Maine Revised Statutes

Title 22: HEALTH AND WELFARE

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Title 22: HEALTH AND WELFARE

Subtitle 1: DEPARTMENTAL ORGANIZATION AND OPERATION

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(REPEALED)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
1967, c. 261, §§1-3 (AMD). 1967, c. 490, §7 (AMD). 1969, c. 504, §35 (AMD). 1973, c. 553, §§1,2 (AMD). 1973, c. 793, §1 (RPR). P&SL 1975, c. 147, §G2 (AMD). 1975, c. 293, §§1,2 (AMD). 1975, c. 755, §4 (AMD). 1975, c. 771, §§207-209 (AMD). 1977, c. 78, §145 (AMD). 1977, c. 674, §§18,19 (AMD). 1979, c. 333, (AMD). 1981, c. 10, §1 (AMD). 1981, c. 703, §A4 (AMD). 1983, c. 409, §1 (AMD). 1983, c. 729, §5 (AMD). 1985, c. 785, §B82 (AMD). 1989, c. 329, §§1,2 (AMD). 1989, c. 400, §§3,14 (AMD). 1989, c. 507, (AMD). 1989, c. 576, §§3,5 (AMD). 1989, c. 878, §§A51,52 (AMD). 1993, c. 349, §50 (AMD). 1993, c. 685, §B2 (AMD). 1995, c. 418, §A1 (AMD). 1995, c. 560, §J2 (AMD). 2003, c. 689, §§B6,7 (REV). 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. [2007, c. 539, Pt. N, §9 (NEW).]

1. **Commissioner.** "Commissioner" means the Commissioner of Health and Human Services.

[2007, c. 539, Pt. N, §9 (NEW) .]

2. **Department.** "Department" means the Department of Health and Human Services.

[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.

[2011, c. 542, Pt. A, §23 (NEW) .]

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

§2. LEGAL ASSISTANCE FROM ATTORNEY GENERAL

(REPEALED)

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

§3. DUTIES OF DEPARTMENT

(REPEALED)

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

§3-A. STATE WARDS

(REPEALED)

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

§3-B. EMERGENCY MEDICAL CARE

(REPEALED)

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

§3-C. CLEARINGHOUSE OF INFORMATION ON HANDICAPPED HOUSING ACCESSIBILITY

(REPEALED)

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

§3-D. MAINE CENTER FOR PUBLIC HEALTH PRACTICE

(REPEALED)

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

§4. ADVISE ON INCORPORATION OF INSTITUTIONS

(REPEALED)

SECTION HISTORY
2007, c. 539, Pt. N, §16 (RP).

§5. INSPECTION AND LICENSING OF INSTITUTIONS, AGENCIES AND BOARDING HOMES

(REPEALED)

SECTION HISTORY
1965, c. 462, (AMD). 1971, c. 592, §§34,39 (AMD). 1973, c. 303, §3 (AMD). 1975, c. 491, §1 (AMD). 1975, c. 623, §25 (AMD). 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
1973, c. 164, §2 (NEW). 1973, c. 303, §3 (AMD). 1975, c. 65, §§1-4 (AMD). 1975, c. 623, §26 (AMD). 1975, c. 719, §2 (RP).

§6. DISTRIBUTION OF FUNCTIONS

(REPEALED)

SECTION HISTORY
2007, c. 539, Pt. N, §17 (RP).

§6-A. SERVICE DELIVERY REGIONS

(REPEALED)

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

§6-B. JOINT LOCATION OF SERVICES

(REPEALED)

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

§6-C. COMMUNITY SERVICES CENTER

(REPEALED)

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

§7. ADDITIONAL DUTIES

(REPEALED)

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

§8. COMPLEMENTARY SERVICES

(REPEALED)

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

§9. FEES FOR SERVICE

(REPEALED)

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

§9-A. PUBLIC ASSISTANCE ELIGIBILITY

(REPEALED)

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

§10. FEDERAL FUNDS AND COMMODITIES

(REPEALED)

SECTION HISTORY
1967, c. 219, (NEW). 1967, c. 356, (NEW). 1967, c. 544, §55 (RP). 1975, c. 771, §210 (AMD). 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
2005, c. 634, §10 (NEW). 2007, c. 539, Pt. N, §26 (RP).

§11. MUNICIPAL GRANTS

(REPEALED)

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

§12. FUNDS FOR SOCIAL SERVICES

(REPEALED)

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

§12-A. PERFORMANCE-BASED CONTRACTS

(REPEALED)

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

§12-B. AID TO CHARITABLE INSTITUTIONS

(REPEALED)

SECTION HISTORY
1995, c. 368, §TT1 (NEW). 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, hereinafter referred to in this section as the "unit." The commissioner is authorized to employ and assign to the unit such employees as he deems appropriate.

[1975, c. 715, §3 (NEW); 2003, c. 689, Pt. B, §7 (REV) .]

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.

[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.

[1975, c. 715, §3 (NEW) .]

4. **Violation of law; action.** Whenever the unit determines that a fraud, 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 such fraud or violation to the Attorney General or his delegate for such action as he may deem 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 he deems appropriate, assist in the recovery of funds.

[1975, c. 715, §3 (NEW) .]

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.

[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. [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. [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. [2003, c. 613, §1 (NEW).]

[2011, c. 2, §22 (COR) .]

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

§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. [2011, c. 593, §1 (NEW).]

SECTION HISTORY
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.

[2007, c. 381, §1 (AMD) .]

2. **Condition for eligibility.**

[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.

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

[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.

[2003, c. 20, Pt. K, §2 (AMD); 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.

[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.

[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.

[2007, c. 381, §4 (AMD) .]

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

[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 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 MaineCare, 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;

(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 or a failure to present proper documentation at the point-of-sale that is the basis of the claim, 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. [2007, c. 240, Pt. JJJ, §2 (AMD); 2007, c. 448, §8 (AMD); 2007, c. 448, §14 (AFF).]

B. [2007, c. 240, Pt. JJJ, §3 (RP).]

[2007, c. 240, Pt. JJJ, §§2, 3 (AMD); 2007, c. 448, §8 (AMD); 2007, c. 448, §14 (AFF) .]

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. [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-A, 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. [2003, c. 20, Pt. K, §2 (AMD).]

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. [2005, c. 12, Pt. DDD, §9 (AMD); 2005, c. 12, Pt. DDD, §17 (AFF).]

C-1. [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. [2005, c. 12, Pt. DDD, §9 (NEW); 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. [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. [2005, c. 12, Pt. DDD, §9 (AMD); 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-A, 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. [2009, c. 150, §3 (AMD).]

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. [2005, c. 12, Pt. DDD, §12 (NEW); 2005, c. 12, Pt. DDD, §17 (AFF).]

[2009, c. 150, §3 (AMD) .]

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.

[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.

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

SECTION HISTORY
1979, c. 145, (NEW). 1979, c. 610, §§1,2 (AMD). 1981, c. 24, §§1,2 (AMD). 1981, c. 698, §92 (AMD). 1987, c. 203, (AMD). 1987, c. 621, (AMD). 1989, c. 397, §2 (AMD). 1989, c. 778, §§1-3 (AMD). 1991, c. 9, §§N1-6 (AMD). 1991, c. 815, §1 (AMD). 1993, c. 410, §§I2,3 (AMD). 1993, c. 707, §I1 (AMD). 1995, c. 462, §§D2,3 (AMD). 1997, c. 395, §E1 (AMD). 1997, c. 795, §§1-4 (AMD). 1999, c. 483, §§1,2 (AMD). 1999, c. 668, §§94-99 (AMD). 1999, c. 731, §§TT1-6 (AMD). 2003, c. 20, §K2 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 12, §DDD9 (AMD). 2005, c. 12, §DDD17 (AFF). 2007, c. 240, Pt. JJJ, §§1-4 (AMD). 2007, c. 311, §1 (AMD). 2007, c. 381, §§1-4 (AMD). 2007, c. 423, §1 (AMD). 2007, c. 448, §§7-9 (AMD). 2007, c. 448, §14 (AFF). 2009, c. 150, §3 (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: [2013, c. 235, §1 (AMD).]

1. **Restitution.** Restitution for all excess benefits or payments made;

[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;

[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;

[1995, c. 191, §2 (AMD) .]

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

[1995, c. 191, §3 (AMD) .]

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

[1995, c. 191, §4 (NEW) .]

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

[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. [2013, c. 235, §2 (NEW).]

SECTION HISTORY
1981, c. 242, §2 (NEW). 1995, c. 191, §§1-4 (AMD). 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. [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. [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. [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. [1985, c. 819, Pt. A, §24 (REEN).]

[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.

[1985, c. 819, Pt. A, §24 (REEN) .]

3. **Repeal.**

[1985, c. 668, §2 (RP) .]

SECTION HISTORY
1983, c. 784, §4 (NEW). 1985, c. 668, §2 (AMD). 1985, c. 819, §A24 (REEN). 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.

[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.

[2003, c. 20, Pt. K, §3 (NEW) .]

SECTION HISTORY
2003, c. 20, §K3 (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. [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. [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. [1995, c. 419, §28 (NEW).]

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

[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.

[1997, c. 537, §53 (AMD); 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; [1995, c. 419, §28 (NEW).]

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

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

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

[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.

[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.

[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.

[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.

[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.

[1995, c. 419, §28 (NEW) .]

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

[1995, c. 419, §28 (NEW) .]

10. **Repeal.**

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

SECTION HISTORY

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

[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.

[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.

[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.

[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.

[1997, c. 795, §5 (NEW) .]

SECTION HISTORY
1997, c. 795, §5 (NEW). 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. [1997, c. 795, §5 (NEW).]

SECTION HISTORY
1997, c. 795, §5 (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. [1995, c. 675, §1 (NEW).]

1. **AFDC.** "AFDC" means the Aid to Families with Dependent Children program administered pursuant to former chapter 1053.

