

**CHAPTER 1**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**SUBCHAPTER 1**

**ORGANIZATION; GENERAL POWERS AND DUTIES**

**§1. Department; commissioner; bureaus; compensation; employees; definitions**

**(REPEALED)**

**SECTION HISTORY**

PL 1967, c. 261, §§1-3 (AMD). PL 1967, c. 490, §7 (AMD). PL 1969, c. 504, §35 (AMD). PL 1973, c. 553, §§1,2 (AMD). PL 1973, c. 793, §1 (RPR). P&SL 1975, c. 147, §G2 (AMD). PL 1975, c. 293, §§1,2 (AMD). PL 1975, c. 755, §4 (AMD). PL 1975, c. 771, §§207-209 (AMD). PL 1977, c. 78, §145 (AMD). PL 1977, c. 674, §§18,19 (AMD). PL 1979, c. 333 (AMD). PL 1981, c. 10, §1 (AMD). PL 1981, c. 703, §A4 (AMD). PL 1983, c. 409, §1 (AMD). PL 1983, c. 729, §5 (AMD). PL 1985, c. 785, §B82 (AMD). PL 1989, c. 329, §§1,2 (AMD). PL 1989, c. 400, §§3,14 (AMD). PL 1989, c. 507 (AMD). PL 1989, c. 576, §§3,5 (AMD). PL 1989, c. 878, §§A51,52 (AMD). PL 1993, c. 349, §50 (AMD). PL 1993, c. 685, §B2 (AMD). PL 1995, c. 418, §A1 (AMD). PL 1995, c. 560, §J2 (AMD). PL 2003, c. 689, §§B6,7 (REV). PL 2007, c. 539, Pt. N, §8 (RP).

**§1-A. Definitions**

As used in this Title, unless the context otherwise indicates, the following terms have the following meanings. [PL 2007, c. 539, Pt. N, §9 (NEW).]

**1. Commissioner.** "Commissioner" means the Commissioner of Health and Human Services. [PL 2007, c. 539, Pt. N, §9 (NEW).]

**2. Department.** "Department" means the Department of Health and Human Services. [PL 2007, c. 539, Pt. N, §9 (NEW).]

**3. Intermediate care facility for persons with intellectual disabilities.** "Intermediate care facility for persons with intellectual disabilities" has the same meaning as in Title 34-B, section 1001, subsection 4-B. [PL 2011, c. 542, Pt. A, §23 (NEW).]

**SECTION HISTORY**

PL 2007, c. 539, Pt. N, §9 (NEW). PL 2011, c. 542, Pt. A, §23 (AMD).

**§2. Legal assistance from Attorney General**

**(REPEALED)**

**SECTION HISTORY**

PL 1973, c. 567, §20 (AMD). PL 2007, c. 539, Pt. N, §10 (RP).

**§3. Duties of department**

**(REPEALED)**

**SECTION HISTORY**

PL 1965, c. 207, §1 (AMD). PL 1975, c. 751, §1 (AMD). PL 1987, c. 349, §H12 (AMD). PL 1989, c. 167, §1 (AMD). PL 2003, c. 689, §B6 (REV). PL 2007, c. 539, Pt. N, §11 (RP).

**§3-A. State wards**

**(REPEALED)**

SECTION HISTORY

PL 1971, c. 598, §33 (NEW). PL 1971, c. 622, §§69-D (AMD). PL 2003, c. 708, §1 (AMD). PL 2007, c. 539, Pt. N, §12 (RP).

**§3-B. Emergency medical care**

**(REPEALED)**

SECTION HISTORY

PL 1977, c. 454, §1 (NEW). PL 2007, c. 539, Pt. N, §13 (RP).

**§3-C. Clearinghouse of information on handicapped housing accessibility**

**(REPEALED)**

SECTION HISTORY

PL 1987, c. 730, §2 (NEW). PL 2007, c. 539, Pt. N, §14 (RP).

**§3-D. Maine Center for Public Health Practice**

**(REPEALED)**

SECTION HISTORY

PL 1995, c. 598, §A1 (NEW). PL 2007, c. 539, Pt. N, §15 (RP).

**§4. Advise on incorporation of institutions**

**(REPEALED)**

SECTION HISTORY

PL 2007, c. 539, Pt. N, §16 (RP).

**§5. Inspection and licensing of institutions, agencies and boarding homes**

**(REPEALED)**

SECTION HISTORY

PL 1965, c. 462 (AMD). PL 1971, c. 592, §§34,39 (AMD). PL 1973, c. 303, §3 (AMD). PL 1975, c. 491, §1 (AMD). PL 1975, c. 623, §25 (AMD). PL 1975, c. 719, §1 (RP).

**§5-A. Inspection and licensing of residential facilities for the care, treatment or rehabilitation of drug users**

**(REPEALED)**

SECTION HISTORY

PL 1973, c. 164, §2 (NEW). PL 1973, c. 303, §3 (AMD). PL 1975, c. 65, §§1-4 (AMD). PL 1975, c. 623, §26 (AMD). PL 1975, c. 719, §2 (RP).

**§6. Distribution of functions**

**(REPEALED)**

SECTION HISTORY

PL 2007, c. 539, Pt. N, §17 (RP).

**§6-A. Service delivery regions****(REPEALED)**

## SECTION HISTORY

PL 1991, c. 781, §D1 (NEW). PL 1991, c. 781, §D4 (AFF). RR 1995, c. 2, §39 (COR). PL 1995, c. 502, §D1 (RPR). PL 2001, c. 354, §3 (AMD). PL 2005, c. 397, §A18 (AMD). PL 2007, c. 539, Pt. N, §18 (RP).

**§6-B. Joint location of services****(REPEALED)**

## SECTION HISTORY

PL 1993, c. 738, §F1 (NEW). PL 1995, c. 560, §K82 (AMD). PL 1995, c. 560, §K83 (AFF). PL 2001, c. 354, §3 (AMD). PL 2007, c. 539, Pt. N, §19 (RP).

**§6-C. Community Services Center****(REPEALED)**

## SECTION HISTORY

PL 1995, c. 560, §K82 (AMD). PL 1995, c. 560, §K83 (AFF). PL 1995, c. 665, §CC1 (NEW). PL 1995, c. 665, §CC2 (AFF). PL 1999, c. 401, §L1 (AMD). PL 1999, c. 401, §L2 (AFF). PL 2001, c. 354, §3 (AMD). PL 2005, c. 397, §A19 (RPR). PL 2007, c. 539, Pt. N, §20 (RP).

**§7. Additional duties****(REPEALED)**

## SECTION HISTORY

PL 1965, c. 425, §14-A (AMD). PL 1985, c. 785, §B83 (AMD). PL 1985, c. 785, §C3 (AMD). PL 2007, c. 539, Pt. N, §21 (RP).

**§8. Complementary services****(REPEALED)**

## SECTION HISTORY

PL 1965, c. 132 (NEW). PL 2007, c. 539, Pt. N, §22 (RP).

**§9. Fees for service****(REPEALED)**

## SECTION HISTORY

PL 1965, c. 470 (NEW). PL 1977, c. 574 (RPR). PL 1979, c. 254, §§1-7 (AMD). PL 1979, c. 509, §1 (AMD). PL 1979, c. 663, §§130,131 (AMD). PL 1981, c. 703, §A5 (AMD). PL 1983, c. 292 (RPR). PL 1989, c. 400, §§4,14 (AMD). PL 2003, c. 689, §B6 (REV). PL 2007, c. 539, Pt. N, §23 (RP).

**§9-A. Public assistance eligibility****(REPEALED)**

## SECTION HISTORY

PL 1989, c. 566 (NEW). PL 1995, c. 418, §§A2,3 (AMD). PL 1997, c. 530, §A6 (AMD). PL 2001, c. 439, §UU1 (AMD). PL 2007, c. 539, Pt. N, §24 (RP).

**§10. Federal funds and commodities**

**(REPEALED)**

## SECTION HISTORY

PL 1967, c. 219 (NEW). PL 1967, c. 356 (NEW). PL 1967, c. 544, §55 (RP). PL 1975, c. 771, §210 (AMD). PL 2007, c. 539, Pt. N, §25 (RP).

**§10-A. Coordination and reporting on expenditure of funds pertaining to homeland security and bioterrorism prevention****(REPEALED)**

## SECTION HISTORY

PL 2005, c. 634, §10 (NEW). PL 2007, c. 539, Pt. N, §26 (RP).

**§11. Municipal grants****(REPEALED)**

## SECTION HISTORY

PL 1967, c. 544, §56 (NEW). PL 2007, c. 539, Pt. N, §27 (RP).

**§12. Funds for social services****(REPEALED)**

## SECTION HISTORY

PL 1973, c. 410 (NEW). PL 1975, c. 293, §4 (AMD). PL 1993, c. 415, §E1 (AMD). PL 1995, c. 694, §D27 (AMD). PL 1995, c. 694, §E2 (AFF). PL 2007, c. 539, Pt. N, §28 (RP).

**§12-A. Performance-based contracts****(REPEALED)**

## SECTION HISTORY

PL 1993, c. 737, §2 (NEW). PL 1995, c. 402, §B2 (AMD). PL 1995, c. 691, §2 (AMD). PL 2007, c. 539, Pt. N, §29 (RP).

**§12-B. Aid to charitable institutions****(REPEALED)**

## SECTION HISTORY

PL 1995, c. 368, §TT1 (NEW). PL 2007, c. 539, Pt. N, §30 (RP).

**§13. Human Services Fraud Investigation Unit**

**1. Establishment; composition.** The Commissioner of Health and Human Services is authorized to create within the department a Human Services Fraud Investigation Unit, referred to in this section as the "unit." The commissioner is authorized to employ and assign to the unit such employees as the commissioner considers appropriate.

[RR 2021, c. 2, Pt. B, §79 (COR).]

**2. Purpose.** The purpose of the unit shall be to investigate reported acts of fraud or attempted fraud or incidents of commingling or misapplication of funds in connection with, but not limited to, the requesting, obtaining, receiving, withholding, recording, reporting, expending or handling of funds administered by the department. The unit shall investigate such reported acts or incidents involving, but not limited to, recipients, providers and vendors receiving or applying for services or funds administered by the department.

[PL 1975, c. 715, §3 (NEW).]

**3. Cooperation; information.** All agencies of the State and municipal governments shall cooperate fully with the unit, rendering any assistance requested by the unit. Every head of a department, bureau, division, commission or any other unit of State Government shall report in writing to the unit all information concerning any suspected incident of fraud or attempted fraud or violation of any law in connection with funds administered by the department.

[PL 1975, c. 715, §3 (NEW).]

