certified by ~~the medical board~~ an independent health care provider or the medical review service provider to be permanently mentally incompetent or permanently physically incapacitated and is determined by the executive director to be unable to engage in any substantially gainful employment.

**Sec. 31. 5 MRSA §18502, sub-§1, ¶A**, as amended by PL 2017, c. 88, §30, is repealed.

**Sec. 32. 5 MRSA §18503**, as amended by PL 2017, c. 88, §31, is further amended to read:

**§18503. Examination or tests**

The examination or tests to determine whether a member is disabled under section 18501 are governed as follows.

**1. Agreed upon ~~medical health care~~ provider.** The examination or tests must be conducted by a ~~qualified medical health care~~ provider mutually agreed upon by the executive director and member claiming to be disabled.

**2. Agreed upon place.** The examination or tests ~~shall~~ **must** be conducted at the health care provider's office or facility or at a place mutually agreed upon by the executive director and member claiming to be disabled.

**3. Costs.** The costs incurred under subsections 1 and 2 ~~shall~~ **must** be paid by the retirement system.

**Sec. 33. 5 MRSA §18512, first ¶,** as enacted by PL 2003, c. 387, §10, is amended to read:

Upon agreement of the executive director and the person, rehabilitation services may be provided to any person who is the recipient of a disability retirement benefit under this article as a means to the person being able to return to substantially gainful activity. As a condition of entering into an agreement to provide rehabilitation services, the executive director must determine that rehabilitation is feasible, that rehabilitation is consistent with the purposes of this article, that the recipient is suitable for rehabilitation services and that rehabilitation services are likely to lead to substantially gainful activity. ~~When appropriate, determination of suitability must include consultation with the medical board to determine any medical indications that the recipient should not engage in a rehabilitation program or to identify a recipient too severely disabled to benefit from rehabilitation services in accordance with the purposes of this article.~~ Services must be provided by private and public rehabilitation counselors, government agencies and others approved by the executive director as qualified to provide rehabilitation services. The executive director shall consider a rehabilitation counselor's rate of successfully placing rehabilitated employees in jobs relative to the placement rates of other counselors in the State as fundamental in deciding whether to approve the counselor as qualified. This section does not affect the ongoing requirement that a person remain disabled in order to continue to receive disability benefits.

**Sec. 34. 5 MRSA §18521, sub-§1, ¶B,** as enacted by PL 1989, c. 409, §§11 and 12, is amended to read:

~~B. That it is impossible to perform the duties the member is unable to perform the essential functions of the member's employment position with reasonable accommodation;~~

**Sec. 35. 5 MRSA §18525, sub-§1, ¶A,** as amended by PL 2017, c. 88, §32, is repealed.

**Sec. 36. 5 MRSA §18526,** as amended by PL 2017, c. 88, §33, is further amended to read:

**§18526. Examinations or tests**

Any examinations or tests ~~recommended by the medical board in accordance with~~ conducted under section ~~47106~~ 17106-B or required by the executive director under section 18521, subsection 1, paragraph D; section 18524; section 18529, subsection 2, paragraph B; or section 18533, subsection 3, paragraph A; are governed as follows.

**1. Agreed upon ~~medical health care~~ provider.** The examinations or tests must be conducted by a ~~qualified medical health care~~ provider mutually agreed upon by the executive director and the member claiming to be disabled.

**2. Agreed upon place.** The examinations or tests ~~shall~~ **must** be conducted at the health care provider's office or facility or at a place mutually agreed upon by the executive director and the member claiming to be disabled.