[1997, c. 530, Pt. A, §8 (AMD) .]

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.

[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.

[1995, c. 675, §1 (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.

[2011, c. 687, §3 (AMD) .]

5. **Food stamps.** "Food stamps" means the food stamp program established pursuant to section 3104.

[1995, c. 675, §1 (NEW) .]

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.

[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.

[1995, c. 675, §1 (NEW); 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.

[1995, c. 675, §1 (NEW) .]

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

[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.

[1995, c. 675, §1 (NEW) .]

10. **Program.** "Program" means the AFDC program, food stamps or Medicaid program or another program.

[1995, c. 675, §1 (NEW) .]

11. **Recipient.** "Recipient" means a recipient of benefits under the AFDC, food stamp or Medicaid programs or another program.

[1995, c. 675, §1 (NEW) .]

11-A. **Temporary Assistance for Needy Families.** "Temporary Assistance for Needy Families" means the program established in chapter 1053-B.

[1997, c. 530, Pt. A, §9 (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.

[1995, c. 675, §1 (NEW) .]

SECTION HISTORY
1995, c. 675, §1 (NEW). 1997, c. 530, §§A8,9 (AMD). 2003, c. 689, §B6 (REV). 2011, c. 687, §3 (AMD).

§22. ELECTRONIC BENEFIT TRANSFER SYSTEM ESTABLISHED

The department is authorized to establish an electronic benefit transfer system for the issuance of benefits under the AFDC, food stamp, Temporary Assistance for Needy Families, Parents as Scholars and Medicaid programs. [1997, c. 530, Pt. A, §10 (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.

[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.

[1995, c. 675, §1 (NEW) .]

3. **Participation.** All recipients of benefits under the AFDC, food stamp and Medicaid program or another program approved for addition under subsection 2 must participate in the EBT system.

[1995, c. 675, §1 (NEW) .]

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 [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. [1995, c. 675, §1 (NEW).]

[1995, c. 675, §1 (NEW) .]

SECTION HISTORY
1995, c. 675, §1 (NEW). 1997, c. 530, §A10 (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; [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 [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. [2011, c. 687, §4 (NEW).]

[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.

[2011, c. 687, §4 (NEW) .]

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

Subchapter 2: ADMINISTRATION

§41. COMMISSIONER'S REPORT

The commissioner, as soon as practicable after the close of the fiscal year which 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 he deems necessary or important. [1975, c. 771, §211 (AMD).]

SECTION HISTORY
1975, c. 771, §211 (AMD).

§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. [2001, c. 666, Pt. D, §1 (NEW).]

SECTION HISTORY
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. [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.

[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; [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; [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 [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. [2005, c. 588, §2 (NEW).]

[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.

[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.

[2005, c. 588, §2 (NEW) .]

SECTION HISTORY
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.

[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.

[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.

[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.

[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.

[2015, c. 494, Pt. A, §14 (AMD) .]

3-B. **Inspection of plumbing and subsurface waste water disposal systems.** The department shall adopt rules providing for the inspection of plumbing and subsurface waste water disposal systems. 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.

[1991, c. 824, Pt. A, §39 (AMD) .]

4. **Industrial employees.**

[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 can not 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; 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.

[2009, c. 514, §1 (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.

[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. [2005, c. 588, §3 (AMD).]

B. [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. [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. [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. [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. [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. [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. [2003, c. 688, Pt. C, §7 (AMD).]

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

[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 Bureau of Medical 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, Temporary Assistance for Needy Families and food stamp programs that have retroactive application to comply with federal requirements or to conform to the state Medicaid plan as filed with the Federal Government. [2003, c. 612, §1 (NEW).]

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. [2005, c. 648, §1 (AMD).]

C. For any benefits or services in the MaineCare, Temporary Assistance for Needy Families or food stamp programs 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. [2003, c. 612, §1 (NEW).]

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 food stamp 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 food stamp recipient or the beneficiary or recipient of any other program administered by the department. [2003, c. 612, §1 (NEW).]

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. [2003, c. 612, §1 (NEW).]

F. [2005, c. 648, §2 (RP).]

[2005, c. 648, §§1, 2 (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.

[2005, c. 241, §1 (NEW) .]

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

§42-A. DUTIES OF THE DEPARTMENT OF HEALTH AND WELFARE

(REPEALED)

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

§42-B. ADOPTION OF A GRIEVANCE PROCEDURE CONCERNING DISCRIMINATION ON THE BASIS OF HANDICAP

(REPEALED)

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

§43. COMMITTEE OF HEALTH AND WELFARE

(REPEALED)

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

§44. POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1965, c. 444, §2 (AMD). 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. [1977, c. 78, §1 (AMD).]

§46. CHARITABLE AND BENEVOLENT INSTITUTIONS TO SUBMIT ITEMIZED BILLS; RECIPIENTS NOT DEEMED 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 shall 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, shall have been filed with the State Controller 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; 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. [1981, c. 470, Pt. A, §54 (AMD).]

In all instances, payments made by the State to charitable and benevolent organizations under this section shall be governed by such rules and regulations and rates as are prescribed by the department. No person shall be deemed a pauper by reason of having received the benefit of any funds, either state or municipal, which shall have been expended in his behalf under this section. [1971, c. 622, §69-C (AMD).]

SECTION HISTORY
1969, c. 283, (AMD). 1971, c. 622, §§69-B,69-C (AMD). 1981, c. 470, §A54 (AMD).

§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.

[2003, c. 452, Pt. K, §1 (NEW); 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.

[2003, c. 452, Pt. K, §1 (NEW); 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.

[2003, c. 452, Pt. K, §1 (NEW); 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.

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

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

§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 Bureau of Medical Services. The department shall implement the provisions of this section within existing resources. [2003, c. 419, §3 (NEW).]

SECTION HISTORY
2003, c. 419, §3 (NEW).

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

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

§50. PLANNING FOR LONG-TERM CARE SERVICES

By January 15, 2012 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 to further these goals and any recommendations for action by the Legislature. [2009, c. 279, §1 (NEW).]

SECTION HISTORY
2009, c. 279, §1 (NEW).

Subtitle 2: HEALTH

Part 1: ADMINISTRATION

Chapter 101: GENERAL PROVISIONS

§251. INFORMATION FOR DEPARTMENT ON REQUEST

In order to afford the department better advantages for obtaining knowledge important to be incorporated with that collected through special investigations and from other sources, all officers of the State, the physicians of all incorporated companies and the president or agent of any company chartered, organized or transacting business under the laws of this State, as far as practicable, shall furnish to the department any information bearing upon public health which may be requested by said department for the purpose of enabling it better to perform its duties of collecting and distributing useful knowledge on this subject.

§252. PENALTIES

A person who intentionally or knowingly violates any provision of section 451, 454-A, 461 or 462, or of rules adopted pursuant to those sections, or neglects or refuses to obey any order or direction of any local health officer authorized by those provisions, the penalty for which is not specifically provided, or intentionally or knowingly interferes with any person or thing to prevent the execution of those sections or of the rules, commits a civil violation for which a fine of not more than $500 may be adjudged. The District Court has jurisdiction of all offenses under these sections. [2007, c. 598, §4 (AMD).]

SECTION HISTORY
1979, c. 127, §141 (AMD). 1989, c. 487, §2 (AMD). 2007, c. 598, §4 (AMD).

§253. COMPREHENSIVE HEALTH PLANNING

(REPEALED)

SECTION HISTORY
1967, c. 243, (NEW). 1975, c. 293, §4 (AMD). 1981, c. 470, §§A55,A56 (AMD). 1995, c. 653, §C3 (AFF). 1995, c. 653, §C1 (RPR). 1997, c. 689, §A2 (AMD). 1997, c. 689, §C2 (AFF). 2001, c. 354, §3 (AMD). 2003, c. 469, §B3 (RP). 2003, c. 510, §A14 (AMD). 2003, c. 599, §3 (AMD).

§254. ELDERLY LOW-COST DRUG PROGRAM

(REPEALED)

SECTION HISTORY
1975, c. 293, §4 (AMD). 1975, c. 619, §1 (NEW). 1975, c. 771, §§212,213 (AMD). 1977, c. 694, §333 (AMD). 1977, c. 718, §1 (AMD). 1979, c. 726, §§1-5 (AMD). 1981, c. 470, §§A57-A59 (AMD). 1983, c. 66, (AMD). 1983, c. 290, (AMD). 1985, c. 785, §A94 (AMD). 1987, c. 746, (AMD). 1989, c. 563, §§1,2 (AMD). 1989, c. 564, §§1-3,5 (AMD). 1989, c. 596, §N9 (AMD). 1989, c. 878, §§A54,55 (AMD). 1991, c. 528, §§P3-9 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §§P3-9 (AMD). 1991, c. 622, §§M1-4 (AMD). 1991, c. 622, §M5 (AFF). 1991, c. 645, (AMD). 1991, c. 671, §L1 (AMD). 1991, c. 780, §§R8,10 (AFF). 1993, c. 6, §§C1-4 (AMD). 1993, c. 6, §C14 (AFF). 1993, c. 410, §§I4-6 (AMD). 1997, c. 643, §§RR1,2 (AMD). RR 1999, c. 1, §27 (COR). 1999, c. 401, §KKK1 (AMD). 1999, c. 401, §KKK10 (AFF). 1999, c. 531, §F1 (AMD). 1999, c. 531, §F2 (AFF). 1999,

c. 551, §§1,2 (AMD). 1999, c. 707, §1 (AMD). 1999, c. 731, §§TT7-10 (AMD). 1999, c. 786, §§B1,2 (AMD). 2001, c. 293, §§1-4 (AMD). 2001, c. 405, §1 (AMD). 2001, c. 405, §3 (AFF). 2001, c. 439, §§HH1-3 (AMD). 2001, c. 439, §HH4 (AFF). 2001, c. 691, §1 (AMD). 2001, c. 691, §6 (AFF). 2003, c. 20, §§GGG1-6 (AMD). 2003, c. 451, §§P1,2 (AMD). 2003, c. 611, §1 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 12, §§KKK1-3 (AMD). 2005, c. 401, §A1 (RP).