**4. Violation of law; action.** Whenever the unit determines that a fraud, an attempted fraud or a violation of law in connection with funds administered by the department may have occurred, it shall report in writing all information concerning the fraud or violation to the Attorney General or the Attorney General's delegate for such action as the Attorney General considers appropriate, including civil action for recovery of funds and criminal prosecution by the Department of the Attorney General. The unit shall, upon request of the Attorney General and in such a manner as the Attorney General considers appropriate, assist in the recovery of funds.

[RR 2021, c. 2, Pt. B, §80 (COR).]

**5. Audit methods.** When conducting audits pursuant to this section, the department may not engage a private vendor to conduct the audit or base any auditor's compensation on a percentage of the alleged overpayment amount, except that the department may engage a private vendor to conduct audits of providers located outside this State and may base that vendor's compensation on a percentage of the amount of overpayment received by the department. The department shall disclose to the public any mathematical algorithm used in performance of an audit.

[PL 2005, c. 12, Pt. QQ, §1 (AMD).]

**6. Limitation on actions to recover overpayments.** The department may impose a sanction or withhold payment from a MaineCare provider in order to recover or impose penalties for an overpayment for services rendered or goods delivered under the MaineCare program as provided in this subsection.

A. The department may impose a sanction or withhold payment when the department has obtained an order from Superior Court allowing interim sanctions upon showing a substantial likelihood that overpayment or fraud has occurred and that substantial harm to the department will result from further delay or when the department has taken final agency action and the provider has waived or exhausted its right to judicial review. [PL 2003, c. 688, Pt. C, §6 (AMD).]

B. Notwithstanding paragraph A, the department may terminate or suspend the participation of a provider in the MaineCare program pursuant to federal regulation and state rule. This authority includes, but is not limited to, provider payment suspensions required under section 1714-E. [RR 2011, c. 2, §22 (COR).]

C. For the purposes of this subsection, "overpayment" does not include an overestimate made as part of a prospective interim payment, a 3rd-party liability recovery, a departmental administrative error or receivership fees or debt. In addition, this subsection does not apply to routine adjustments of \$2,500 or less that result from claims editing or processing. [PL 2003, c. 613, §1 (NEW).]

[RR 2011, c. 2, §22 (COR).]

#### SECTION HISTORY

PL 1975, c. 715, §3 (NEW). PL 2001, c. 464, §1 (AMD). PL 2001, c. 464, §2 (AFF). PL 2003, c. 419, §1 (AMD). PL 2003, c. 613, §1 (AMD). PL 2003, c. 688, §C6 (AMD). PL 2003, c. 689, §B7 (REV). PL 2005, c. 12, §QQ1 (AMD). PL 2011, c. 687, §2 (AMD). RR 2011, c. 2, §22 (COR). RR 2021, c. 2, Pt. B, §§79, 80 (COR).

#### §13-A. MaineCare program integrity recovery audit contractor agreement

Notwithstanding any other provision of law to the contrary, the provisions of this section apply to MaineCare program integrity recovery audit contracting. The department may enter into an agreement

with a recovery audit contractor for the purpose of ensuring MaineCare program integrity, specifically to identify and reimburse to correct underpayments and to identify and recoup overpayments under the Medicaid state plan and under any waiver of the state plan. An agreement entered into under this section must provide that payment to the contractor may be made only from amounts recovered and that payments for identifying underpayments and collecting overpayments must be made on a contingent fee basis. After payments to correct underpayments and payment of any contingent fees due to the contractor, the proceeds of collections from overpayments must be deposited into the Medical Care - Payments to Providers program, Other Special Revenue Funds account in the Department of Health and Human Services for the purpose of providing state match under the federal Medicaid program. [PL 2011, c. 593, §1 (NEW).]

#### SECTION HISTORY

PL 2011, c. 593, §1 (NEW).

#### **§14. Action against parties liable for medical care rendered to assistance recipients; assignment of claims**

**1. Recovery procedures.** When benefits are provided or will be provided to a member under the MaineCare program administered by the department pursuant to the United States Social Security Act, Title XIX, including any prescription drug programs administered under the auspices of MaineCare, referred to collectively in this section as MaineCare, for the medical costs of injury, disease, disability or similar occurrence for which a 3rd party is, or may be, liable, the commissioner may recover from that party the cost of the benefits provided. This right of recovery is separate and independent from any rights or causes of action belonging to a member under the MaineCare program. For MaineCare recipients who participated in the MaineCare managed care program, "cost" means the total value of coverable medical services provided measured by the amount that MaineCare would have paid to providers directly for such services, were it not for the managed care system. The MaineCare program is the payor of last resort and shall provide medical coverage only when there are no other available resources. The Attorney General, or counsel appointed by the Attorney General, may, to enforce this right, institute and prosecute legal proceedings directly against the 3rd party in the appropriate court in the name of the commissioner.

In addition to the right of recovery set forth in this subsection, the commissioner must also be subrogated, to the extent of any benefits provided under the MaineCare program, to any cause of action or claim that a member has against a 3rd party who is or may be liable for medical costs incurred by or on behalf of the member. The Attorney General, or counsel appointed by the Attorney General, to enforce this right may institute and prosecute legal proceedings in the name of the injured person, member, guardian, personal representative, estate or survivor. If necessary to enforce the commissioner's right of recovery, the Attorney General, or counsel appointed by the Attorney General, may institute legal proceedings against any member, including the agent, representative or attorney of that member, who has received a settlement or award from a 3rd party.

The commissioner's right to recover the cost of benefits provided constitutes a statutory lien on the proceeds of an award or settlement from a 3rd party if recovery for MaineCare costs was or could have been included in the recipient's claim for damages from the 3rd party to the extent of the recovery for medical expenses. The commissioner is entitled to recover the cost of the benefits actually paid out when the commissioner has determined that collection will be cost-effective to the extent that there are proceeds available for such recovery after the deduction of reasonable attorney's fees and litigation costs from the gross award or settlement. In determining whether collection will be cost-effective, the commissioner shall consider all factors that diminish potential recovery by the department, including but not limited to questions of liability and comparative negligence or other legal defenses, exigencies of trial that reduce a settlement or award in order to resolve the recipient's claim and limits on the amount of applicable insurance coverage that reduce the claim to the amount recoverable by the

recipient. The department's statutory lien may not be reduced to reflect an assessment of a pro rata share of the recipient's attorney's fees or litigation costs. The commissioner may, at the commissioner's discretion, compromise, or otherwise settle and execute a release of, any claim or waive any claim, in whole or in part, if the commissioner determines the collection will not be cost-effective or that the best possible outcome requires compromise, release or settlement.

[PL 2007, c. 381, §1 (AMD).]

## **2. Condition for eligibility.**

[PL 1981, c. 24, §1 (RP).]

**2-A. Assignment of rights of recovery.** The receipt of benefits under the MaineCare program constitutes an assignment by the recipient or any legally liable relative to the department of the right to recover from 3rd parties for the medical cost of injury, disease, disability or similar occurrence for which the recipient receives medical benefits. The department's assigned right to recover is limited to the amount of medical benefits received by the recipient and does not operate as a waiver by the recipient of any other right of recovery against a 3rd party that a recipient may have.

The recipient is also deemed to have appointed the commissioner as the recipient's attorney in fact to perform the specific act of submitting claims, making inquiries, requesting information, verifying other previous, current or potential coverage for the recipient or the recipient's spouse or dependents or endorsing over to the department any and all drafts, checks, money orders or any other negotiable instruments connected with the payment of 3rd-party medical claims to 3rd parties, liable parties or potentially liable 3rd parties. The appointment includes complete access to medical expense records and data, insurance policies and coverage and all other information relating to MaineCare's duty to cost-avoid and seek other coverage or payment response.

[PL 2007, c. 240, Pt. JJJ, §1 (AMD); PL 2007, c. 448, §7 (AMD); PL 2007, c. 448, §14 (AFF).]

**2-B. Direct reimbursement to health care provider.** When an insured is eligible under the MaineCare program for the medical costs of injury, disease, disability or similar occurrence for which an insurer is liable, and the insured's claim is payable to a health care provider as provided or permitted by the terms of a health insurance policy or pursuant to an assignment of rights by an insured, the insurer shall directly reimburse the health care provider to the extent that the claim is honored.

[PL 2003, c. 20, Pt. K, §2 (AMD).]

**2-C. Direct reimbursement to department.** When an insured is eligible under the MaineCare program for the medical costs of injury, disease, disability or similar occurrence for which an insurer is liable, and the claim is not payable to a health care provider under the terms of the insurance policy, the insurer shall directly reimburse the Department of Health and Human Services for any medical services paid by the department on behalf of a recipient under the MaineCare program to the extent that those medical services are payable under the terms of the insurance policy. If the insurer knows or has information upon which to reasonably conclude that the insured is a recipient of MaineCare services, the insurer shall advise the department in writing as to the existence of the claim prior to any other payment.

[PL 2003, c. 20, Pt. K, §2 (AMD); PL 2003, c. 689, Pt. B, §6 (REV).]

**2-D. Notification of claim.** A recipient under the MaineCare program, or any agent, representative or attorney representing a recipient under the MaineCare program, who makes a claim to recover the medical cost of injury, disease, disability or similar occurrence for which the party received medical benefits under the MaineCare program shall notify the department in writing prior to settlement negotiations and provide information required by the department of the existence of the claim. If the notice is not given and the department's ability to recover for benefits paid is compromised, the department may institute legal proceedings against a recipient, including the agent, representative or attorney of that recipient, who has received a settlement or award from a 3rd party. The department may accept a letter of MaineCare claim protection in lieu of this section.

[PL 2007, c. 381, §2 (AMD).]

**2-E. Notification of pleading.** In an action to recover the medical cost of injury, disease, disability or similar occurrence for which the party received medical benefits under the MaineCare program, the party bringing the action shall notify the department of that action at least 10 days prior to filing the pleadings. The notification must provide timely opportunity for the department, at its discretion, to intervene in all actions as an interested party. If adequate opportunity to intervene is not given and the department's ability to recover for benefits paid is compromised, the department may institute legal proceedings against a recipient, including the agent, representative or attorney of that recipient, who has received a settlement or award from a 3rd party. The department may accept a letter of MaineCare claim protection in lieu of intervention. Department records indicating medical benefits paid by the department on behalf of the recipient are prima facie evidence of the medical expenses incurred by the recipient for the related medical services.

[PL 2007, c. 381, §3 (AMD).]