**3. Costs.** The costs incurred under subsections 1 and 2 ~~shall~~ **must** be paid by the retirement system.

**Sec. 37. 5 MRSA §18527, first ¶,** as amended by PL 2003, c. 387, §11, is further amended to read:

Upon agreement of the executive director and the person, rehabilitation services may be provided to any person who is the recipient of a disability retirement benefit under this article as a means to the person being able to return to substantially gainful activity. As a condition of entering into an agreement to provide rehabilitation services, the executive director must determine that rehabilitation is feasible, that rehabilitation is consistent with the purposes of this article, that the recipient is suitable for rehabilitation services and that rehabilitation services are likely to lead to substantially gainful activity. ~~When appropriate, determination of suitability must include consultation with the medical board to determine any medical indications that the recipient should not engage in a rehabilitation program or to identify a recipient too severely disabled to benefit from rehabilitation services in accordance with the purposes of this article.~~ Services must be provided by private and public rehabilitation counselors, government agencies and others approved by the executive director as qualified to provide rehabilitation services. The executive director shall consider a rehabilitation counselor's rate of successfully placing rehabilitated employees in jobs relative to the placement rates of other counselors in the State as fundamental in deciding whether to approve the counselor as qualified. This section does not affect the ongoing requirement that a person remain disabled in order to continue to receive disability benefits.

**Sec. 38. 5 MRSA §18529, sub-§2, ¶B,** as amended by PL 2003, c. 675, §4, is further amended to read:



B. The executive director may require, once each year, that the person undergo examinations or tests, conducted in accordance with section 18526, to determine the person's disability. ~~The executive director may refer the records documenting the results of the examinations or tests and the person's file to the medical board for medical consultation regarding rehabilitation in accordance with section 17106, subsection 3, paragraph E.~~

- (1) After the disability has continued for 2 years, the disability must render the person unable to engage in any substantially gainful activity that is consistent with the person's training, education or experience and average final compensation adjusted by the same percentage adjustment as has been received under section 18407. The disability retirement benefit continues if the person can effectively demonstrate to the executive director that the person is actively seeking work. For purposes of this subparagraph, the ability to engage in substantially gainful activity is demonstrated by the ability to perform work resulting in annual earnings that exceed \$20,000 or 80% of the recipient's average final compensation at retirement, whichever is greater, adjusted by the same percentage adjustments granted under section 18407.
- (2) If the person refuses to submit to the examinations or tests under this paragraph, the disability retirement benefit is discontinued until that person withdraws the refusal.
- (3) If the person's refusal under subparagraph (2) continues for one year, all rights to any further benefits under this article cease.
- (4) If it is determined, on the basis of the examinations or tests under this paragraph, that the disability of a person no longer exists, the payment of the disability retirement benefit ceases.
- (5) The executive director shall notify the person in writing of the decision to discontinue the disability retirement allowance under subparagraph (2) or (4).
  - (a) The decision is subject to appeal under section 17451.
  - (b) If the person appeals the executive director's decision, the disability retirement allowance may not be discontinued until all appeals have been exhausted.

**Sec. 39. 5 MRSA §18530, sub-§2, ¶C**, as enacted by PL 1989, c. 409, §§11 and 12, is amended to read:

C. If, during the first 5 years of reemployment, the person again becomes disabled, terminates

employment and is not covered by any other disability program, the retirement system shall resume paying the disability retirement benefit payable prior to the reemployment with all applicable cost-of-living adjustments and shall provide rehabilitation services under in accordance with section 18527 ~~if recommended by the medical board~~. If the benefit payable under the other disability program is not equal to or greater than the benefit under this article, the retirement system shall pay the difference between the amount of the benefit payable under the other disability program and the amount of the benefit payable under this article. The executive director shall require examinations or tests to determine whether the person is disabled as described in section 18521; and

**Sec. 40. 5 MRSA §18530, sub-§3, ¶E**, as enacted by PL 1989, c. 409, §§11 and 12, is amended to read:

E. If, during the first 5 years of reemployment, the person again becomes disabled and terminates employment, the retirement system shall resume paying the disability retirement benefit payable prior to the reemployment with all applicable cost-of-living adjustments, or if greater, a disability retirement benefit based upon the person's current average final compensation and shall provide rehabilitation services under in accordance with section 18527 ~~if recommended by the medical board~~. The executive director shall require examinations or tests to determine whether the person is disabled as defined in section 18521; and

**Sec. 41. 5 MRSA §18553, sub-§3, ¶A**, as amended by PL 1991, c. 469, §5, is further amended to read:

A. A surviving spouse of the qualifying member is paid a \$150 benefit each month beginning the first month after the death occurs and continuing during the surviving spouse's lifetime, if:

- (1) The deceased qualifying member had 10 years of creditable service at the time of death; or
- (2) The surviving spouse is certified by ~~the medical board~~ an independent health care provider or the medical review service provider to be permanently mentally incompetent or permanently physically incapacitated and is determined by the executive director to be unable to engage in any substantially gainful employment.