§254-A. ELDERLY LOW-COST DRUG PROGRAM INFORMATION

(REPEALED)

SECTION HISTORY
1997, c. 643, §RR3 (NEW). 2001, c. 691, §2 (AMD). 2001, c. 691, §6 (AFF). 2005, c. 401, §C1 (RP).

§254-B. MAINE RESIDENT LOW-COST PRESCRIPTION DRUG PROGRAM

(REPEALED)

SECTION HISTORY
1999, c. 431, §1 (NEW). 1999, c. 786, §A2 (RP).

§254-C. PRESCRIPTION DRUG PROGRAM FOR OUT-OF-COUNTRY PRESCRIPTION DRUGS

The department shall establish a prescription drug program, when permitted by federal law or by the granting of a waiver by the United States Secretary of Health and Human Services, to provide access to prescription drugs from out of the country to residents of the State who are 62 years of age or older or have disabilities. The program must operate within the limits of federal law and regulation and state law and rule. [2005, c. 165, §1 (NEW).]

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

A. "Member" means a person who meets the eligibility requirements of subsection 2 and who is enrolled in the program. [2005, c. 165, §1 (NEW).]

B. "Program" means the prescription drug program under this section. [2005, c. 165, §1 (NEW).]

[2005, c. 165, §1 (NEW) .]

2. **Eligibility.** Residents of the State are eligible for the program if they are 62 years of age or older or have disabilities.

[2005, c. 165, §1 (NEW) .]

3. **Access.** Access to prescription drugs under the program is subject to the requirements of this subsection.

A. The member must show evidence of use of a pharmacist licensed in the State to coordinate all prescriptions and prevent harmful drug interactions. [2005, c. 165, §1 (NEW).]

B. The program may provide access to prescription drugs that a member has taken according to prescription for at least 15 days. [2005, c. 165, §1 (NEW).]

C. The program may provide access to prescription drugs from pharmacies located outside the country, provided that the department has specifically approved the use of any pharmacies located outside the country. [2005, c. 165, §1 (NEW).]

D. The program may provide access to prescription drugs that are brand-name drugs in their original sealed packaging. [2005, c. 165, §1 (NEW).]

E. The program may not provide access to antibiotics for acute illnesses or prescription drugs for alleviation of pain that are habit-forming. [2005, c. 165, §1 (NEW).]

[2005, c. 165, §1 (NEW) .]

4. **Testing.** The program must include a procedure for random testing of drugs to ensure purity and safety for the member.

[2005, c. 165, §1 (NEW) .]

5. **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.

[2005, c. 165, §1 (NEW) .]

SECTION HISTORY
2005, c. 165, §1 (NEW).

§254-D. ELDERLY LOW-COST DRUG PROGRAM

The Department of Health and Human Services may conduct the elderly low-cost drug program to provide low-cost prescription and nonprescription drugs, medication and medical supplies to disadvantaged, elderly and disabled individuals. [2005, c. 401, Pt. A, §2 (NEW).]

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

A. "Beneficiary under Medicare Part D" means a person who is enrolled in Medicare Part D. [2005, c. 401, Pt. A, §2 (NEW).]

B. "Enrollee" means a person who receives benefits under the program. [2005, c. 401, Pt. A, §2 (NEW).]

C. "Household income" means family income as defined by the department for the purposes of this section. [2005, c. 401, Pt. A, §2 (NEW).]

D. "MaineCare member" means a person who receives benefits under the MaineCare program under chapter 855. [2005, c. 401, Pt. A, §2 (NEW).]

E. "Manufacturer" means a manufacturer of prescription drugs and includes a subsidiary or affiliate of the manufacturer or a person or entity that receives prescription drugs from a manufacturer or wholesaler and repackages those drugs for later retail sale and has a labeler code from the federal Food and Drug Administration under 21 Code of Federal Regulations, 207.20 (1999). [2005, c. 401, Pt. A, §2 (NEW).]

F. "Medicare Part D" means the prescription drug benefit program provided under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108-173. [2005, c. 401, Pt. A, §2 (NEW).]

G. "Program" means the elderly low-cost drug program authorized in this section. [2005, c. 401, Pt. A, §2 (NEW).]

H. "Wholesale price" means the average price paid by a wholesaler to a manufacturer for a product distributed for retail sale. "Wholesale price" includes a deduction for any customary prompt payment discounts. [2005, c. 401, Pt. A, §2 (NEW).]

[2005, c. 401, Pt. A, §2 (NEW) .]

2. **Administration.** The commissioner shall provide sufficient personnel to ensure efficient administration of the program. The commissioner shall determine the extent and the magnitude of the program on the basis of the calculated need of the recipient population and the available funds. The department may not spend more on this program than is available through appropriations from the General Fund, dedicated revenue, federal or other grants and other established and committed funding sources. The commissioner may accept, for the purposes of carrying out this program, federal funds appropriated under any federal law relating to the furnishing of free or low-cost drugs to disadvantaged, elderly or disabled individuals and may take such action as is necessary for the purposes of carrying out that federal law and may accept from any other agency of government, individual, group or corporation such funds as may be available to carry out this chapter. The department may establish priorities of coverage and cost-sharing with available funds. Funds appropriated from the General Fund to carry out the purposes of this section may not lapse but must carry from year to year.

[2005, c. 401, Pt. A, §2 (NEW) .]

3. **Applications.** The commissioner shall make available suitable applications for benefits under the program with instructions for applicants. Individuals who are eligible for benefits under both MaineCare and Medicare Part D may be deemed eligible for the program without the need for application.

[2005, c. 401, Pt. A, §2 (NEW) .]

4. **Conduct of program.** This subsection governs the conduct of the program, including the basic, supplemental and catastrophic components, by the department.

A. Prescription and nonprescription drugs, medications and medical supplies of manufacturers that enter into rebate agreements pursuant to paragraph H may be available under the program. The department may create and implement a preferred drug list. Drugs may be made available through the operation of the basic and supplemental components of the program as follows.

(1) The basic component of the program must provide drugs and medications for cardiac conditions and high blood pressure, diabetes, arthritis, anticoagulation, hyperlipidemia, osteoporosis, chronic obstructive pulmonary disease and asthma, incontinence, thyroid diseases, glaucoma, parkinson's disease, multiple sclerosis and amyotrophic lateral sclerosis. The basic component must also provide over-the-counter medications that are prescribed by a health care provider and approved as cost-effective by the department.

(2) The supplemental component of the program must provide all prescription drugs and medications of manufacturers that enter into rebate agreements pursuant to paragraph H other than those prescription drugs and medications provided under subparagraph (1). [2005, c. 401, Pt. A, §2 (NEW).]

B. An individual is eligible for the program if that individual:

(1) Is a legal resident of the State;

(2) Meets the income eligibility criteria set forth in this section or is eligible for both MaineCare and Medicare Part D;

(3) Does not receive full MaineCare pharmaceutical benefits;

(4) Is at least 62 years of age, or is 19 years of age or older and determined to be disabled by the standards of the federal social security program. A person who was eligible for the program at any time from August 1, 1998 to July 31, 1999 and who does not meet the requirements of this subparagraph at the time of application or renewal retains eligibility for the program if that person is a member of a household of an eligible person; and

(5) Does not have more than $50,000 individually or more than $75,000 per couple in liquid assets. [2015, c. 267, Pt. TT, §1 (AMD).]

C. The department may require that an enrollee or applicant for the program who is otherwise eligible for Medicare Part D become a beneficiary under Medicare Part D unless the department determines that good cause exists for the person not to participate in Medicare Part D. [2005, c. 401, Pt. A, §2 (NEW).]

D. Income eligibility of individuals must be determined by this paragraph and by reference to the federal poverty guidelines for the 48 contiguous states and the District of Columbia, as defined by the federal Office of Management and Budget and revised annually in accordance with the United States Omnibus Budget Reconciliation Act of 1981, Section 673, Subsection 2, Public Law 97-35, reauthorized by Public Law 105-285, Section 201 (1998). If the household income is not more than 175% of the federal poverty guideline applicable to the household, the individual is eligible for the basic program and the supplemental program. Individuals are also eligible for the basic and the supplemental program if the household spends at least 40% of its income on unreimbursed direct medical expenses for prescription drugs and medications and the household income is not more than 25% higher than the levels specified in this paragraph. For the purposes of this paragraph, the cost of drugs provided to a household under this section is considered a cost incurred by the household for eligibility determination purposes. [2011, c. 657, Pt. HH, §1 (AMD).]

E. Specifications for the administration and management of the program may include, but are not limited to, program objectives, accounting and handling practices, supervisory authority and evaluation methodology. [2005, c. 401, Pt. A, §2 (NEW).]

F. The method of prescribing or ordering the drugs under paragraph A may include, but is not limited to, the use of standard or larger prescription refill sizes so as to minimize operational costs and to maximize economy. Unless the prescribing physician indicates otherwise or the department determines that it would not be cost-effective, the use of generic or chemically equivalent drugs is required, as long as these drugs are of the same quality and have the same mode of delivery as is provided to the general public, consistent with good pharmaceutical practice. [2005, c. 401, Pt. A, §2 (NEW).]

G. The commissioner may establish the amount of payment to be made by the program and by enrollees toward the cost of drugs and medications furnished under the program, including covered prescription and nonprescription drugs, medications and medical supplies, under the following terms.

(1) For the basic component of the program, the total cost to an enrollee for the purchase of any covered drug or medication may not exceed the sum of $2 plus 20% of the price allowed for that drug or medication under program rules.

