

STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND AND TWELVE

—  
S.P. 665 - L.D. 1888

**An Act To Strengthen the State's Ability To Investigate and Prosecute  
Misuse of Public Benefits**

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

**Sec. 1. 17-A MRSA §905-C** is enacted to read:

**§905-C. Misuse of public benefits instrument**

1. A person is guilty of misuse of a public benefits instrument if the person knowingly:

A. Transfers a public benefits instrument without authorization of the agency issuing the instrument; or

B. Obtains or possesses a public benefits instrument that was obtained without authorization of the agency issuing the instrument.

2. As used in this section, "public benefits instrument" means electronic benefits transfer cards, coupons, vouchers and any other means for distributing benefits from the following programs:

A. The municipal general assistance program under Title 22, chapter 1161;

B. The TANF program under Title 22, chapter 1053-B;

C. The statewide food supplement program under Title 22, section 3104;

D. The child care subsidies under Title 22, chapter 1052-A; or

E. The Women, Infants and Children Special Supplemental Food Program of the United States Child Nutrition Act of 1966.

3. Misuse of a public benefits instrument is a Class D crime.

**Sec. 2. 22 MRSA §13, sub-§6, ¶B**, as amended by PL 2003, c. 688, Pt. C, §6, is further amended to read:

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-D.

**Sec. 3. 22 MRSA §21, sub-§4**, as enacted by PL 1995, c. 675, §1, is amended to read:

**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 or 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.

**Sec. 4. 22 MRSA §23** is enacted to read:

**§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;

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 State Code, Section 2012(r); or

C. A retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.

**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.

**Sec. 5. 22 MRSA §1714-A, sub-§1, ¶C**, as enacted by PL 1991, c. 9, Pt. G, §4, is amended to read:

C. "Former provider" means the person reimbursed by the department for the provision of health care services at a nursing home, boarding home or hospital or other provider of health care services prior to its transfer.

**Sec. 6. 22 MRSA §1714-A, sub-§1, ¶¶I and J**, as enacted by PL 1991, c. 9, Pt. G, §4, are amended to read:

I. "Transfer" means any change in the ownership or control of a nursing home, boarding home or hospital or other provider of health care services, including, but not limited to, a sale, lease or gift of the land, building or operating entity, that results in:

(1) The department reimbursing a person other than the former provider for the provision of care or services; or

(2) The discontinuation of the provision of care or services.

J. "Transferee" means any person to whom a nursing home, boarding home ~~or~~, hospital or other provider of health care services is transferred.

**Sec. 7. 22 MRSA §1714-A, sub-§4, ¶¶A and B**, as enacted by PL 1991, c. 9, Pt. G, §4, are amended to read:

A. When a nursing home, boarding home ~~or~~, hospital or other provider of health care services is transferred, the transferee is liable for debts owed to the department by the former provider unless by the time of sale:

(1) All debts owed by the former provider to the department have been paid, except as stated in subparagraph (2);

(2) If the indebtedness is the subject of an administrative appeal, an escrow account has been created and funded in an amount sufficient to cover the debt as claimed by the department; or

(3) An interim cost report has:

(a) Been filed and an escrow account has been created and funded in an amount sufficient to cover any overpayment identified in the report; or

(b) Not been filed and an escrow account has been created and funded in an amount sufficient to cover 5% of Medicaid reimbursement or cost reimbursement for the last fiscal year or \$50,000, whichever is less.

B. Any person affected by this subsection may request that the department identify the amount of any debt owed by a nursing home, boarding home ~~or~~, hospital or other provider of health care services. When the department receives such a request, it shall identify the debt within 30 days. Failure to identify the amount of a debt when a request is made in writing at least 30 days prior to the transfer precludes the department from recovering that debt from the transferee.

**Sec. 8. 22 MRSA §1714-A, sub-§4, ¶C**, as amended by PL 1991, c. 568, §2, is further amended to read:

C. The department shall provide written notice of the requirements of this section to the transferee in a letter acknowledging receipt of a request for a certificate of need or waiver of the certificate of need for a nursing home or hospital transfer or in response to a request for an application for a license to operate a boarding home or to provide other health care services.

**Sec. 9. 22 MRSA §1714-D** is enacted to read:

**§1714-D. Credible allegations of fraud; provider payment suspensions**

If the department determines that there is a credible allegation of fraud by a provider under the MaineCare program, the following procedures apply.

**1. Suspension of payments.** The department shall suspend payment in whole or in part to a MaineCare provider when a suspension is necessary to comply with Section 6402(h)(2) of the federal Patient Protection and Affordable Care Act of 2010, Public Law 111-148 and 42 Code of Federal Regulations, Part 455.

**2. Administrative appeal; scope.** A MaineCare provider may administratively appeal the department's decision to suspend payment under subsection 1.

**3. No stay during administrative appeal.** A suspension of payments under subsection 1 may not be stayed during an administrative appeal of the department's decision to suspend payment. The department may provide a fair opportunity for appropriate expedited relief from a suspension of payments consistent with federal law.