**2-F. Disbursement.** Except as otherwise provided in this subsection, a disbursement of any award, judgment or settlement may not be made to a recipient without the recipient or the recipient's attorney first paying to the department that amount of the award, judgment or settlement that constitutes reimbursement for medical payments made or obtaining from the department a release of any obligation owed to it for medical benefits provided to the recipient. If a dispute arises between the recipient and the commissioner as to the settlement of any claim that the commissioner may have under this section, the 3rd party or the recipient's attorney shall withhold from disbursement to the recipient an amount equal to the commissioner's claim. Either party may apply to the Superior Court or the District Court in which an action based upon the recipient's claim could have been commenced for an order to determine a reasonable amount in satisfaction of the statutory lien, consistent with federal law.

[PL 2007, c. 381, §4 (AMD).]

**2-G. Claims against estates of certain Medicaid recipients.**

[PL 1993, c. 410, Pt. I, §2 (RP).]

**2-H. Honoring of assignments.** The following provisions apply to claims for payment submitted by the department or a health care provider.

A. Whenever the department submits claims to a health insurer, as included in 42 United States Code, Section 1396a(a)(25)(I), including self-insured plans, group health plans as defined in the federal Employee Retirement Income Security Act of 1974, Section 607(1), service benefit plans, managed care organizations, pharmacy benefit managers or other parties that are, by statute, contract or agreement, legally responsible for payment of a claim for a health care item or service, on behalf of a current or former recipient under the MaineCare program for whom an assignment of rights has been received, or whose rights have been assigned by the operation of law, the health insurer doing business in the State or providing coverage to a resident of this State must respond to the department within 60 days and:

- (1) Provide information, with respect to individuals who are eligible for or are provided medical assistance under the MaineCare program, upon the request of the State, to determine during what period the individual or the individual's spouse or dependents may be or may have been covered by a health insurer and the nature of the coverage that is or was provided by the health insurer, including the name, address and identifying number of the plan, in a manner prescribed by the United States Secretary of Health and Human Services;
- (2) Accept the State's right of recovery and the assignment to the State of any right of an individual or other entity to payment from the party for an item or service for which payment has been made under the state plan and, in the case of a responsible 3rd party that requires prior authorization for an item or service furnished to an individual eligible to receive medical assistance under the MaineCare program, accept authorization provided by the State that the



item or service is covered under the MaineCare program for that individual, as if the authorization were the prior authorization made by the 3rd party for the item or service;

(3) Respond to any inquiry by the State regarding a claim for payment for any health care item or service that is submitted not later than 3 years after the date of the provision of such health care item or service; and

(4) Agree not to deny a claim submitted by the State solely on the basis of the date of submission of the claim, the type or format of the claim form, a failure to present proper documentation at the point-of-sale that is the basis of the claim or, in the case of a responsible 3rd party, a failure to obtain a prior authorization for the item or service for which the claim is being submitted, if:

(a) The claim is submitted by the State within the 3-year period beginning on the date on which the item or service was furnished; and

(b) Any action by the State to enforce its rights with respect to such claim is commenced within 6 years of the State's submission of such claim. [PL 2023, c. 162, §1 (AMD).]

B. [PL 2007, c. 240, Pt. JJJ, §3 (RP).]

C. A payment made as part of an assignment by a 3rd party to the MaineCare program or a contractor acting on behalf of the MaineCare program is considered final 2 years after the date of the payment and when final the payment is not subject to adjustment. [PL 2023, c. 162, §1 (NEW).]

[PL 2023, c. 162, §1 (AMD).]

**2-I. Claims against estates of MaineCare recipients.** Claims against the estates of MaineCare recipients are governed by this subsection.

A. The department has a claim against the estate of a MaineCare recipient when, after the death of the recipient:

(1) Property or other assets are discovered that existed and were owned by the recipient during the period when MaineCare benefits were paid for the recipient and disclosure of the property or assets at the time benefits were being paid would have rendered the recipient ineligible to receive the benefits;

(2) It is determined that the recipient was 55 years of age or older when that person received MaineCare assistance; or

(3) It is determined that the recipient has received or is entitled to receive benefits under a long-term care insurance policy in connection with which assets or resources are disregarded and medical assistance was paid on behalf of the recipient for nursing facility or other long-term care services. [PL 2003, c. 20, Pt. K, §2 (AMD).]

B. The amount of MaineCare benefits paid and recoverable under this subsection is a claim against the estate of the deceased recipient.

(1) As to assets of the recipient included in the probated estate, this claim may be enforced pursuant to Title 18-C, Article 3, Part 8.

(2) As to assets of the recipient not included in the probated estate, this claim may be enforced by filing a claim in any court of competent jurisdiction. [PL 2017, c. 402, Pt. C, §41 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Except for a claim collected through a voluntary payment arrangement under paragraph C-2, a claim may not be made under paragraph A, subparagraph (2) or (3) until:

(1) The recipient has no surviving spouse; and

(2) The recipient has no surviving child who is under age 21 or who is blind or permanently and totally disabled as defined in 42 United States Code, Section 1382c. [PL 2005, c. 12, Pt. DDD, §9 (AMD); PL 2005, c. 12, Pt. DDD, §17 (AFF).]

C-1. [PL 2007, c. 423, §1 (RP).]

C-2. The department shall provide heirs, assignees or transferees of a deceased recipient an opportunity to pay a claim under this subsection through a voluntary payment arrangement that is acceptable to the department. The payment arrangement may consist of a payment plan, promissory note or other payment mechanism. [PL 2005, c. 12, Pt. DDD, §9 (NEW); PL 2005, c. 12, Pt. DDD, §17 (AFF).]

D. Paragraph A, subparagraphs (2) and (3) apply only to a recipient who died on or after October 1, 1993 for MaineCare payments made on or after October 1, 1993. [PL 2003, c. 20, Pt. K, §2 (AMD).]

E. A claim under paragraph A, subparagraph (2) must be waived if enforcement of the claim would create an undue hardship under criteria developed by the department or if the costs of collection are likely to exceed the amount recovered. A waiver may be granted in full or in part. A waiver may not be granted if the recipient or waiver applicant acted to lose, diminish, divest, encumber or otherwise transfer any value of or title to an asset for the purpose of preventing recovery under this subsection. [PL 2005, c. 12, Pt. DDD, §9 (AMD); PL 2005, c. 12, Pt. DDD, §17 (AFF).]

F. As used in this subsection, unless the context otherwise indicates, the term "estate" means:

(1) All real and personal property and other assets included in the recipient's estate, as defined in Title 18-C, section 1-201; and

(2) Any other real and personal property and other assets in which the recipient had any legal interest at the time of death, to the extent of that interest, including assets conveyed to a survivor, heir or assign of the deceased recipient through tenancy in common, survivorship, life estate, living trust, joint tenancy in personal property or other arrangement but not including joint tenancy in real property.

Unless otherwise required by the United States Social Security Act, 42 United States Code, Section 1396p(b), "estate" does not include an account established under a qualified ABLE program that complies with the requirements of the federal Achieving a Better Life Experience Act of 2014, Public Law 113-295. [PL 2019, c. 348, §2 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

G. The department may accept, hold, transfer title to and sell real property to collect a claim under this subsection. The department may receive title to real property from a personal representative, special or public administrator, creditor, heir, devisee, assignee or transferee in full or partial satisfaction of a claim under this subsection. [PL 2005, c. 12, Pt. DDD, §12 (NEW); PL 2005, c. 12, Pt. DDD, §17 (AFF).]

[PL 2019, c. 348, §2 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2-J. Authority to contract for attorney services.** The department is authorized to pursue rights under this section, including 3rd-party reimbursement of MaineCare costs in workers' compensation claims cases, through contracted attorney services. The department may adopt rules as necessary to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2007, c. 311, §1 (NEW).]

**3. Definitions.** For purposes of this section, "3rd party" or "liable party" or "potentially liable party" means any entity, including, but not limited to, any health insurer as included in 42 United States Code, Section 1396a(a)(25)(I) and any other parties that are, by statute, contract or agreement, legally responsible for payment of a claim for a health care item or service, that may be liable under a contract

to provide health, automobile, workers' compensation or other insurance coverage that is or may be liable to pay all or part of the medical cost of injury, disease, disability or similar occurrence of an applicant or recipient of benefits under the MaineCare program. For purposes of this section and sections 18 and 19, an "insurance carrier" includes, but is not limited to, health insurers, group health plans as defined in 29 United States Code, Section 1167(1), service benefit plans and health maintenance organizations, as well as any other entity included in 42 United States Code, Section 1396a(a)(25)(I).

"Liable party," "potentially liable party" or "3rd party" also includes the trustee or trustees of any mortuary trust established by the recipient or on the recipient's behalf in which there is money remaining after the actual costs of the funeral and burial have been paid in accordance with the terms of the trust and in which there is no provision that the excess be paid to the decedent's estate. "Liable party," "potentially liable party" or "3rd party" may also include the recipient of benefits under the MaineCare program.

[PL 2007, c. 240, Pt. JJJ, §4 (AMD); PL 2007, c. 448, §9 (AMD); PL 2007, c. 448, §14 (AFF).]

#### SECTION HISTORY

PL 1979, c. 145 (NEW). PL 1979, c. 610, §§1,2 (AMD). PL 1981, c. 24, §§1,2 (AMD). PL 1981, c. 698, §92 (AMD). PL 1987, c. 203 (AMD). PL 1987, c. 621 (AMD). PL 1989, c. 397, §2 (AMD). PL 1989, c. 778, §§1-3 (AMD). PL 1991, c. 9, §§N1-6 (AMD). PL 1991, c. 815, §1 (AMD). PL 1993, c. 410, §§I2,3 (AMD). PL 1993, c. 707, §I1 (AMD). PL 1995, c. 462, §§D2,3 (AMD). PL 1997, c. 395, §E1 (AMD). PL 1997, c. 795, §§1-4 (AMD). PL 1999, c. 483, §§1,2 (AMD). PL 1999, c. 668, §§94-99 (AMD). PL 1999, c. 731, §§TT1-6 (AMD). PL 2003, c. 20, §K2 (AMD). PL 2003, c. 689, §B6 (REV). PL 2005, c. 12, §DDD9 (AMD). PL 2005, c. 12, §DDD17 (AFF). PL 2007, c. 240, Pt. JJJ, §§1-4 (AMD). PL 2007, c. 311, §1 (AMD). PL 2007, c. 381, §§1-4 (AMD). PL 2007, c. 423, §1 (AMD). PL 2007, c. 448, §§7-9 (AMD). PL 2007, c. 448, §14 (AFF). PL 2009, c. 150, §3 (AMD). PL 2017, c. 402, Pt. C, §§41, 42 (AMD). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 348, §2 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2023, c. 162, §1 (AMD).