(2) For the supplemental component of the program, the total cost to an enrollee for the purchase of any covered drug or medication may not exceed:

(a) For a brand name drug or medication, the cost to the program for that drug or medication minus the $2 paid by the program; and

(b) For a generic drug or medication, the sum of $2 plus 20% of the price allowed for that drug or medication under program rules.

(3) For the catastrophic component of the program, the commissioner shall establish annual limits on the costs incurred by enrollees for drugs and medications covered under the program on or prior to May 31, 2001. After the limit is reached, the program must pay 80% of the cost of each drug and medication covered by the supplemental component of the program on May 31, 2001 minus $2.

Any remaining amount is paid by the enrollee. The limits must be set by the commissioner by rule as necessary to operate the program within the program budget. [2005, c. 401, Pt. A, §2 (NEW).]

H. Payment must be denied for drugs from manufacturers that do not enter into a rebate agreement with the department.

(1) Each agreement must provide that the manufacturer make rebate payments for both the basic and supplemental components of the program to the department according to the following schedule.

(a) From October 1, 1992 to October 1, 1998, the rebate percentage is equal to the percentage recommended by the federal Center for Medicare and Medicaid Services of the manufacturer's wholesale price for the total number of dosage units of each form and strength of a prescription drug that the department reports as reimbursed to providers of prescription drugs, provided payments are not due until 30 days following the manufacturer's receipt of utilization data supplied by the department, including the number of dosage units reimbursed to providers of prescription drugs during the period for which payments are due.

(b) Beginning October 1, 1998, the department shall seek to achieve an aggregate rebate amount from all rebate agreements that is 6 percentage points higher than that required by division (a), provided such rebates result in a net increase in the rebate revenue available to the elderly low-cost drug program.

(2) Upon receipt of data from the department, the manufacturer shall calculate the quarterly payment.

(a) If a discrepancy is discovered, the department may, at its expense, hire a mutually agreed-upon independent auditor to verify the manufacturer's calculation.

(b) If a discrepancy is still found, the manufacturer shall justify its calculation or make payment to the department for any additional amount due.

(c) The manufacturer may, at its expense, hire a mutually agreed-upon independent auditor to verify the accuracy of the utilization data provided by the department. If a discrepancy is discovered, the department shall justify its data or refund any excess payment to the manufacturer.

(d) If the dispute over the rebate amount is not resolved, a request for a hearing with supporting documentation must be submitted to the department's division of administrative hearings. Failure to resolve the dispute may be cause for terminating the drug rebate agreement and denying payment to the manufacturer for any drugs.

(3) A prescription drug of a manufacturer that does not enter into an agreement pursuant to this paragraph is reimbursable only if the department determines the prescription drug is essential.

(4) All prescription drugs of a manufacturer that enters into an agreement pursuant to this paragraph that appear on the list of approved drugs under the program must be immediately available and the cost of the drugs must be reimbursed except as provided in this paragraph. The commissioner may impose prior authorization requirements on drugs under the program. If the commissioner establishes maximum retail prices for prescription drugs pursuant to section 2693, the department shall adopt rules for the program requiring the use of a drug formulary and prior authorization for the dispensing of certain drugs to be listed on a formulary.

(5) The names of manufacturers who do and do not enter into rebate agreements pursuant to this paragraph are public information. The department shall release this information to health care providers and the public on a regular basis and shall publicize participation by manufacturers that is of particular benefit to the public. [2015, c. 1, §16 (COR).]

I. The eligibility determination made by the department is final, subject to appeal in accordance with the appeal process established in the MaineCare program. [2005, c. 401, Pt. A, §2 (NEW).]

[2015, c. 1, §16 (COR); 2015, c. 267, Pt. TT, §1 (AMD) .]

5. **Relationship to federal Medicare program.** To the extent permitted by federal law and to the extent that funds are available, the department may:

A. Serve as the authorized representative for enrollees for the purpose of enrollment in a Medicare Part D plan; [2005, c. 401, Pt. A, §2 (NEW).]

B. Apply for Medicare Part D benefits and subsidies on behalf of enrollees; [2005, c. 401, Pt. A, §2 (NEW).]

C. Establish rules by which enrollees may opt out of the procedures under paragraphs A and B; [2005, c. 401, Pt. A, §2 (NEW).]

D. At its discretion, file exceptions and appeals pertaining to Medicare Part D eligibility or benefits on behalf of enrollees who are beneficiaries under Medicare Part D. The department may identify a designee for this function; [2005, c. 401, Pt. A, §2 (NEW).]

E. Identify objective criteria for evaluating Medicare Part D plans for the purposes of assisting or enrolling persons in those plans; [2005, c. 401, Pt. A, §2 (NEW).]

F. Deem eligible for and enroll in the program without the need for application individuals who are eligible for both MaineCare and Medicare Part D; [2005, c. 401, Pt. A, §2 (NEW).]

G. For enrollees who are also beneficiaries under or eligible for Medicare Part D:

(1) Provide coverage of drugs to the same extent that coverage is available to enrollees who are not eligible for Medicare Part D; and

(2) Provide assistance with premiums and other cost-sharing requirements of Medicare Part D; and [2005, c. 401, Pt. A, §2 (NEW).]

H. For enrollees who are MaineCare members and who are also beneficiaries under or eligible for Medicare Part D:

(1) Provide coverage of drugs to the same extent that coverage is available to enrollees who are MaineCare members who are not eligible for Medicare Part D; and

(2) Provide assistance with the cost of prescription drugs and premiums and other cost-sharing requirements of Medicare Part D. [2005, c. 401, Pt. A, §2 (NEW).]

[2005, c. 401, Pt. A, §2 (NEW) .]

6. **Education, outreach and materials to increase access.** The department shall provide education and outreach services to applicants and enrollees in the program, MaineCare members and beneficiaries under Medicare Part D to increase access to needed prescription and nonprescription drugs and fully use other private, state and federal programs. The department shall provide materials, which must cover the availability of benefits and the application process and must include brochures, posters for pharmacies and flyers for pharmacists to distribute with prescription drug purchases.

[2005, c. 1, §4 (COR) .]

7. **Rulemaking.** The commissioner may adopt rules to implement the program. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 401, Pt. A, §2 (NEW) .]

8. **Emergency drug coverage.** The department shall provide emergency drug coverage to an enrollee when:

A. A medically necessary drug prescribed for the enrollee is not on the enrollee's Medicare Part D prescription drug plan formulary, is not provided for in the dosage or amount necessary or is on the formulary as a nonpreferred drug; [2005, c. 519, Pt. AAA, §1 (NEW).]

B. The enrollee's initial prior authorization request was not approved by the Medicare Part D prescription drug plan; and [2005, c. 519, Pt. AAA, §1 (NEW).]

C. The drug is available as a preferred drug under either the program or MaineCare or is available from these programs with prior authorization and the enrollee has received or would receive prior authorization approval. [2005, c. 519, Pt. AAA, §1 (NEW).]

[2005, c. 519, Pt. AAA, §1 (NEW) .]

SECTION HISTORY
RR 2005, c. 1, §4 (COR). 2005, c. 401, §A2 (NEW). 2005, c. 519, §AAA1 (AMD). 2007, c. 240, Pt. RR, §1 (AMD). 2011, c. 657, Pt. HH, §1 (AMD). RR 2015, c. 1, §16 (COR). 2015, c. 267, Pt. TT, §1 (AMD).

§255. COORDINATION OF HEALTH SERVICES FUNDED THROUGH THE STATE AND FEDERAL FUNDS

1. **Findings and declaration of legislative intent.** The Legislature finds that the costs of health care and services provided by health care facilities are matters of vital concern to the people of this State and have a direct relationship to the ability of the people to obtain necessary health care.

The Legislature further finds that the coordination of health services in a geographic area within an existing health facility, where practicable, increases both access and quantity of services provided and increases the likelihood costs for these services will be reasonable.

It is the intent of the Legislature to define a policy for the Department of Health and Human Services in order that health services paid for by state and federal funds be coordinated through existing health facilities whenever possible.

[1979, c. 393, (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

2. **Coordination of health services.** To assure equal access to and to avoid the unnecessary duplication of administrative systems, of health services and of health care facilities, the Department of Health and Human Services shall, to the extent practicable, assure that health services funded or provided under the United States Social Security Act, Title V, ESPDT of Title XIX and Title XX, as amended, the United States Public Health Services Act, Section 314 D of Title III, as amended, the Women, Infants and Children (WIC) Special Supplemental Food Program of the United States Child Nutrition Act of 1966, or its successor, the United States Older Americans Act, ASPDT of Title III, as amended, shall be provided through agreements with an existing health facility as long as quality of care is maintained.

[1979, c. 393, (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

SECTION HISTORY
1979, c. 393, (NEW). 2003, c. 689, §B6 (REV).

§255-A. COMMISSION TO PROTECT THE LIVES AND HEALTH OF MEMBERS OF THE MAINE NATIONAL GUARD

(REPEALED)

SECTION HISTORY
2007, c. 318, §2 (NEW). 2011, c. 344, §25 (RP).

§256. HEALTH CARE OCCUPATIONS MANUAL

(REPEALED)

SECTION HISTORY
1989, c. 579, §3 (NEW). 2005, c. 327, §1 (RP).

§256-A. HEALTH CARE OCCUPATIONS REPORT

Beginning in 2006, the Department of Labor, in conjunction with the Office of Data, Research and Vital Statistics, shall compile and annually update a health care occupations report to be completed and presented to the health workforce forum established in section 257 by September 15th. Beginning in 2009, the health care occupations report must be completed and presented to the health workforce forum established in section 257 by September 15th and presented every 4th year thereafter. The report must be posted on a publicly accessible site on the Internet maintained by the Department of Labor and provide the following information: [2009, c. 601, §1 (AMD).]