A full month's benefit is paid to the estate of the surviving spouse for the month in which the surviving spouse dies.

**Sec. 42. 5 MRSA §18553, sub-§5-A, ¶A,** as amended by PL 1991, c. 469, §5, is further amended to read:

A. A designated beneficiary who is alive at the time of the death of the qualifying member is paid \$150 per month beginning the first month after the death occurs and continuing until the date of the designated beneficiary's death, if the designated beneficiary is certified by ~~the medical board~~ an independent health care provider or the medical review service provider to be permanently mentally incompetent or permanently physically incapacitated and is determined by the executive director to be unable to engage in any substantially gainful employment.

**Sec. 43. Implementation plan for mandatory long-term disability insurance.** The Maine Public Employees Retirement System shall convene a stakeholder group, including representatives of participant employers and employee groups, to develop an implementation plan for providing mandatory long-term disability insurance coverage to retirement system members through their employers. The Maine Public Employees Retirement System shall submit an implementation plan, including any recommended legislation, to the joint standing committee of the Legislature having jurisdiction over retirement matters no later than January 3, 2023. The joint standing committee of the Legislature having jurisdiction over retirement matters may report out a bill to the 131st Legislature on matters related to the report.

**Sec. 44. Report on disability retirement.** The Maine Public Employees Retirement System shall report to the joint standing committee of the Legislature having jurisdiction over retirement matters, no later than January 31, 2023, on the experience of the system and its members after the implementation of this Act. The joint standing committee of the Legislature having jurisdiction over retirement matters may report out a bill to the 131st Legislature on matters related to the report.

**Sec. 45. Application.** This Act applies to disability retirement benefit applications received by the Maine Public Employees Retirement System on or after the effective date of this Act.

See title page for effective date.

**CHAPTER 278**

**S.P. 531 - L.D. 1646**

**An Act To Amend the Occupational Therapy Licensing Statutes**

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

**Sec. 1. 32 MRSA §2272, sub-§12,** as enacted by PL 1997, c. 294, §2, is repealed.

**Sec. 2. 32 MRSA §2272, sub-§12-D** is enacted to read:

**12-D. Occupational therapy.** "Occupational therapy" means the therapeutic use of everyday life activities and occupations with individuals or groups to enhance or enable participation, performance or function in roles and situations in home, school, workplace, community and other settings for the purpose of promoting health and wellness to those who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation or participation restriction. Occupational therapy addresses the physical, cognitive, psychosocial, sensory and other aspects of performance in a variety of contexts to support engagement in everyday occupations that affect physical and mental health, well-being and quality of life. "Occupational therapy" includes:

**A. Methods and strategies selected to direct the process of interventions such as:**

- (1) Facilitating establishment, remediation or restoration of a skill or ability that has not yet developed, is impaired or is in decline;**
- (2) Compensation, modification or adaptation of an activity or environment to enhance performance or to prevent injuries, disorders or other conditions;**
- (3) Maintenance and enhancement of capabilities without which performance of everyday life activities would decline;**
- (4) Health promotion and wellness to enable or enhance performance in everyday life activities; and**
- (5) Prevention or remediation of barriers to performance, including disability prevention;**

**B. Evaluation of client factors affecting activities of daily living, instrumental activities of daily living, education, work, play, leisure and social participation, including:**

- (1) Body functions such as neuromuscular, sensory, visual, perceptual, mental and cognitive functions; pain factors; bodily systems such as cardiovascular, digestive, integumentary and genitourinary systems; and structures related to movement;**
- (2) Habits, routines, roles and behavior patterns;**
- (3) Cultural, physical, environmental, social and spiritual contexts and activity demands that affect performance; and**
- (4) Performance skills, including motor, process, emotional regulation, cognitive, sensory**