#### §15. Civil liability of persons making false claims

Any person, firm, association, partnership, corporation or other legal entity who makes or causes to be made or presents or causes to be presented for payment or approval any claim upon or against the department or upon any funds administered by the department, knowing such claim to be materially false, fictitious or fraudulent, or who knowingly makes any false written statement or knowingly submits any false document material to a false, fictitious or fraudulent claim or who knowingly enters into any agreement, combination or conspiracy to defraud the department by obtaining the payment or approval of any materially false, fictitious or fraudulent claim or who knowingly makes or causes to be made a false written statement or record material to an obligation to pay or transmit money or property to the department or knowingly conceals or knowingly and improperly materially avoids or materially decreases an obligation to pay or transmit money or property to the department is, in addition to any criminal liability that may be provided by law, subject to civil suit by this State in the Superior Court for recovery of civil penalties to include the following: [PL 2013, c. 235, §1 (AMD).]

**1. Restitution.** Restitution for all excess benefits or payments made;  
[PL 1981, c. 242, §2 (NEW).]

**2. Payment of interest.** Payment of interest on the amount of the excess benefits or payments as set forth in subsection 1 at the maximum legal rate in effect on the date the payment was made and computed for the date payment was made to the date on which repayment is made;  
[PL 1981, c. 242, §2 (NEW).]

**3. Payment of civil penalties.** Payment of civil penalties, without regard to the amount in controversy, in an amount which is threefold the amount of such excess benefits or payments as set

forth in subsection 1, but in any case not less than \$2,000 for each false claim for assistance, benefits or payments, or for each document submitted in support of such false claim, whichever is the greater amount;

[PL 1995, c. 191, §2 (AMD).]

**4. Cost of the suit.** Cost of the suit;

[PL 1995, c. 191, §3 (AMD).]

**5. Costs of investigation.** Costs of investigation; and

[PL 1995, c. 191, §4 (NEW).]

**6. Attorney's fees.** Attorney's fees.

[PL 1995, c. 191, §4 (NEW).]

For purposes of this section, "knowing" or "knowingly" means that, with respect to information, a person has actual knowledge of the information, acts in deliberate ignorance of the truth or falsity of the information or acts in reckless disregard of the truth or falsity of the information. A person may act knowingly without specific intent to defraud. [PL 2013, c. 235, §2 (NEW).]

#### SECTION HISTORY

PL 1981, c. 242, §2 (NEW). PL 1995, c. 191, §§1-4 (AMD). PL 2013, c. 235, §§1, 2 (AMD).

#### §16. Access to financial records of deposit accounts of recipients of public assistance

**1. Definitions.** For the purposes of this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Financial institution" means a trust company, savings bank, industrial bank, commercial bank, savings and loan association or credit union organized under the laws of this State or otherwise authorized to do business in this State. [PL 1985, c. 819, Pt. A, §24 (REEN).]

B. "Match" means a comparison by name and social security number of individuals included in any public assistance roll with individuals included in records of deposit accounts in any financial institution. [PL 1985, c. 819, Pt. A, §24 (REEN).]

C. "Public assistance" means aid, assistance or benefits available through:

(1) A program of temporary assistance for needy families administered in this State pursuant to chapter 1053-B or the Parents as Scholars program pursuant to chapter 1054-B;

(2) A program of medical assistance administered in this State pursuant to chapter 855; or

(3) Any other program that is based on need and is conducted or administered by this State. [PL 1997, c. 530, Pt. A, §7 (AMD).]

D. "Public assistance roll" means a list of individuals who are receiving aid, assistance or benefits in this State under one or more public assistance programs. The list may include individuals whose applications for aid, assistance or benefits are pending at the time of the match. [PL 1985, c. 819, Pt. A, §24 (REEN).]

[PL 1997, c. 530, Pt. A, §7 (AMD).]

**2. Verification procedure.** Upon written request from the commissioner and at the expense of the department, each financial institution in this State shall match its records of deposit accounts against public assistance rolls provided to the financial institution by the department and shall compile for the department a list of accounts that, as a result of the match, appear to be owned in whole or in part by recipients of or applicants for public assistance. The list of accounts shall include the name and social security number of each matched applicant or recipient and the type of deposit account, the account number and the account balance that appear in the records of the financial institution. The department

shall be responsible for making its computer data compatible with the data of any financial institution with which a match is sought.

The department may not automatically terminate or deny public assistance benefits solely on the basis of information received through a match, nor shall anything in this section be construed to create a lien on or otherwise encumber deposit accounts that are subject to a match. The department shall ensure that the privacy of individuals involved in matching will be protected to the maximum extent possible. [PL 1985, c. 819, Pt. A, §24 (REEN).]

### 3. Repeal.

[PL 1985, c. 668, §2 (RP).]

#### SECTION HISTORY

PL 1983, c. 784, §4 (NEW). PL 1985, c. 668, §2 (AMD). PL 1985, c. 819, §A24 (REEN). PL 1997, c. 530, §A7 (AMD).

#### §16-A. Mandatory insurance data matches

**1. Persons receiving MaineCare benefits.** Upon request by the department in order to identify persons who have been employed in the State or who have been employers in the State or who received monetary benefits of any kind from a state agency, all state agencies shall provide to the department information about persons who have been receiving, are currently receiving or are legally responsible for some or all of the medical expenses of an individual who is receiving MaineCare benefits. The information must be transmitted promptly in response to the department's request and must be provided in a manner that allows the department's electronic identification of former or current MaineCare members who had or have income during any period of MaineCare coverage.

[PL 2003, c. 20, Pt. K, §3 (NEW).]

**2. Persons with health insurance coverage.** Upon request by the department, a nonprofit hospital or medical service organization authorized under Title 24 or an insurer authorized under Title 24-A shall provide to the department a list of persons who have health insurance coverage with the organization or insurer. The information must be transmitted promptly in response to the department's request and must be provided in a manner that allows the department's electronic identification of former or current MaineCare members who had or have health insurance coverage during any period of MaineCare coverage.

[PL 2003, c. 20, Pt. K, §3 (NEW).]

#### SECTION HISTORY

PL 2003, c. 20, §K3 (NEW).

#### §16-B. Verification of integrity of reported information by applicants for public assistance

The department shall use commercially available data to conduct an electronic verification of information provided on an application for benefits for public assistance as defined in section 16, subsection 1, paragraph C. The electronic verification must, at a minimum, be conducted on all new applications for benefits and must include searches for income, residency and available assets. [PL 2017, c. 284, Pt. NNNNNNN, §1 (NEW).]

#### SECTION HISTORY

PL 2017, c. 284, Pt. NNNNNNN, §1 (NEW).

#### §17. Access to financial records of deposit accounts of individuals who owe overdue child support

**1. Definitions.** For the purposes of this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Depositor" has the same meaning as used in Title 9-B, and includes "share account holders" of credit unions. [PL 1995, c. 419, §28 (NEW).]

B. "Financial institution" means a trust company, savings bank, industrial bank, commercial bank, savings and loan association or credit union organized under the laws of this State or otherwise authorized to do business in this State. [PL 1995, c. 419, §28 (NEW).]

C. "Match" means an automated comparison by name and social security number of a list of obligors provided to a financial institution by the department and a list of depositors of any financial institution. [PL 1995, c. 419, §28 (NEW).]

D. "Obligor" means a person who owes overdue support. [PL 1995, c. 419, §28 (NEW).]

E. "Overdue support" means a debt of \$500 or more for maintenance and support of a child or children that has been owed for a least 60 days, if the obligor had prior notice of the debt and a prior opportunity to contest the amount owed. "Overdue support" includes spousal support or alimony being collected in conjunction with child support. [PL 1995, c. 419, §28 (NEW).]

[PL 1995, c. 419, §28 (NEW).]

**2. Computer match.** Upon written request from the commissioner to a financial institution in this State with the technological capacity to perform a match, the financial institution shall perform a match using the list of obligors' social security numbers provided by the department. The department is responsible for making its computer data compatible with the data of the financial institution with which a match is sought. The department's data, at a minimum, must include the full name and social security number of and the amount of overdue support owed by each obligor. The department may not request a financial institution to perform a match under this section more often than once every calendar quarter. [PL 1997, c. 537, §53 (AMD); PL 1997, c. 537, §62 (AFF).]

**3. Compilation of match list.** After completing a match requested by the department under subsection 2, a financial institution shall compile for the department a list of those depositors whose social security numbers match the list of social security numbers of obligors provided by the department. The list must contain the following information, if available to the financial institution through its matching procedure, for each account identified:

A. The obligor's full name; [PL 1995, c. 419, §28 (NEW).]

B. The obligor's social security number; [PL 1995, c. 419, §28 (NEW).]

C. The financial institution account number; and [PL 1995, c. 419, §28 (NEW).]

D. The amount of deposits contained in the account, if available. [PL 1995, c. 419, §28 (NEW).]  
[PL 1995, c. 419, §28 (NEW).]

**4. Notice to department.** A financial institution that has compiled a match list under subsection 3 shall send the list to the department at the address designated by the department. [PL 1995, c. 419, §28 (NEW).]

**5. Notice to customer.** The financial institution may not provide notice in any form to a depositor contained in a match list submitted to the department under subsection 4. Failure to provide notice to a depositor does not constitute a violation of the financial institution's duty of good faith to its customers.

[PL 1995, c. 419, §28 (NEW).]

**6. Reasonable fee.** To cover the costs of carrying out the requirements of this section, a financial institution may assess a reasonable fee to the department not to exceed the actual costs incurred by the financial institution.

[PL 1995, c. 419, §28 (NEW).]

**7. Confidentiality.** The list of obligors, with their social security numbers and the amount of the overdue support provided by the department to a financial institution is confidential. The information may be used only for the purpose of carrying out the requirements of this section. Knowing or intentional use of the information, without authorization from the department, is a civil violation for which a forfeiture not to exceed \$1,000 may be adjudged.

[PL 1995, c. 419, §28 (NEW).]

**8. Immunity from liability; hold harmless.** A financial institution is immune from any liability for its good faith actions to comply with this section. The department shall defend and hold harmless, including compensation for attorney's fees, a financial institution that acts in good faith to carry out the requirements of this section.

[PL 1995, c. 419, §28 (NEW).]

**9. Rulemaking.** The department shall adopt rules to carry out this section.

[PL 1995, c. 419, §28 (NEW).]

**10. Repeal.**

[PL 1997, c. 537, §54 (RP); PL 1997, c. 537, §62 (AFF).]

SECTION HISTORY

PL 1995, c. 419, §28 (NEW). PL 1997, c. 537, §§53,54 (AMD). PL 1997, c. 537, §62 (AFF).

**§18. Private Health Insurance Premium Program**

**1. Program.** The Private Health Insurance Premium Program is operated by the Office of MaineCare Services within the department and implements the provisions of 42 United States Code, Section 1396a(a)(25)(G) and 1396e. The office shall seek to maximize enrollment in the program by establishing procedures to identify families or individuals with access to other public or private insurance coverage and educating members and employers about the purpose and benefits of the program.