1. **Listing.** A listing of all health care occupations licensed, registered or certified under the authority of the boards listed in section 256-B, including:

A. A brief description of each occupation; [2005, c. 327, §2 (NEW).]

B. Minimum education requirements; [2005, c. 327, §2 (NEW).]

C. Schools in the State offering education in those health care occupations, including current enrollment and annual number of graduates; and [2005, c. 327, §2 (NEW).]

D. Average starting salary for each health care occupation listed; [2005, c. 327, §2 (NEW).]

[2005, c. 327, §2 (NEW) .]

2. **Future outlook.** An analysis of trends and the current outlook in employment supply and demand, including implications for the state and health care industry; and

[2005, c. 327, §2 (NEW) .]

3. **Financial aid.** Financial aid available for education.

[2005, c. 327, §2 (NEW) .]

SECTION HISTORY
2005, c. 327, §2 (NEW). 2007, c. 240, Pt. RR, §2 (AMD). 2007, c. 631, §1 (AMD). 2009, c. 601, §1 (AMD).

§256-B. COLLECTION OF PROFESSIONAL DATA

1. **Voluntary surveys.** All licensed, registered or certified persons, including all dependent practitioners, under the authority of the following boards must receive a voluntary survey with their licensure, registration or certification renewal beginning January 1, 2006:

A. Emergency Medical Services Board; [2005, c. 327, §2 (NEW).]

B. Radiologic Technology Board of Examiners; [2005, c. 327, §2 (NEW).]

C. Board of Occupation Therapy Practice; [2005, c. 327, §2 (NEW).]

D. Board of Examiners on Speech Pathology and Audiology; [2005, c. 327, §2 (NEW).]

E. Maine Board of Pharmacy; [2005, c. 327, §2 (NEW).]

F. State Board of Nursing; [2005, c. 327, §2 (NEW).]

G. Board of Licensure in Medicine; [2005, c. 327, §2 (NEW).]

H. Board of Osteopathic Licensure; [2005, c. 327, §2 (NEW).]

I. Board of Examiners in Physical Therapy; [2005, c. 327, §2 (NEW).]

J. Board of Respiratory Care Practitioners; [2005, c. 327, §2 (NEW).]

K. Board of Licensing of Dietetic Practice; [2005, c. 327, §2 (NEW).]

L. State Board of Social Worker Licensure; [2005, c. 327, §2 (NEW).]

M. Board of Dental Practice; [2005, c. 327, §2 (NEW); 2015, c. 429, §23 (REV).]

N. State Board of Alcohol and Drug Counselors; and [2005, c. 327, §2 (NEW).]

O. State Board of Examiners of Psychologists. [2005, c. 327, §2 (NEW).]

[2005, c. 327, §2 (NEW); 2015, c. 429, §23 (REV) .]

2. Information requested on survey. The voluntary surveys issued pursuant to subsection 1 must request the following information from persons seeking renewal of their licenses, registrations and certifications:

A. Home zip code; [2005, c. 327, §2 (NEW).]

B. Business zip code; [2005, c. 327, §2 (NEW).]

C. Birth year; [2005, c. 327, §2 (NEW).]

D. Gender; [2005, c. 327, §2 (NEW).]

E. Race; [2005, c. 327, §2 (NEW).]

F. Current employment status: employed in a health care field, employed in another field, seeking health care employment, temporarily not working and not seeking work, retired or not intending to return to work, or some specified other status; [2005, c. 327, §2 (NEW).]

G. Practice setting: a hospital, private practice, community clinic or nursing home; an academic, governmental or other institution; or some specified other setting; [2005, c. 327, §2 (NEW).]

H. Field of licensure, registration or certification; [2005, c. 327, §2 (NEW).]

I. Specialty credential, if any; [2005, c. 327, §2 (NEW).]

J. Whether the person plans to be working in health care 5 years from now; [2005, c. 327, §2 (NEW).]

K. Basic and advanced education, degree earned and state where educated; [2005, c. 327, §2 (NEW).]

L. Number of hours hired to work in the person's primary position per week, average hours worked per week, preferred number of hours per week and number of hours providing direct care per week; [2005, c. 327, §2 (NEW).]

M. In addition to the person's primary position, number of hours worked per week for other health care employers, if any; and [2005, c. 327, §2 (NEW).]

N. If not working in a health care occupation, the reasons: issues of wages or benefits, inability to find position desired, pursuit of education opportunities, pursuit of other career opportunity, retirement or some other specified reason. [2005, c. 327, §2 (NEW).]

[2005, c. 327, §2 (NEW) .]

3. **Submission of surveys.** All surveys conducted pursuant to subsection 1 must be submitted to the Office of Data, Research and Vital Statistics for analysis, and survey data from which personally identifiable information has been eliminated must be publicly available.

[2009, c. 601, §2 (AMD) .]

4. **Rulemaking.** Rules adopted to implement this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 327, §2 (NEW) .]

SECTION HISTORY
2005, c. 327, §2 (NEW). 2007, c. 240, Pt. RR, §3 (AMD). 2009, c. 601, §2 (AMD). 2015, c. 429, §23 (REV).

§257. HEALTH WORKFORCE FORUM

The department shall convene at least once annually a health workforce forum to review the latest report developed under section 256-A and discuss current health care workforce issues. The forum must include representatives of health professionals, licensing boards, employers, health education programs and the Department of Labor. [2007, c. 631, §2 (AMD).]

1. **Inventory.**

[2005, c. 327, §3 (RP) .]

2. **Research.**

[2005, c. 327, §3 (RP) .]

The department shall use the information gathered through the forum to develop its health policy and planning decisions authorized under this Title and to make appropriate policy recommendations based on its analysis of the health care workforce. The department shall post the report and recommendations on a publicly accessible site on the Internet maintained by the department by December 31st beginning in 2009. [2007, c. 631, §2 (AMD).]

SECTION HISTORY
1995, c. 653, §C2 (NEW). 1995, c. 653, §C3 (AFF). 2005, c. 327, §3 (AMD). 2007, c. 631, §2 (AMD).

§258. HEALTHY MAINE PRESCRIPTION PROGRAM

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

A. "Elderly low-cost drug program" means the program established as part of the Healthy Maine Prescription Program pursuant to section 254-D. [2005, c. 401, Pt. C, §2 (AMD).]

B. "Prescription program" means the Healthy Maine Prescription Program established in this section. [2001, c. 293, §5 (NEW).]

[2005, c. 401, Pt. C, §2 (AMD) .]

2. **Program established.** The Healthy Maine Prescription Program is established as the Medicaid prescription drug discount program authorized pursuant to 42 United States Code, Section 1315, as amended, and the waiver project authorized under that section.

[2001, c. 293, §5 (NEW) .]

3. **Administration; components.** The department shall administer the prescription program. The elderly low-cost drug program is a component of the prescription program.

[2001, c. 293, §5 (NEW) .]

4. **Benefit eligibility.** Benefits are subject to the following provisions.

A. An individual enrolled in both the elderly low-cost drug program and the prescription program is eligible for the more generous discount authorized under either program in the event overlapping benefits exist. [2001, c. 293, §5 (NEW).]

B. If a drug rebate is paid for any prescription under the prescription program, a rebate is not due under the elderly low-cost drug program. [2001, c. 293, §5 (NEW).]

C. The department shall issue a single certificate for eligibility to an individual who is eligible for both the benefit under the elderly low-cost drug program and the benefit under the prescription program. [2001, c. 293, §5 (NEW).]

[2001, c. 293, §5 (NEW) .]

5. **Copayments.** Notwithstanding section 3173-C, a beneficiary of the prescription program shall make the copayments authorized under the prescription program and the elderly low-cost drug program.

[2001, c. 293, §5 (NEW) .]

6. **Report.** On or before January 15th each year, the department shall report to the Legislature on the prescription program.

[2001, c. 293, §5 (NEW) .]

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

[2001, c. 293, §5 (NEW) .]

8. **Transition.** When benefits are not available under this section, the commissioner may provide benefits under pharmaceutical benefits programs that were in effect on May 26, 2001.

[2001, c. 467, Pt. B, §1 (NEW); 2001, c. 467, Pt. B, §4 (AFF) .]

SECTION HISTORY
2001, c. 293, §5 (NEW). 2001, c. 467, §B1 (AMD). 2001, c. 467, §B4 (AFF). 2005, c. 401, §C2 (AMD).

§259. SUPPORT FOR PRIMARY AND PREVENTIVE HEALTH CARE SERVICES

The department shall maintain and expand health care access for underserved populations using funds appropriated for these purposes by the Legislature as provided in this section. [2001, c. 450, Pt. B, §1 (NEW).]

1. **Support for federally qualified health centers.** The department shall provide support for federally qualified health centers as follows:

A. Seventy-five thousand dollars in fiscal years 2001-02 and 2002-03 as the state Medicaid match to contract for Medicaid outstationing services at federally qualified health centers; [2015, c. 267, Pt. JJJ, §1 (AMD).]

B. Six hundred ninety-nine thousand, one hundred fifty dollars in fiscal year 2001-02 to federally qualified health centers to support the infrastructure of these programs in providing primary care services to underserved populations. Forty-four thousand, two hundred fifty dollars must be provided to each federally qualified health center with an additional $8,850 for the 2nd and each additional site operated by a federally qualified health center. For the purposes of this paragraph, "site" means a site or sites operated by the federally qualified health center within its scope of service that meet all health center requirements, including providing primary care services, regardless of patients' ability to pay, 5 days a week with extended hours. If there is not sufficient funding to meet the formula in this paragraph, the $699,150 must be allocated in proportion to the formula outlined in this paragraph; and [2015, c. 267, Pt. JJJ, §1 (AMD).]