**4. Final determination; offset.** Upon a final determination that fraud has occurred and that money is owed by the MaineCare provider to the department, and 31 days after exhaustion of all administrative appeals and any judicial review available under Title 5, chapter 375, the department may retain and apply as an offset to amounts determined to be owed to the department any payments to the provider that were suspended by the department pursuant to this section. The amount retained pursuant to this subsection may not exceed the amount determined finally to be owed.

**5. Confidentiality.** Except as necessary for purposes of the investigation of fraud or the administration of the MaineCare program, the department's records regarding a determination of a credible allegation of fraud are confidential until the relevant MaineCare provider has been given notice of a suspension of payments under subsection 1.

**6. Rules.** The department shall adopt rules to implement this section, including rules to define "credible allegation of fraud" and to provide exception and appeal procedures as required by and in accordance with the requirements of federal law and regulations. If the department provides a procedure for expedited relief from suspension of payments, as authorized in subsection 3, the rules must include that procedure. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**7. Repeal.** This section is repealed if Section 6402(h)(2) of the federal Patient Protection and Affordable Care Act of 2010, Public Law 111-148 and 42 Code of Federal Regulations, Part 455 are invalidated by the United States Supreme Court.

**Sec. 10. 22 MRSA §3104, sub-§12,** as amended by PL 2009, c. 291, §2, is further amended to read:

**12. Penalty.** The unauthorized issuance, redemption, use, transfer, acquisition, alteration or possession of coupons or other program access device, including an electronic benefits transfer card, may subject an individual, partnership, corporation or other legal entity to prosecution by the State in accordance with Sections 15 (b) and 15 (c) of the federal Food Stamp Act of 1977 and the federal Food and Nutrition Act of 2008. Penalties are in accordance with those outlined in federal law or regulations. A

person who knowingly engages in trafficking in benefits as defined by 7 Code of Federal Regulations, Section 271.2 commits a Class D crime.

**Sec. 11. 22 MRSA §3811, sub-§3**, as amended by PL 1997, c. 466, §27 and affected by §28, is further amended to read:

**3. Overpayment.** "Overpayment" means program benefits ~~that an individual or assistance unit receives~~ that exceed the amount of program benefits for which ~~the~~ an individual or assistance unit is eligible when the department or a court has determined that the benefits were received provided as a result of an intentional program violation, an unintentional error by the individual or household or an error by the department. "Overpayment" ~~includes any overpayment made before or after the effective date of this subsection~~ does not include an overpayment for medical services by the department pursuant to chapter 855 or municipal general assistance pursuant to chapter 1161, if the overpayment occurred due to an unintentional error by the individual or household or an error by the department or by the municipality in the case of municipal general assistance under chapter 1161.

**Sec. 12. 22 MRSA §3811, sub-§4**, as amended by PL 1997, c. 683, Pt. C, §9 and affected by §10, is further amended to read:

**4. Program benefits.** "Program benefits" means money payments or food coupons issued by the department pursuant to an application for benefits made by an individual to Aid to Families with Dependent Children established in former chapter 1053, the food stamp program established in chapter 851 or the Temporary Assistance to Needy Families program established in chapter ~~1053-A~~ 1053-B, or money payments or vouchers issued by a municipal general assistance program established pursuant to chapter 1161, or payments for medical services issued by the department pursuant to the MaineCare program established pursuant to chapter 855.

**Sec. 13. Emergency rules.** Notwithstanding the Maine Revised Statutes, Title 5, section 8054, the department may adopt emergency rules to implement Title 22, section 1714-D without the necessity of demonstrating that immediate adoption is necessary to avoid a threat to public health or safety or the general welfare, if notice is given through a MaineCare provider list and 5 days or more are allowed for comment prior to adoption of the rules.

**Sec. 14. Appropriations and allocations.** The following appropriations and allocations are made.

## **HEALTH AND HUMAN SERVICES, DEPARTMENT OF (FORMERLY DHS)**

### **Office for Family Independence Z020**

Initiative: Effective January 1, 2013, establishes and provides funding for 8 Fraud Investigator positions and 2 Office Associate positions and related All Other costs funded 50% from the General Fund and 50% from Other Special Revenue Funds in the Office for Family Independence program.

<b>GENERAL FUND</b>	<b>2011-12</b>	<b>2012-13</b>
Personal Services	\$0	\$156,506
All Other	\$0	\$9,822
<b>GENERAL FUND TOTAL</b>	<u>\$0</u>	<u>\$166,328</u>

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2011-12</b>	<b>2012-13</b>
POSITIONS - LEGISLATIVE COUNT	0.000	10.000
Personal Services	\$0	\$156,506
All Other	\$0	\$14,419
<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<u>\$0</u>	<u>\$170,925</u>

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In House of Representatives, ..... 2012

Read twice and passed to be enacted.

..... Speaker

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In Senate, ..... 2012

Read twice and passed to be enacted.

..... President

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Approved ..... 2012

..... Governor