[PL 2007, c. 448, §10 (AMD).]

**2. Condition for eligibility.** The department shall require, as a condition of being or remaining eligible for medical assistance, an individual otherwise entitled to medical assistance under this Title to apply for enrollment in a group health plan in which the individual is otherwise eligible to be enrolled, if the department determines that enrollment is cost-effective. For purposes of this section, the term "cost-effective" means that the reduction in medical assistance expenditures as a result of the individual's enrollment in a group health plan is likely to be greater than the additional expenditures by the department for premiums and cost-sharing with respect to that enrollment.

[PL 1997, c. 795, §5 (NEW).]

**3. Payments covered.** If the individual enrolls in a group health plan or is accepted for coverage under an individual health insurance policy pursuant to the department's approval under the Private Health Insurance Premium Program, except as provided in subsection 5, the department shall provide for payments of all premiums, deductibles, coinsurance and other cost-sharing obligations for items and services otherwise covered under the department's medical assistance program and shall treat coverage under the group health plan or the individual health insurance policy as a 3rd-party liability under section 14.

[PL 1997, c. 795, §5 (NEW).]

**4. Family enrollment in employer plan.** The department shall require, as a condition of being or remaining eligible for medical assistance, an individual who is a parent, is eligible for medical assistance under this Title and is eligible for family health coverage through an employer, to apply for enrollment for each eligible child. If the employed parent refuses to apply for such enrollment, the

employer shall accept an application for enrollment of children, if otherwise eligible for family health coverage, submitted by the other parent or by the department. The employer shall enroll children in the employer plan without regard to any enrollment season restrictions.  
[PL 1997, c. 795, §5 (NEW).]

**5. Cost-effective enrollment.** If some members of a family are not eligible for medical assistance under this Title and enrollment of the family members who are eligible for medical assistance is not possible without also enrolling the members who are not eligible for medical assistance, the department shall provide for payment of enrollment premiums for all family members if, taking into account payment of all such premiums, the enrollment is cost-effective.  
[PL 1997, c. 795, §5 (NEW).]

#### SECTION HISTORY

PL 1997, c. 795, §5 (NEW). PL 2007, c. 448, §10 (AMD).

#### §19. Prohibition against insurer discrimination

Insurers may not consider the availability or eligibility for medical assistance under this Title pursuant to 42 United States Code, Chapter 7, Subchapter XIX when considering coverage eligibility or benefit calculations for insureds and covered family members or for individuals and their family members for whom application has been made for coverage. [PL 1997, c. 795, §5 (NEW).]

#### SECTION HISTORY

PL 1997, c. 795, §5 (NEW).

#### §20. Director of Maine Center for Disease Control and Prevention

**1. Qualifications.** The Director of the Maine Center for Disease Control and Prevention, referred to in this section as "the director," must have demonstrated experience in administration of public health or clinical medicine and:

- A. Be licensed, or eligible for licensure, as a physician under Title 32, chapter 36 or 48 or as an advanced practice registered nurse under Title 32, chapter 31; or [PL 2019, c. 523, §1 (NEW).]
- B. Have a degree in public health from an accredited school of public health or any equivalent combination of education and experience in public health. [PL 2019, c. 523, §1 (NEW).]

[PL 2019, c. 523, §1 (NEW).]

**2. Annual report.** The director shall report annually to the joint standing committee of the Legislature having jurisdiction over health and human services matters on:

- A. Challenges and threats to the health of the residents of the State; and [PL 2019, c. 523, §1 (NEW).]
- B. The ways in which the Maine Center for Disease Control and Prevention has responded to those challenges and threats and has aided in keeping the residents of the State healthy and safe. [PL 2019, c. 523, §1 (NEW).]

[PL 2019, c. 523, §1 (NEW).]

#### SECTION HISTORY

PL 2019, c. 523, §1 (NEW).

#### §20-A. Housing First Program

**1. Program established.** The Housing First Program, referred to in this section as "the program," is established in the department to facilitate the delivery of support and stabilization services to residents of properties established or developed to provide permanent housing to address chronic homelessness in the State. Except as otherwise provided in this section, services facilitated under the program must be available on site, 24 hours per day and be designed to build independent living skills



and connect individuals with community-based services. The department shall ensure that reimbursement under the MaineCare program is available to providers under the Housing First Program to the maximum extent possible. For the purposes of this section, "chronic homelessness" means a situation in which a person is living in a place not meant for human habitation, including emergency shelters, for at least 12 months and for whom homelessness is correlated with a condition that makes accessing services and maintaining housing a significant challenge such as substance use disorder or a behavioral health condition. "Chronic homelessness" includes a situation in which a person has been living intermittently in an institutional care facility, including but not limited to jail or a health treatment facility, but is otherwise living in a place not meant for human habitation.

[PL 2023, c. 412, Pt. AAAA, §1 (NEW).]

**2. Fund established.** The Housing First Fund, referred to in this section as "the fund," is established as a separate and distinct fund for accounting and budgetary reporting purposes in order to support the program. Funds distributed in accordance with this section must be used to supplement, not supplant, existing or future federal funding designed to provide services associated with services provided by the program under subsections 1 and 5, including but not limited to the MaineCare program and the housing outreach and member engagement provider program administered by the department.

[PL 2023, c. 412, Pt. AAAA, §1 (NEW).]

**3. Sources of fund.** The Treasurer of State shall credit to the fund:

A. All money received by the State in accordance with Title 36, section 4641-B, subsection 4-B, paragraph E-1; [PL 2023, c. 412, Pt. AAAA, §1 (NEW).]

B. Money from any other source, whether public or private, designated for deposit into or credited to the fund; and [PL 2023, c. 412, Pt. AAAA, §1 (NEW).]

C. Interest earned or other investment income on balances in the fund. [PL 2023, c. 412, Pt. AAAA, §1 (NEW).]

[PL 2023, c. 412, Pt. AAAA, §1 (NEW).]

**4. Distribution of funds.** Beginning July 1, 2025, the department shall make distributions from the fund as described in this subsection.

A. Annually, the department shall deposit \$1,000,000 from the fund to an account established for the purpose of providing funding for housing stability services described in subsection 5. [PL 2023, c. 412, Pt. AAAA, §1 (NEW).]

B. The department shall establish payment models as appropriate for the purpose of providing 24-hour, on-site supportive services to residents at Housing First Program properties established or developed to provide permanent housing to persons experiencing chronic homelessness. Supportive services must include coordination with a MaineCare provider. [PL 2023, c. 412, Pt. AAAA, §1 (NEW).]

C. The department shall establish 2 permanent, full-time positions in the department to assist providers with providing 24-hour, on-site supportive services and navigating reimbursement under the MaineCare program for those services. [PL 2023, c. 412, Pt. AAAA, §1 (NEW).]

D. The department shall annually determine the amount necessary to support the established payment models at each property for services provided under the program in the current fiscal year and the anticipated amount needed to pay for 24-hour, on-site services expected to be provided at each property in the next fiscal year. Funds in excess of those amounts must be transferred to the Maine State Housing Authority for the purposes of:

(1) Providing technical assistance to housing developers to help with capital and planning issues associated with developing properties consistent with the housing model established by the program and as described in subsection 5; and

(2) Developing affordable housing projects with a housing model established by the program and as described in subsection 5. [PL 2023, c. 412, Pt. AAAA, §1 (NEW).]  
[PL 2023, c. 412, Pt. AAAA, §1 (NEW).]

**5. Housing stability services.** The department shall establish a payment model to provide funds to pay for the costs of housing stability services provided to residents at properties under the program where supportive services are not necessarily provided on site or 24 hours per day. Services funded under this subsection must be available to residents no less than 20 hours per week and must adequately meet the needs of the residents to build independent living skills, to maintain housing and to access necessary community-based services. Housing stability services funded under this subsection may also include outreach to persons who are experiencing chronic homelessness for the purposes of establishing connections and providing support that may result in securing stable housing at a property under the program.

[PL 2023, c. 412, Pt. AAAA, §1 (NEW).]

**6. Rulemaking.** The department and the Maine State Housing Authority shall jointly adopt rules to administer the program. The rules must specify which elements of the program are administered by the department, which elements are administered by the Maine State Housing Authority and which elements are administered jointly, if any. Rules adopted under this subsection are routine technical rules under Title 5, chapter 375, subchapter 2-A.

[PL 2023, c. 412, Pt. AAAA, §1 (NEW).]

**7. Report.** Beginning February 1, 2025, the department and the Maine State Housing Authority shall submit a report annually to the joint standing committee or joint select committee of the Legislature having jurisdiction over housing matters to provide the committee with necessary data and information to evaluate the effectiveness of the program. The initial report submitted to the committee must provide an assessment of the number of housing units and the scope of services needed to serve persons who are experiencing chronic homelessness to serve as a baseline against which the effectiveness of the program and other services will be measured. Subsequent reports must provide updates to that assessment in addition to the following:

A. An accounting of the services facilitated using money from the fund at properties that provide 24-hour, on-site services and properties that provide housing stability services described under subsection 5; [PL 2023, c. 412, Pt. AAAA, §1 (NEW).]

B. An accounting of services provided at properties under the program funded under the housing outreach and member engagement provider program and services reimbursed under the MaineCare program; [PL 2023, c. 412, Pt. AAAA, §1 (NEW).]

C. The number of residents served by the program and the number of months residents avoided returning to homelessness or maintained stable housing; [PL 2023, c. 412, Pt. AAAA, §1 (NEW).]

D. The amount of money from the fund transferred to the Maine State Housing Authority pursuant to subsection 4, paragraph D that is used for the purposes described in subsection 4, paragraph D, subparagraphs (1) and (2); and [PL 2023, c. 412, Pt. AAAA, §1 (NEW).]

E. Information requested by the committee considered necessary to evaluate the effectiveness of the program. [PL 2023, c. 412, Pt. AAAA, §1 (NEW).]

[PL 2023, c. 412, Pt. AAAA, §1 (NEW).]

#### SECTION HISTORY

PL 2023, c. 412, Pt. AAAA, §1 (NEW).

#### SUBCHAPTER 1-A

**ELECTRONIC BENEFIT TRANSFER SYSTEM****§21. Definitions**

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1995, c. 675, §1 (NEW).]

**1. AFDC.**

[PL 2017, c. 284, Pt. NNNNNNN, §2 (RP).]

**2. Automated teller machine or ATM.** "Automated teller machine" or "ATM" means a machine that accepts a debit card distributed to recipients; to the extent permitted by federal law on the effective date of this subchapter, issues funds from established accounts to recipients; and records and reports individual recipient account activity related to the deposit and distribution of recipient cash benefits.