C. Five hundred thousand dollars, beginning with fiscal year 2015-16 and continuing each fiscal year thereafter, to support access to primary medical, behavioral health and dental services to residents of the State in rural and underserved communities and to assist with provider recruitment and retention. Twenty-five thousand dollars must be provided to each federally qualified health center. [2015, c. 267, Pt. JJJ, §1 (NEW).]

[2015, c. 267, Pt. JJJ, §1 (AMD) .]

2. **Restriction.** Funding provided under this section may not supplant other sources of funding.

[2001, c. 450, Pt. B, §1 (NEW) .]

SECTION HISTORY
2001, c. 450, §B1 (NEW). 2001, c. 667, §C12 (AMD). 2015, c. 267, Pt. JJJ, §1 (AMD).

§260. MAINE HEALTH ACCESS FUND

There is established the Maine Health Access Fund, referred to in this section as the "fund," as a dedicated fund to provide expanded access to health care. [2001, c. 450, Pt. E, §1 (NEW).]

1. **Transfers to fund.** The State Controller shall transfer to the fund such money as authorized by law. The fund may also receive funds from other sources that are designated for the fund. Interest earned on fund balances and investment income on balances in the fund accrue to the fund.

[2001, c. 450, Pt. E, §1 (NEW) .]

2. **Nonlapsing.** Any unexpended balances in the fund may not lapse but must be carried forward.

[2001, c. 450, Pt. E, §1 (NEW) .]

3. **Restriction.** Allocations from the fund must be used to supplement and not supplant appropriations from the General Fund.

[2001, c. 450, Pt. E, §1 (NEW) .]

SECTION HISTORY
2001, c. 450, §E1 (NEW).

§261. MATERNAL AND INFANT DEATH REVIEW PANEL

The department shall establish the maternal and infant death review panel in accordance with this section. [2005, c. 467, §1 (NEW).]

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

A. "Center" means the Maine Center for Disease Control and Prevention. [2005, c. 467, §1 (NEW).]

B. "Deceased person" means a woman who died during pregnancy or within 42 days of giving birth or a child who died within 1 year of birth. [2005, c. 467, §1 (NEW).]

C. "Director" means the director of the center. [2005, c. 467, §1 (NEW).]

C-1. "Family" means a woman who has experienced a fetal death or the parent or parents or other authorized representative of a deceased person. [2009, c. 531, §1 (NEW).]

D. "Panel" means the maternal and infant death review panel established under this section. [2005, c. 467, §1 (NEW).]

E. "Panel coordinator" means an employee of the center who is appointed by the director or a person designated by the panel coordinator. The panel coordinator must be a licensed physician or registered nurse or other health care professional licensed or registered in this State. [2005, c. 467, §1 (NEW).]

[2009, c. 531, §1 (AMD) .]

2. **Membership.** The panel consists of health care and social service providers, public health officials, law enforcement officers and other persons with professional expertise on maternal and infant health and mortality. The director shall appoint the members of the panel, who serve at the pleasure of the director. The director shall appoint an employee of the center to serve as panel coordinator.

[2005, c. 467, §1 (NEW) .]

3. **Contact with family.** The first contact pursuant to this section with the family may not occur prior to 4 months after the death and must:

A. Be by letter from the State Health Officer on letterhead of the center; and [2005, c. 467, §1 (NEW).]

B. Include an invitation to participate in a review of the death of the deceased person or the fetal death from a statewide organization dedicated to improving the health of babies by preventing birth defects, premature birth and infant mortality. [2009, c. 531, §1 (AMD).]

[2009, c. 531, §1 (AMD) .]

4. **Duties and powers of panel coordinator.** The panel coordinator has the following duties and powers.

A. The panel coordinator shall review the deaths of all women during pregnancy or within 42 days of giving birth, the majority of cases in which a fetal death occurs after 28 weeks of gestation and the majority of deaths of infants under 1 year of age, with selection of cases of infant death based on the need to review particular causes of death or the need to obtain a representative sample of all deaths. [2009, c. 531, §1 (AMD).]

A-1. The panel coordinator may have access to the death certificates of deceased persons and to fetal death certificates of fetal deaths occurring after 28 weeks of gestation. [2009, c. 531, §1 (NEW).]

B. Prior to accessing medical records, the panel coordinator shall obtain permission in all cases for access to those records from the family. [2009, c. 531, §1 (AMD).]

C. Prior to conducting a voluntary interview, the panel coordinator shall obtain permission in all cases for the interview from the family. [2009, c. 531, §1 (AMD).]

D. The panel coordinator may conduct voluntary interviews with the family. The purpose of the voluntary interview is limited to gathering information or data for the purposes of the panel in summary or abstract form without family names or patient identifiers. A person who conducts interviews under this paragraph must meet the qualifications for panel coordinator and also have professional experience or training in bereavement services. A person conducting an interview under this paragraph may make a referral for bereavement counseling. [2009, c. 531, §1 (AMD).]

E. The panel coordinator shall prepare a summary or abstract of relevant information regarding the case, as determined to be useful to the panel, but without the name or identifier of the deceased person or the woman who experienced a fetal death, and shall present the summary or abstract to the panel. [2009, c. 531, §1 (AMD).]

[2009, c. 531, §1 (AMD) .]

5. **Duties and powers of panel.** The panel has the following duties and powers.

A. The panel shall conduct comprehensive multidisciplinary reviews of data presented by the panel coordinator. [2005, c. 467, §1 (NEW).]

B. The panel shall present an annual report to the department and to the joint standing committee of the Legislature having jurisdiction over health and human services matters. The report must identify factors contributing to maternal and infant death in the State, determine the strengths and weaknesses of the current maternal and infant health care delivery system and make recommendations to the department to decrease the rate of maternal and infant death.

The panel shall offer a copy of the annual report to the person or persons that granted permission to the panel coordinator for a voluntary interview under subsection 4, paragraph C. [2009, c. 531, §1 (AMD).]

C. The panel shall share the results of its data reviews and recommendations with the child death and serious injury review panel established pursuant to section 4004, subsection 1, paragraph E. The maternal and infant death review panel may request and review data from the child death and serious injury review panel, regardless of any prior work by the child death and serious injury review panel. [2005, c. 467, §1 (NEW).]

[2009, c. 531, §1 (AMD) .]

6. **Limitations.** The panel coordinator may not proceed with reviews of medical records or voluntary interviews without the permission of the family. The panel coordinator may not photocopy or retain copies of medical records or review cases of abortion. In performing work under this section, the panel coordinator shall minimize the burden imposed on health care practitioners, hospitals and facilities.

[2009, c. 531, §1 (AMD) .]

7. **Confidentiality.** All records created or maintained pursuant to this section, other than reports provided under subsection 5, paragraph B, are protected as provided in this subsection. The records are confidential under section 42, subsection 5. The records are not open to public inspection, are not public records for the purposes of Title 1, chapter 13, subchapter 1 and are not subject to subpoena or civil process nor admissible in evidence in connection with any judicial, executive, legislative or other proceeding.

[2005, c. 467, §1 (NEW) .]

8. **Immunity.** A health care practitioner, hospital or health care facility or the employee or agent of that person or entity is not subject to civil or criminal liability arising from the disclosure or furnishing of records or information to the panel pursuant to this section.

[2005, c. 467, §1 (NEW) .]

9. **Funding.** The department may accept any public or private funds to carry out the purposes of this section.

[2005, c. 467, §1 (NEW) .]

10. **Rulemaking.** The department shall adopt rules to implement this section, including rules on collecting information and data, selecting members of the panel, collecting and using individually identifiable health information and conducting reviews under this section. The rules must ensure that access to individually identifiable health information is restricted as much as possible while enabling the panel to accomplish its work. The rules must establish a protocol to preserve confidentiality, specify the manner in which the family will be contacted for permission and maintain public confidence in the protection of individually identifiable information. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 531, §1 (AMD) .]

11. **Repeal.**

[2009, c. 531, §1 (RP) .]

SECTION HISTORY
2005, c. 467, §1 (NEW). 2009, c. 531, §1 (AMD).

§262. HOME VISITING

1. **Voluntary universal home visiting program.** The department, as permitted by the availability of funds, shall offer a voluntary universal home visiting program for new families with children from the prenatal stage of development through 5 years of age, regardless of family income level. The home visiting program must incorporate the following principles:

A. Healthy and strong parent-child attachment; [2007, c. 683, Pt. B, §2 (NEW).]

B. Physical and behavioral health of the family; [2007, c. 683, Pt. B, §2 (NEW).]

C. Reduced incidence of child abuse and neglect; [2007, c. 683, Pt. B, §2 (NEW).]

D. Positive and creative learning environments for the child; [2007, c. 683, Pt. B, §2 (NEW).]

E. Effective and positive parenting; [2007, c. 683, Pt. B, §2 (NEW).]

F. Parental competencies and self-confidence; [2007, c. 683, Pt. B, §2 (NEW).]

G. Reducing family isolation through community linkages; [2007, c. 683, Pt. B, §2 (NEW).]

H. School readiness; and [2007, c. 683, Pt. B, §2 (NEW).]

I. Family self-sufficiency. [2007, c. 683, Pt. B, §2 (NEW).]

[2007, c. 683, Pt. B, §2 (NEW) .]

SECTION HISTORY
2007, c. 683, Pt. B, §2 (NEW).

§263. FEES FOR SERVICES PROVIDED TO MUNICIPALITIES

The department shall adopt rules to charge fees for services provided to municipalities by the Maine Center for Disease Control and Prevention pertaining to health data and vital statistics, including but not limited to fees for services, paper and supplies. The department shall review fees charged under this section every 3 years beginning in 2013. Rules adopted pursuant to this section are major substantive rules as defined by Title 5, chapter 375, subchapter 2-A. [2009, c. 589, §1 (NEW).]

SECTION HISTORY
2009, c. 589, §1 (NEW).

Chapter 102: TOBACCO TAX AND HEALTH PROTECTION

§271. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1997, c. 560, Pt. D, §2 (NEW).]