[PL 1995, c. 675, §1 (NEW).]

**3. Debit card.** "Debit card" means an encoded plastic card distributed by the department or another department or a contractor with that department for use in an automated teller machine or a point of sale device.

[PL 1995, c. 675, §1 (NEW).]

**3-A. Electronic benefits transfer card or EBT card.** "Electronic benefits transfer card" or "EBT card" means a card issued by the department under an electronic benefits transfer system for the delivery of benefits to recipients.

[PL 2017, c. 284, Pt. NNNNNNN, §3 (NEW).]

**4. Electronic benefits transfer system or EBT.** "Electronic benefits transfer system" or "EBT" means a system for the delivery of benefits to recipients by means of credit or debit card services, automated teller machines, point of sale devices or access to online systems for the withdrawal of funds or the processing of a payment for merchandise or a service.

[PL 2011, c. 687, §3 (AMD).]

**5. Food stamps.**

[PL 2023, c. 405, Pt. C, §5 (RP).]

**6. Medicaid.** "Medicaid" means the Medicaid program under the provisions of the United States Social Security Act, Title XIX, and successors to it, and related rules of the department pursuant to chapter 855.

[PL 1995, c. 675, §1 (NEW).]

**7. Other department or another department.** "Other department" or "another department" means a department of the State other than the Department of Health and Human Services.

[PL 1995, c. 675, §1 (NEW); PL 2003, c. 689, Pt. B, §6 (REV).]

**8. Other program or another program.** "Other program" or "another program" means a program of the department not defined as a program in subsection 10 or a program of another department that is approved for addition to the EBT system.

[PL 1995, c. 675, §1 (NEW).]

**8-A. Parents as Scholars Program.** "Parents as Scholars" means the program established in chapter 1054-B.

[PL 1997, c. 530, Pt. A, §9 (NEW).]

**9. Point of sale device.** "Point of sale device" means a machine that accepts a debit card distributed to recipients; electronically processes transactions at the vendor's place of business; and records and reports individual recipient benefit entitlement and distribution.

[PL 1995, c. 675, §1 (NEW).]

**10. Program.** "Program" means SNAP or the Medicaid program or another program.  
[PL 2023, c. 405, Pt. C, §6 (AMD).]

**11. Recipient.** "Recipient" means a recipient of benefits under SNAP or the Medicaid program or another program.  
[PL 2023, c. 405, Pt. C, §7 (AMD).]

**11-A. Temporary Assistance for Needy Families.** "Temporary Assistance for Needy Families" means the program established in chapter 1053-B.  
[PL 1997, c. 530, Pt. A, §9 (NEW).]

**11-B. Supplemental Nutrition Assistance Program or SNAP.** "Supplemental Nutrition Assistance Program" or "SNAP" means the Supplemental Nutrition Assistance Program established pursuant to section 3104.  
[PL 2023, c. 405, Pt. C, §8 (NEW).]

**12. Vendor.** "Vendor" means an authorized retailer, wholesaler or health care provider that provides food, cash benefits or health care services to a recipient.  
[PL 1995, c. 675, §1 (NEW).]

#### SECTION HISTORY

PL 1995, c. 675, §1 (NEW). PL 1997, c. 530, §§A8,9 (AMD). PL 2003, c. 689, §B6 (REV). PL 2011, c. 687, §3 (AMD). PL 2017, c. 284, Pt. NNNNNNN, §§2-4 (AMD). PL 2023, c. 405, Pt. C, §§5-8 (AMD).

#### §22. Electronic benefit transfer system established

The department is authorized to establish an electronic benefits transfer system for the issuance of benefits under the statewide Supplemental Nutrition Assistance Program under section 3104, the Temporary Assistance for Needy Families program under chapter 1053-B, the Women, Infants and Children Special Supplemental Food Program of the federal Child Nutrition Act of 1966 and the Parents as Scholars and Medicaid programs and for child care subsidies under chapter 1052-A; all recipients of benefits under these programs or another program approved for addition under subsection 2 must participate in the EBT system. [PL 2021, c. 398, Pt. OO, §4 (AMD).]

**1. Rulemaking.** In accordance with Title 5, chapter 375, the department shall adopt rules required for implementation of this subchapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.  
[PL 1995, c. 675, §1 (NEW).]

**2. Other programs.** The department may add other programs to the EBT system if approved for addition by their respective departments, as long as rules are adopted by the department and other departments for the administration of and delivery of benefits under those programs.  
[PL 1995, c. 675, §1 (NEW).]

**3. Participation.**  
[PL 2017, c. 284, Pt. NNNNNNN, §6 (RP).]

**4. Restriction.** The following requirements apply prior to implementation of the EBT system and as applied to each program using the EBT system:

A. The department and other departments must determine that use of the EBT system will not decrease benefits or result in unreasonable costs to the recipients; and [PL 1995, c. 675, §1 (NEW).]

B. The department and other departments must successfully complete a request-for-proposals evaluation and contract negotiations that ensure that the EBT system will be cost-effective for the individual program. [PL 1995, c. 675, §1 (NEW).]

SECTION HISTORY

PL 1995, c. 675, §1 (NEW). PL 1997, c. 530, §A10 (AMD). PL 2017, c. 284, Pt. NNNNNNN, §§5, 6 (AMD). PL 2021, c. 398, Pt. OO, §4 (AMD).

**§23. Unauthorized use of electronic benefits transfer system**

**1. Unauthorized spending of benefits.** A recipient may not use the electronic benefits transfer system established under section 22 to effect any transaction in:

A. A retail establishment where 50% or more of the gross revenue of the establishment is derived from the sale of liquor as defined in Title 28-A, section 2, subsection 16; [PL 2011, c. 687, §4 (NEW).]

B. A gambling facility, as defined in Title 8, section 1001, subsection 16, except that use of the electronic benefits transfer system is permitted in any portion of the premises of a gambling facility that is set aside separately for the sale primarily of staple foods as defined in 7 United States Code, Section 2012(r); or [RR 2011, c. 2, §23 (COR).]

C. A retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment. [PL 2011, c. 687, §4 (NEW).]  
[RR 2011, c. 2, §23 (COR).]

**2. Rulemaking.** The department shall adopt rules to implement this section. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2011, c. 687, §4 (NEW).]

SECTION HISTORY

RR 2011, c. 2, §23 (COR). PL 2011, c. 687, §4 (NEW).

**§24. Photographs on electronic benefits transfer cards**

The commissioner shall place a photograph of a recipient of benefits under a program specified in section 22 on the recipient's electronic benefits transfer card if agreed to in writing by the recipient. When a recipient of benefits is a minor or incapacitated individual, the commissioner may place a photograph of the recipient's parent or legal guardian on the EBT card if agreed to in writing by that parent or legal guardian. [PL 2017, c. 284, Pt. NNNNNNN, §7 (NEW).]

SECTION HISTORY

PL 2017, c. 284, Pt. NNNNNNN, §7 (NEW).

**§25. Restrictions of the number of replacement electronic benefits transfer cards**

When the department determines that the number of requests by a recipient of benefits for a replacement electronic benefits transfer card is excessive, the department shall require the recipient or a member of the recipient's household to contact the recipient's local office of the department to provide an explanation for the requests. Upon a 5th request for a replacement card within a 12-month period, the department may not issue a replacement card until the recipient or a member of the recipient's household reports to the recipient's local office of the department to explain the excessive number of replacement requests. [PL 2017, c. 284, Pt. NNNNNNN, §7 (NEW).]

SECTION HISTORY

PL 2017, c. 284, Pt. NNNNNNN, §7 (NEW).

**SUBCHAPTER 2**

**ADMINISTRATION**

**§41. Commissioner's report**

The commissioner, as soon as practicable after the close of the fiscal year that is indicated by an even number, shall report to the Governor the activities of the department during the biennial period just ended with such suggestions as to legislative action as the commissioner considers necessary or important. [RR 2021, c. 2, Pt. B, §81 (COR).]

**SECTION HISTORY**

PL 1975, c. 771, §211 (AMD). RR 2021, c. 2, Pt. B, §81 (COR).

**§41-A. Biennial funding comparison report**

By January 31, 2003, and every 2 years thereafter, the commissioner shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters and the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs the amounts of appropriations and allocations that would be required to fully fund all reimbursable costs for nursing facilities and medical and remedial private nonmedical institutions covered by the department, determined pursuant to the department's principles of reimbursement and the amounts of appropriations and allocations that would be necessary to raise the reimbursement rates for all providers of services reimbursed under the Medicaid program on a fee-for-service basis who are reimbursed below 70% of usual and customary rates to a level equal to 70% of usual customary rates, as long as the rate does not exceed the rate allowed by federal law or regulation. The information in the report regarding nursing facilities and private nonmedical institutions must be presented in a manner that compares the amounts that would be required to fully fund the 2 types of facilities, the amounts that are requested in the Governor's budget bill and the amounts that were appropriated and allocated for each of the 2 years of the biennium in which the report is made. [PL 2001, c. 666, Pt. D, §1 (NEW).]

**SECTION HISTORY**

PL 2001, c. 666, §D1 (NEW).

**§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. [PL 2005, c. 588, §2 (NEW).]

**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. [PL 2005, c. 588, §2 (NEW).]

**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; [PL 2005, c. 588, §2 (NEW).]

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; [PL 2005, c. 588, §2 (NEW).]

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 [PL 2005, c. 588, §2 (NEW).]

D. Whether the expenditure is consistent with meeting special needs of the population served through innovative or specialized services offered by a particular provider. [PL 2005, c. 588, §2 (NEW).]

[PL 2005, c. 588, §2 (NEW).]

**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.

[PL 2005, c. 588, §2 (NEW).]

**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.

[PL 2005, c. 588, §2 (NEW).]

## SECTION HISTORY

PL 2005, c. 588, §2 (NEW).

### §42. Rules and regulations

**1. General.** The department shall issue rules and regulations considered necessary and proper for the protection of life, health and welfare, and the successful operation of the health and welfare laws. The rules and regulations shall be adopted pursuant to the requirements of the Maine Administrative Procedure Act.

[PL 1977, c. 694, §331 (AMD).]

**1-A. Administration of medication.** The administration of medication in boarding care facilities, drug treatment centers, day care facilities, children's homes and nursery schools and group home intermediate care facilities for persons with intellectual disabilities must be in accordance with rules established by the department. In other facilities licensed or approved by the department, excluding those facilities licensed under section 1811, other than group home intermediate care facilities for persons with intellectual disabilities, the department may establish rules for the administration of medication as it considers necessary. In establishing rules for each type of facility, the department shall consider, among other factors, the general health of the persons likely to receive medication, the number of persons served by the facility and the number of persons employed at the facility who might be involved in the administration of medication. Any rules for the administration of medication must be established in accordance with Title 5, chapter 375.

[PL 2011, c. 542, Pt. A, §24 (AMD).]

**2. Department records.** The department shall make and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files and communications of the department, and especially those which pertain to the granting of public assistance. The use of such records, papers, files and communications by any other agency or department of government to which they may be furnished shall be limited to the purposes for which they are furnished and by the law under which they may be furnished. It shall be unlawful for any person, except for purposes directly connected with the administration of the public assistance and in accordance with the rules and regulations of the department, to solicit, disclose, receive, make use of or authorize, knowingly permit, participate in or acquiesce in the use of, any list of or names of, or any information concerning, persons applying for or receiving such assistance, directly or indirectly, derived from the records, papers, files or communications of the State or subdivisions or agencies thereof, or acquired in the course of the performance of official duties. Any person violating any provision of this subsection shall be punished by a fine of not more than \$500 or by imprisonment for not more than 11 months, or by both. [PL 1973, c. 521, §1 (RPR).]

**3. Subsurface sewage disposal.** The department shall adopt minimum rules relating to subsurface sewage disposal systems. All rules, including installation and inspection rules, must be consistent with Title 30-A, chapter 185, subchapter III and Title 32, chapter 49, but this does not preempt the authority of municipalities under Title 30-A, section 3001 to adopt more restrictive ordinances. These rules may regulate the location of water supply wells to provide minimum separation distances from subsurface sewage disposal systems. The department may require a deed covenant or deed restriction when determined necessary.

Any person who violates the rules adopted under this subsection, or who violates a municipal ordinance adopted pursuant to Title 30-A, sections 4201 and 4211 or uses a subsurface waste water disposal system not in compliance with rules applicable at the time of installation or modification must be penalized in accordance with Title 30-A, section 4452. Enforcement of the rules is the responsibility of the municipalities rather than the department. The department or a municipality may seek to enjoin violations of the rules or municipal ordinances. In the prosecution of a violation by a municipality, the court shall award reasonable attorney's fees to a municipality if that municipality is the prevailing party, unless the court finds that special circumstances make the award of these fees unjust. [PL 1997, c. 727, Pt. C, §4 (AMD).]

**3-A. Licensing of persons to evaluate soils for subsurface wastewater disposal systems.** The department shall adopt rules providing for professional qualification and competence, ethical standards, licensing and relicensing and revocation of licenses of persons to evaluate soils for the purpose of designing subsurface wastewater disposal systems. The hearings provided for in subsection 3 must include consideration of the adoption or change of those rules.

The department shall investigate or cause to be investigated all cases or complaints of noncompliance with or violations of this section and the rules adopted pursuant to this section. The department has the authority to grant or amend, modify or refuse to issue or renew a license in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter 5. The District Court has the exclusive jurisdiction to suspend or revoke the license of any person who is found guilty of noncompliance with or violation of the rules adopted pursuant to this subsection or subsection 3.

The department may charge applicants no more than \$100 for examination to become a licensed site evaluator. The department shall by rule charge a biennial site evaluator license fee of not more than \$150. A licensed site evaluator who is employed by the department to administer this section and does not practice for the public is exempt from the license fee requirement. Appropriate rules must be adopted by the department defining the appropriate financial procedure. The fees are paid to the Treasurer of State to be maintained as a permanent fund and used by the department for carrying out its plumbing and subsurface wastewater disposal rules and site evaluation program. [PL 2015, c. 494, Pt. A, §14 (AMD).]



**3-B. Inspection of plumbing and subsurface wastewater disposal systems and temporary portable toilets.** The department shall adopt rules providing for the inspection of plumbing and subsurface wastewater disposal systems. The department may adopt routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A providing for the inspection of temporary portable toilets, except for temporary portable toilets allowed pursuant to Title 30-A, section 4211, subsection 3-A. In municipalities, the municipal officers shall provide for the appointment of one or more plumbing inspectors. In plantations, the assessors shall appoint plumbing inspectors in accordance with Title 30-A, section 4221. In the unorganized areas of the State, the department shall appoint plumbing inspectors or act in the capacity of a plumbing inspector until a person is appointed. For purposes of this subsection, "temporary portable toilet" means a prefabricated toilet designed for temporary use. [PL 2023, c. 614, §1 (AMD).]

**4. Industrial employees.** [PL 1977, c. 83, §2 (RP).]

**5. Confidentiality of records containing certain medical information.** Department records that contain personally identifying medical information that are created or obtained in connection with the department's public health activities or programs are confidential. These records include, but are not limited to, information on genetic, communicable, occupational or environmental disease entities, and information gathered from public health nurse activities, or any program for which the department collects personally identifying medical information.

The department's confidential records may not be open to public inspection, are not public records for purposes of Title 1, chapter 13, subchapter 1 and may not be examined in any judicial, executive, legislative or other proceeding as to the existence or content of any individual's records obtained by the department.

Exceptions to this subsection include release of medical and epidemiologic information in such a manner that an individual cannot be identified; disclosures that are necessary to carry out the provisions of chapter 250; disclosures made upon written authorization by the subject of the record, except as otherwise provided in this section; disclosures that are specifically required for purposes of reporting data to the Maine Health Data Organization as provided for by statute or by rules adopted by the Maine Health Data Organization; and disclosures that are specifically provided for by statute or by departmental rule. The department may participate in a regional or national tracking system as provided in sections 1533 and 8824.

Nothing in this subsection precludes the department, during the data collection phase of an epidemiologic investigation, from refusing to allow the inspection or copying of any record or survey instrument, including any redacted record or survey instrument, containing information pertaining to an identifiable individual that has been collected in the course of that investigation. The department's refusal is not reviewable.

[PL 2021, c. 423, Pt. A, §2 (AMD).]

**6. Preadministrative hearing settlement process.** The department may adopt rules to establish a preadministrative hearing settlement process. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter II-A. [PL 1997, c. 218, §1 (NEW).]

**7. Appeal process.** The department shall amend the rules governing appeals of informal review decisions of MaineCare payment and cost report audit and review issues filed by MaineCare providers of goods and services or initiated by the department and any other informal review decisions that seek to impose repayment, recovery or recoupment obligations or sanctions or fines on providers as provided in this subsection.

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. [PL 2005, c. 588, §3 (AMD).]

B. [PL 2003, c. 419, §2 (RP).]

C. Compensation under any contract into which the department enters for hearing officer services may reflect the number of appeals on which recommendations are made by the hearing officer and may not reflect the substance of the recommendations made by the hearing officer. [PL 2003, c. 419, §2 (AMD).]

D. The hearing officer shall conduct a hearing de novo on issues raised in the notice of appeal filed by the provider and shall in a timely manner render a written recommendation based on the record and in accordance with applicable state and federal law, rule and regulation. The hearing officer shall provide a copy of the recommendation to the department and to the provider along with notice of the opportunity to submit written comments to the commissioner. [PL 2001, c. 666, Pt. C, §1 (NEW).]

E. The recommendation of the hearing officer must be forwarded to the commissioner for a final decision, based on the record, which must include any written comment submitted in a timely manner by the provider and the department. The commissioner may adopt, adopt with modification or reject the recommendation of the hearing officer. The commissioner shall issue a final decision in writing, which must include the reasons for any departure from the recommendation of the hearing officer and notice of the process for appeal pursuant to Title 5, chapter 375, subchapter 7. If the commissioner deviates from a prior decision cited in the course of a proceeding, the final decision must include an explanation of the reason that the prior decision was not followed. [PL 2003, c. 419, §2 (AMD).]

F. By July 1, 2004 the department shall make available on its publicly accessible 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 website must include a search feature allowing users to obtain information on specific issues of interest.

(2) The website must protect information that is personal or confidential. [PL 2005, c. 588, §4 (AMD).]

G. In lieu of the appeal procedure provided in this subsection, the parties may choose arbitration by a qualified arbitrator or panel of arbitrators as provided in this paragraph. By January 1, 2004, the department shall adopt rules to implement this paragraph that are consistent with federal law and regulation. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

(1) The arbitrator or panel of arbitrators must be selected and compensated as agreed by the parties.

(2) Arbitration under this paragraph is available only when the amount in controversy is \$10,000 or less and the subject matter in controversy is assessments, recovery or recoupment orders, sanctions or administrative fines.

(3) A provider choosing arbitration under this paragraph may waive any right of appeal. [PL 2003, c. 419, §2 (NEW).]

H. In an administrative appeal of an informal review decision under this subsection, the department bears the burden of proving a violation of law or rule by a preponderance of the evidence. If the department proves that existing and available records of goods or services are defective, the department may impose a penalty or sanction, including total recoupment. Total recoupment for defective records is warranted only when the provider has failed to demonstrate by a preponderance of the evidence that the disputed goods or services were medically necessary, MaineCare-covered goods or services and were actually provided to eligible MaineCare members. [PL 2003, c. 688, Pt. C, §7 (AMD).]

The department shall provide funding for contractual services under this subsection from within existing resources.

[PL 2005, c. 588, §§3, 4 (AMD).]

**8. Adoption of rules with retroactive application.** The department is authorized to adopt rules that have a retroactive application for a period not to exceed 8 calendar quarters prior to the date of issuance of the rule in accordance with the provisions of this subsection.

A. The Office of MaineCare Services is authorized to adopt rules that have retroactive application when necessary to maximize available federal revenue sources, specifically regarding the federal Medicaid program, or to conform to the state Medicaid plan as filed with the Federal Government. The Bureau of Family Independence is authorized to adopt rules in the MaineCare program, Temporary Assistance for Needy Families program and Supplemental Nutrition Assistance Program that have retroactive application to comply with federal requirements or to conform to the state Medicaid plan as filed with the Federal Government. [PL 2023, c. 405, Pt. C, §9 (AMD).]

B. With respect to any services that MaineCare providers have rendered prior to the date of adoption of retroactive rules adopted pursuant to this subsection, such rules may not reduce or otherwise negatively affect the reimbursement or other payments that those providers are entitled to receive under the previously applicable rules. The reimbursement or other payments under the amended rules must be equal to or greater than the reimbursement under the rules previously in effect. The rules may retroactively increase provider reimbursement on an emergency basis if needed to ensure that MaineCare members have access to covered medically necessary services. [PL 2005, c. 648, §1 (AMD).]

C. For any benefits or services in the MaineCare program, Temporary Assistance for Needy Families program or Supplemental Nutrition Assistance Program that beneficiaries have received prior to the date of adoption of retroactive rules adopted pursuant to this subsection, such rules may not reduce or otherwise negatively affect the reimbursement or other payments, benefits or services that those beneficiaries are entitled to have covered or paid under the previously applicable rules. The reimbursement or other payments, benefits or services under the amended rules must be equal to or greater than under the rules previously in effect. [PL 2023, c. 405, Pt. C, §10 (AMD).]