1. **Bureau.** "Bureau" means the Bureau of Health.

[1997, c. 560, Pt. D, §2 (NEW) .]

2. **Advisory council.** "Advisory council" means the Tobacco Prevention and Control Advisory Council.

[1997, c. 560, Pt. D, §2 (NEW) .]

3. **Program.** "Program" means the Tobacco Prevention and Control Program.

[1997, c. 560, Pt. D, §2 (NEW) .]

4. **Tobacco products.** "Tobacco products" means any form of tobacco and any material or device used in the smoking, chewing or other form of tobacco consumption, including cigarette papers and pipes.

[1997, c. 560, Pt. D, §2 (NEW) .]

SECTION HISTORY
1997, c. 560, §D2 (NEW).

§272. TOBACCO PREVENTION AND CONTROL PROGRAM

1. **Program established.** The Tobacco Prevention and Control Program is established in the bureau. The purposes of the program are to prevent the State's youths from ever using tobacco products and to assist youths and adults who currently smoke cigarettes and use other tobacco products to discontinue that use. The program includes the following components:

A. An ongoing, major media campaign to:

(1) Educate the public about the health hazards, costs and other relevant facts surrounding the use of tobacco products;

(2) Encourage young people not to begin using tobacco products;

(3) Motivate the users of tobacco products to discontinue smoking; and

(4) Encourage public acceptance of smoke-free environments; [1997, c. 560, Pt. D, §2 (NEW).]

B. Grants for funding community-based programs aimed at tobacco prevention and control, including funding of tobacco prevention and control education for those school administrative units that choose to offer such programs to primary, middle and high school students; for community-based enforcement of state tobacco control laws, including sales to minors and for cessation services; [1997, c. 560, Pt. D, §2 (NEW).]

C. Procedures for monitoring and evaluating the prevention and control program, including:

(1) Monitoring and maintaining the program's effectiveness through an evaluation of each component; and

(2) Assessing the prevalence of the use of tobacco products and knowledge about and attitudes towards such use on a statewide and community basis; and [1997, c. 560, Pt. D, §2 (NEW).]

D. In conjunction with law enforcement and other state and federal agencies, increased law enforcement efforts to increase compliance with laws regarding the transportation, distribution and sale of cigarettes and tobacco products. [1997, c. 560, Pt. D, §2 (NEW).]

The bureau shall administer the program with the review and advice provided by the council in subsection 2 and may contract for professional services to carry out the program.

[1997, c. 560, Pt. D, §2 (NEW) .]

2. **Tobacco Prevention and Control Advisory Council.** The Tobacco Prevention and Control Advisory Council is established under Title 5, section 12004-I, subsection 36-D to review the program. The advisory council shall provide advice to the bureau in carrying out its duties under this section and ensure coordination of the program with relevant nonprofit and community agencies and the Department of Education, the department and other relevant state agencies. The advisory council consists of 9 members, appointed as follows:

A. Two public health officials, appointed by the Governor; [1997, c. 560, Pt. D, §2 (NEW).]

B. Two representatives of nonprofit organizations involved in seeking to reduce the use of tobacco products in the State, with one representative appointed by the President of the Senate and one representative appointed by the Speaker of the House of Representatives; [1997, c. 560, Pt. D, §2 (NEW).]

C. A person who designs and implements issue-oriented public health media campaigns, appointed by the Governor; [1997, c. 560, Pt. D, §2 (NEW).]

D. Two persons involved in designing and implementing community-based education or cessation programs for the prevention of tobacco products use, one to focus on adults, appointed by the President of the Senate, and one to focus on youth, appointed by the Speaker of the House of Representatives; and [1997, c. 560, Pt. D, §2 (NEW).]

E. Two members of the public, appointed jointly by the President of the Senate and the Speaker of the House of Representatives in consultation with the leaders of the minority political party. [1997, c. 560, Pt. D, §2 (NEW).]

Appointments to the advisory council must be made by October 15, 1997. Members serve for 3-year terms and may be reappointed. When the appointment of all members is complete, the Governor or the Governor's designee shall convene the first meeting of the advisory council no later than November 15, 1997. The advisory council shall choose a chair from among its members and establish its procedure for reaching decisions. The bureau shall provide staff assistance to the advisory council. The advisory council shall report annually on the program to the Governor and the Legislature by December 1st and include any recommendations or proposed legislation to further the purposes of the program.

The appointing authority shall fill a vacancy on the advisory council for the remainder of the vacant term. Each member who is not a salaried employee is entitled to compensation as provided in Title 5, section 12004-I, subsection 36-D, following approval of expenses by the Director of the Bureau of Health.

[2011, c. 657, Pt. AA, §58 (AMD) .]

SECTION HISTORY
1997, c. 560, §D2 (NEW). 2001, c. 354, §3 (AMD). 2003, c. 689, §B6 (REV). 2011, c. 657, Pt. AA, §58 (AMD).

Chapter 103: CERTIFICATE OF NEED

§301. SHORT TITLE

(REPEALED)

SECTION HISTORY
1977, c. 687, §1 (NEW). 2001, c. 664, §1 (RP).

§302. DECLARATION OF FINDINGS AND PURPOSES

(REPEALED)

SECTION HISTORY
1977, c. 687, §1 (NEW). 1997, c. 689, §B1 (AMD). 1997, c. 689, §C2 (AFF). 2001, c. 664, §1 (RP).

§303. DEFINITIONS

(REPEALED)

SECTION HISTORY
1977, c. 687, §1 (NEW). 1981, c. 705, §§V1-V14 (AMD). 1983, c. 579, §§6,7 (AMD). 1985, c. 418, §§1-3 (AMD). 1987, c. 486, §1 (AMD). 1995, c. 696, §§A1-8 (AMD). 1997, c. 689, §§B2-9 (AMD). 1997, c. 689, §C2 (AFF). 2001, c. 664, §1 (RP).

§304. CERTIFICATE OF NEED REQUIRED

(REPEALED)

SECTION HISTORY
1977, c. 687, §1 (NEW). 1979, c. 375, (AMD). 1981, c. 705, §V15 (RP).

§304-A. CERTIFICATE OF NEED REQUIRED

(REPEALED)

SECTION HISTORY
1981, c. 705, §V16 (NEW). 1983, c. 579, §8 (AMD). 1985, c. 338, §1 (AMD). 1985, c. 418, §4 (AMD). 1987, c. 363, §§1,2 (AMD). 1987, c. 436, §1 (AMD). 1987, c. 725, §1 (AMD). 1989, c. 919, §§3-9,18 (AMD). 1991, c. 485, §1 (AMD). 1991, c. 485, §10 (AFF). 1993, c. 283, §1 (AMD). 1993, c. 410, §FF1 (AMD). 1993, c. 477, §§D2,3 (AMD). 1993, c. 477, §F1 (AFF). 1995, c. 696, §§A9-14 (AMD). 1997, c. 242, §1 (AMD). 1997, c. 689, §B10 (AMD). 1997, c. 689, §C2 (AFF). 2001, c. 664, §1 (RP).

§304-B. SUBSEQUENT REVIEW

(REPEALED)

SECTION HISTORY
1981, c. 705, §V17 (NEW). 1985, c. 418, §5 (AMD). 1997, c. 689, §B11 (AMD). 1997, c. 689, §C2 (AFF). 2001, c. 664, §1 (RP).

§304-C. WAIVER OF CERTIFICATE OF NEED REVIEW FOR PROJECTS FOR WHICH HOSPITAL DOES NOT SEEK POSITIVE ADJUSTMENT TO FINANCIAL REQUIREMENTS ESTABLISHED BY MAINE HEALTH CARE FINANCE COMMISSION

(REPEALED)

SECTION HISTORY
1985, c. 338, §2 (NEW). 1985, c. 661, §1 (RP).

§304-D. WAIVER OF CERTIFICATE OF NEED FOR CERTAIN MINOR PROJECTS

(REPEALED)

SECTION HISTORY
1985, c. 661, §2 (NEW). 1989, c. 588, §§A3,A4 (AMD). 1991, c. 485, §2 (AMD). 1995, c. 696, §§A15,16 (AMD). 1997, c. 689, §C2 (AFF). 1997, c. 689, §B12 (RP).

§304-E. WAIVER OF CERTIFICATE OF NEED REVIEW WHEN REVIEW IS UNNECESSARY AND SERVES NO PUBLIC PURPOSE

(REPEALED)

SECTION HISTORY

1987, c. 725, §2 (NEW). 1997, c. 689, §B13 (AMD). 1997, c. 689, §C2 (AFF). 2001, c. 664, §1 (RP).

§304-F. PROCEDURES AFTER VOLUNTARY NURSING FACILITY REDUCTIONS

(REPEALED)

SECTION HISTORY
1995, c. 696, §A17 (NEW). 1997, c. 689, §B14 (AMD). 1997, c. 689, §C2 (AFF). 2001, c. 664, §1 (RP).

§304-G. NURSING FACILITY PROJECTS

(REPEALED)

SECTION HISTORY
1997, c. 689, §B15 (NEW). 1997, c. 689, §C2 (AFF). 2001, c. 664, §1 (RP).

§305. PERIODIC REPORTS

(REPEALED)

SECTION HISTORY
1977, c. 687, §1 (NEW). 1997, c. 689, §C2 (AFF). 1997, c. 689, §B16 (RP).

§305-A. ANNUAL PROPOSAL TO ADJUST FOR INFLATION

(REPEALED)

SECTION HISTORY
1997, c. 689, §B17 (NEW). 1997, c. 689, §C2 (AFF). 2001, c. 664, §1 (RP).

§306. APPLICATION PROCESS

(REPEALED)

SECTION HISTORY
1977, c. 687, §1 (NEW). 1981, c. 705, §V18 (RP).