D. This subsection does not give the department the authority to adopt retroactively any rule that has an adverse financial impact on any MaineCare provider or member, Temporary Assistance for Needy Families program or Supplemental Nutrition Assistance Program recipient or the beneficiary or recipient of any other program administered by the department. Specific statutory authority is required for adoption of a retroactive rule that has an adverse financial impact on any MaineCare provider or member, Temporary Assistance for Needy Families program or

Supplemental Nutrition Assistance Program recipient or the beneficiary or recipient of any other program administered by the department. [PL 2023, c. 405, Pt. C, §11 (AMD).]

E. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A; except that, if the underlying statutory rule-making authority for a rule or set of rules specifies that rules adopted pursuant to that authority are major substantive rules, then the related rule or rules adopted under this subsection are major substantive rules. [PL 2003, c. 612, §1 (NEW).]

F. [PL 2005, c. 648, §2 (RP).]  
[PL 2023, c. 405, Pt. C, §§9-11 (AMD).]

**9. Effective date of newly adopted rules.** Notwithstanding any other provision of law, when the department adopts a rule affecting a process or procedural change for licensed health care providers, the rule may not take effect for at least 30 days unless the department determines that an emergency rule is necessary pursuant to Title 5, section 8054 or unless the rule affects reimbursement rates applicable to those licensed health care providers. For the purposes of this subsection, "licensed health care provider" means a physician, clinic, hospital, health maintenance organization, home health agency, private clinical laboratory or other person who provides primary health care services and is registered or licensed by the State.

[PL 2005, c. 241, §1 (NEW).]

#### SECTION HISTORY

PL 1967, c. 233 (AMD). PL 1973, c. 521, §1 (RPR). PL 1975, c. 293, §4 (AMD). PL 1975, c. 760, §§3,4 (AMD). PL 1975, c. 762, §1 (AMD). PL 1977, c. 83, §2 (AMD). PL 1977, c. 286, §1 (AMD). PL 1977, c. 497, §2 (AMD). PL 1977, c. 694, §§331,332 (AMD). PL 1979, c. 244 (AMD). PL 1979, c. 390 (AMD). PL 1981, c. 38, §§1-3 (AMD). PL 1981, c. 60 (AMD). PL 1981, c. 376, §§1-3 (AMD). PL 1983, c. 284, §1 (AMD). PL 1983, c. 796, §8 (AMD). PL 1985, c. 612, §§1-3 (AMD). PL 1987, c. 737, §§C64,C106 (AMD). PL 1989, c. 6 (AMD). PL 1989, c. 9, §2 (AMD). PL 1989, c. 104, §§C4,C8,C10 (AMD). PL 1989, c. 483, §A32 (AMD). PL 1989, c. 878, §A53 (AMD). PL 1991, c. 548, §A16 (AMD). PL 1991, c. 824, §A39 (AMD). PL 1991, c. 827, §1 (AMD). PL 1991, c. 827, §2 (AFF). PL 1993, c. 295, §1 (AMD). PL 1997, c. 218, §1 (AMD). PL 1997, c. 727, §C4 (AMD). PL 1999, c. 86, §1 (AMD). PL 1999, c. 547, §B78 (AMD). PL 1999, c. 547, §B80 (AFF). PL 2001, c. 407, §1 (AMD). PL 2001, c. 666, §C1 (AMD). PL 2003, c. 419, §2 (AMD). PL 2003, c. 612, §1 (AMD). PL 2003, c. 613, §2 (AMD). PL 2003, c. 688, §C7 (AMD). PL 2005, c. 241, §1 (AMD). PL 2005, c. 588, §§3,4 (AMD). PL 2005, c. 648, §§1,2 (AMD). PL 2007, c. 508, §1 (AMD). PL 2009, c. 514, §1 (AMD). PL 2011, c. 542, Pt. A, §24 (AMD). PL 2015, c. 494, Pt. A, §14 (AMD). PL 2019, c. 343, Pt. YY, §2 (AMD). PL 2021, c. 423, Pt. A, §2 (AMD). PL 2023, c. 405, Pt. C, §§9-11 (AMD). PL 2023, c. 614, §1 (AMD).

#### **§42-A. Duties of the Department of Health and Welfare**

**(REPEALED)**

#### SECTION HISTORY

PL 1969, c. 554, §1 (NEW). PL 1973, c. 521, §2 (RP).

#### **§42-B. Adoption of a grievance procedure concerning discrimination on the basis of handicap**

**(REPEALED)**

#### SECTION HISTORY

PL 1985, c. 385 (NEW). PL 1989, c. 502, §A64 (AMD). PL 1995, c. 318, §2 (RP).

#### **§43. Committee of Health and Welfare**

**(REPEALED)**

## SECTION HISTORY

PL 1965, c. 444, §1 (AMD). PL 1973, c. 793, §17 (RP).

**§44. Powers and duties**

**(REPEALED)**

## SECTION HISTORY

PL 1965, c. 444, §2 (AMD). PL 1973, c. 793, §17 (RP).

**§45. Appropriated funds transferable**

The appropriations made by the Legislature to any division of the department may be combined or transferred from one division to another thereof by authority of the Governor when such is deemed necessary. [PL 1977, c. 78, §1 (AMD).]

**§46. Charitable and benevolent institutions to submit itemized bills; recipients not considered paupers**

No part of any appropriations made by the State for the care, treatment, support or education of any person by any charitable or benevolent organization not wholly owned or controlled by the State may be paid until duly itemized bills showing the name of the person receiving the service, the date on which the service was rendered and the rate charged therefor per day or week have been filed with the State Comptroller together with a certificate from the department that satisfactory evidence has been filed in its office by the organization furnishing the service that the persons receiving the service were in need of such services, that they were not able to pay for the same and that the rates charged are not greater than those charged to the general public for the same service. The only exceptions to the above specific procedures are those instances in which the charitable or benevolent organization by agreement with the department elects to return its state appropriation, either in whole or in part, to the department for matching with federal funds. [RR 2021, c. 2, Pt. B, §82 (COR).]

In all instances, payments made by the State to charitable and benevolent organizations under this section are governed by such rules and rates as are prescribed by the department. A person may not be considered to be a pauper because the person received the benefit of any funds, either state or municipal, that were expended on behalf of the person under this section. [RR 2021, c. 2, Pt. B, §82 (COR).]

## SECTION HISTORY

PL 1969, c. 283 (AMD). PL 1971, c. 622, §§69-B,69-C (AMD). PL 1981, c. 470, §A54 (AMD). RR 2021, c. 2, Pt. B, §82 (COR).

**§47. Penalties and jurisdiction**

**1. Hinder, obstruct or interfere with agent.** A person who hinders, obstructs or interferes with an officer, inspector or duly authorized agent of the department while in the performance of the officer's, inspector's or agent's duties commits a Class E crime.  
[PL 2003, c. 452, Pt. K, §1 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

**2. Violation of order, rule or regulation.** A person who violates an order, rule or regulation of the department made for the protection of life or health under law commits a Class E crime unless otherwise provided in this Title.  
[PL 2003, c. 452, Pt. K, §1 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

**3. Violation of Title.** Unless another penalty has been expressly provided, a person who violates a provision of this Title or intentionally or knowingly fails, neglects or refuses to perform any of the duties imposed upon that person by this Title commits a Class E crime.  
[PL 2003, c. 452, Pt. K, §1 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

**4. Strict liability.** Except as otherwise specifically provided, violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

[PL 2003, c. 452, Pt. K, §1 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

#### SECTION HISTORY

PL 1973, c. 521, §3 (AMD). PL 1987, c. 774, §1 (AMD). PL 1991, c. 797, §6 (AMD). PL 2003, c. 452, §K1 (RPR). PL 2003, c. 452, §X2 (AFF).

#### §48. Provider relations

Department personnel assigned to MaineCare provider relations shall assist MaineCare providers in addressing and resolving in a cost-effective and expeditious manner any disagreements between the department and providers or groups of providers. Provider relations personnel shall receive and investigate complaints and concerns from providers regarding the MaineCare program and the MaineCare reimbursement prior to informal review or administrative hearing. In performing their duties under this subsection, the provider relations personnel must have access to the Director of the Office of MaineCare Services. The department shall implement the provisions of this section within existing resources. [PL 2019, c. 343, Pt. YY, §3 (AMD).]

#### SECTION HISTORY

PL 2003, c. 419, §3 (NEW). PL 2019, c. 343, Pt. YY, §3 (AMD).

#### §49. Certificate of commissioner as evidence

A certificate of the commissioner in regard to the records of the department is admissible in evidence in all prosecutions under this Title. [PL 2003, c. 452, Pt. K, §2 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

#### SECTION HISTORY

PL 2003, c. 452, §K2 (NEW). PL 2003, c. 452, §X2 (AFF).

#### §50. Planning for long-term care services

By January 15, 2021 and every 4 years thereafter the department, after input from interested parties, shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters on the current allocation of resources for long-term care and the goals for allocation of those resources during the next 4 years. The report must be based on current and projected demographic data, current and projected consumer needs and recent or anticipated changes in methods of delivery of long-term care services and must include any action taken by the department, both at the state and federal level, to further these goals and any recommendations for action by the Legislature. The report must also include a description of the activities and any recommendations of the quality assurance review committee established pursuant to section 5107-I. [PL 2019, c. 612, §1 (AMD).]

#### SECTION HISTORY

PL 2009, c. 279, §1 (NEW). PL 2019, c. 612, §1 (AMD).

#### §51. Exemption to written informed consent requirement for mental health services and substance use disorder treatment during public health emergency

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

A. “Licensed facility” means a facility licensed under Title 5, section 20005, subsection 6, paragraph B or Title 34-B, section 1203-A. [PL 2021, c. 637, §1 (NEW).]

B. “Public health emergency” means a federal public health emergency declared pursuant to 42 United States Code, Section 247d or a state public health emergency declared pursuant to section 802 or Title 37-B, chapter 13, subchapter 2. [PL 2021, c. 637, §1 (NEW).]

[PL 2021, c. 637, §1 (NEW).]

**2. Informed consent.** The department may not require a licensed facility to obtain written informed consent from a person receiving mental health services or substance use disorder treatment from the licensed facility during a public health emergency. A licensed facility shall obtain consent from a person receiving mental health services or substance use disorder treatment during a public health emergency; such consent may be obtained through verbal, electronic or written means.

[PL 2021, c. 637, §1 (NEW).]

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

[PL 2021, c. 637, §1 (NEW).]

#### SECTION HISTORY

PL 2021, c. 637, §1 (NEW).

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