§306-A. APPLICATION PROCESS FOR A CERTIFICATE OF NEED

(REPEALED)

SECTION HISTORY
1981, c. 705, §V19 (NEW). 1985, c. 418, §6 (AMD). 1987, c. 436, §§2,3 (AMD). 1995, c. 696, §§A18,19 (AMD). 1997, c. 689, §§B18,19 (AMD). 1997, c. 689, §C2 (AFF). 2001, c. 664, §1 (RP).

§306-B. CERTIFICATE OF NEED ADVISORY COMMITTEE

(REPEALED)

SECTION HISTORY

1997, c. 689, §B20 (NEW). 1997, c. 689, §C2 (AFF). 2001, c. 664, §1 (RP).

§307. REVIEW PROCESS

(REPEALED)

SECTION HISTORY
1977, c. 687, §1 (NEW). 1981, c. 705, §§V20-V29 (AMD). 1983, c. 722, (AMD). 1983, c. 812, §115 (AMD). 1985, c. 342, (AMD). 1985, c. 418, §§7-10 (AMD). 1985, c. 443, §1 (AMD). 1985, c. 661, §3 (AMD). 1985, c. 737, §§A48,49 (AMD). 1989, c. 503, §B79 (AMD). 1993, c. 410, §FF2 (AMD). 1995, c. 696, §§A20-24 (AMD). 1997, c. 689, §§B21,22 (AMD). 1997, c. 689, §C2 (AFF). 2001, c. 664, §1 (RP).

§308. WAIVER OF REQUIREMENTS; EMERGENCY CERTIFICATE OF NEED

(REPEALED)

SECTION HISTORY
1977, c. 687, §1 (NEW). 1979, c. 601, §§1,2 (AMD). 1981, c. 705, §V30 (AMD). 1985, c. 418, §§11,12 (AMD). 1987, c. 436, §§4,5 (AMD). 1997, c. 242, §2 (AMD). 1997, c. 689, §§B23-28 (AMD). 1997, c. 689, §C2 (AFF). 2001, c. 664, §1 (RP).

§309. PRINCIPLES GOVERNING THE REVIEW OF APPLICATIONS

(REPEALED)

SECTION HISTORY
1977, c. 687, §1 (NEW). 1981, c. 705, §§V31-V33 (AMD). 1983, c. 579, §9 (AMD). 1985, c. 338, §3 (AMD). 1985, c. 418, §§13-15 (AMD). 1985, c. 661, §§4-6 (AMD). 1987, c. 436, §6 (AMD). 1989, c. 501, §P24 (AMD). 1989, c. 502, §A65 (AMD). 1993, c. 410, §FF3 (AMD). 1993, c. 477, §D4 (AMD). 1993, c. 477, §F1 (AFF). 1995, c. 462, §A41 (AMD). 1995, c. 696, §§A25-30 (AMD). 1997, c. 689, §§B29,30 (AMD). 1997, c. 689, §C2 (AFF). 2001, c. 664, §1 (RP).

§310. RECONSIDERATION

(REPEALED)

SECTION HISTORY
1977, c. 687, §1 (NEW). 1985, c. 443, §2 (AMD). 2001, c. 664, §1 (RP).

§311. REMEDY

(REPEALED)

SECTION HISTORY
1977, c. 687, §1 (NEW). 1985, c. 443, §3 (AMD). 1985, c. 701, (AMD). 1997, c. 689, §B31 (AMD). 1997, c. 689, §C2 (AFF). 2001, c. 664, §1 (RP).

§312. RULES

(REPEALED)

SECTION HISTORY
1977, c. 687, §1 (NEW). 1981, c. 705, §V34 (AMD). 1997, c. 689, §B32 (AMD). 1997, c. 689, §C2 (AFF). 2001, c. 664, §1 (RP).

§313. PUBLIC INFORMATION

(REPEALED)

SECTION HISTORY
1977, c. 687, §1 (NEW). 2001, c. 664, §1 (RP).

§314. CONFLICT OF INTEREST

(REPEALED)

SECTION HISTORY
1977, c. 687, §1 (NEW). 1979, c. 734, §9 (AMD). 1985, c. 418, §16 (AMD). 2001, c. 664, §1 (RP).

§315. DIVISION OF PROJECT TO EVADE COST LIMITATION PROHIBITED

(REPEALED)

SECTION HISTORY
1977, c. 687, §1 (NEW). 2001, c. 664, §1 (RP).

§316. EXEMPTIONS

(REPEALED)

SECTION HISTORY
1977, c. 687, §1 (NEW). 1981, c. 705, §V35 (RP).

§316-A. EXEMPTIONS

(REPEALED)

SECTION HISTORY
1981, c. 705, §V36 (NEW). 1983, c. 200, §§1,2,3 (AMD). RR 1997, c. 2, §§42,43 (COR). 1997, c. 689, §B33 (AMD). 1997, c. 689, §C2 (AFF). 2001, c. 664, §1 (RP).

§317. SCOPE OF CERTIFICATE OF NEED

(REPEALED)

SECTION HISTORY
1977, c. 687, §1 (NEW). 1981, c. 705, §V37 (RP).

§317-A. SCOPE OF CERTIFICATE OF NEED

(REPEALED)

SECTION HISTORY
1981, c. 705, §V38 (NEW). 1985, c. 418, §17 (AMD). 1997, c. 689, §§B34,35 (AMD). 1997, c. 689, §C2 (AFF). 2001, c. 664, §1 (RP).

§318. WITHHOLDING OF LICENSE

(REPEALED)

SECTION HISTORY
1977, c. 687, §1 (NEW). 2001, c. 664, §1 (RP).

§319. WITHHOLDING OF FUNDS

(REPEALED)

SECTION HISTORY
1977, c. 687, §1 (NEW). 1985, c. 418, §18 (AMD). 2001, c. 664, §1 (RP).

§320. INJUNCTION

(REPEALED)

SECTION HISTORY
1977, c. 687, §1 (NEW). 2001, c. 664, §1 (RP).

§321. PENALTY

(REPEALED)

SECTION HISTORY
1977, c. 687, §1 (NEW). 1987, c. 436, §7 (AMD). 2001, c. 664, §1 (RP).

§322. IMPLEMENTATION REPORTS

(REPEALED)

SECTION HISTORY
1977, c. 687, §1 (NEW). 1985, c. 418, §19 (AMD). 2001, c. 664, §1 (RP).

§323. RELATIONSHIP TO THE UNITED STATES SOCIAL SECURITY ACT, SECTION 1122

(REPEALED)

SECTION HISTORY
1981, c. 705, §V39 (NEW). 1997, c. 689, §C2 (AFF). 1997, c. 689, §B36 (RP).

§324. REVIEW

(REPEALED)

SECTION HISTORY
1981, c. 705, §V40 (NEW). 1995, c. 696, §A31 (RPR). 1997, c. 689, §B37 (AMD). 1997, c. 689, §C2 (AFF). 2001, c. 664, §1 (RP).

§325. HEALTH SYSTEMS AGENCY

(REPEALED)

SECTION HISTORY
1981, c. 705, §V41 (NEW). 1985, c. 418, §20 (RP).

Chapter 103-A: CERTIFICATE OF NEED

§326. SHORT TITLE

This chapter may be known and cited as the "Maine Certificate of Need Act of 2002." [2001, c. 664, §2 (NEW).]

SECTION HISTORY
2001, c. 664, §2 (NEW).

§327. DECLARATION OF FINDINGS AND PURPOSES

The Legislature makes the following statements of findings and purposes. [2001, c. 664, §2 (NEW).]

1. **Findings.** The Legislature finds that unnecessary construction or modification of health care facilities and duplication of health services are substantial factors in the cost of health care and the ability of the public to obtain necessary medical services.

[2001, c. 664, §2 (NEW) .]

2. **Purposes.** The purposes of this chapter are to:

A. Support effective health planning; [2001, c. 664, §2 (NEW).]

B. Support the provision of quality health care in a manner that ensures access to cost-effective services; [2001, c. 664, §2 (NEW).]

C. Support reasonable choice in health care services while avoiding excessive duplication; [2001, c. 664, §2 (NEW).]

D. Ensure that state funds are used prudently in the provision of health care services; [2001, c. 664, §2 (NEW).]

E. Ensure public participation in the process of determining the array, distribution, quantity, quality and cost of these health care services; [2001, c. 664, §2 (NEW).]

F. Improve the availability of health care services throughout the State; [2001, c. 664, §2 (NEW).]

G. Support the development and availability of health care services regardless of the consumer's ability to pay; [2001, c. 664, §2 (NEW).]

H. Seek a balance, to the extent a balance assists in achieving the purposes of this subsection, between competition and regulation in the provision of health care; and [2001, c. 664, §2 (NEW).]

I. Promote the development of primary and secondary preventive health care services. [2001, c. 664, §2 (NEW).]

[2001, c. 664, §2 (NEW) .]

SECTION HISTORY
2001, c. 664, §2 (NEW).

§328. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2001, c. 664, §2 (NEW).]

1. **Access to care.** "Access to care" means the ability to obtain in a timely manner needed personal health services to achieve the best possible health outcomes balanced by the health system's resource limitations. Access to care may be influenced by many factors, including, without limitation, travel, distance, waiting time, available resources, availability of a source of care and the health status of the population served.

[2001, c. 664, §2 (NEW) .]

2. **Ambulatory surgical facility.** "Ambulatory surgical facility" means a facility, not part of a hospital, that provides surgical treatment to patients not requiring hospitalization. "Ambulatory surgical facility" does not include the offices of private physicians or dentists, whether in individual or group practice.

[2001, c. 664, §2 (NEW) .]

3. **Capital expenditure.** "Capital expenditure" means an expenditure, including a force account expenditure or predevelopment activities, that under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance and, for the purposes of this chapter, includes capitalized interest on borrowed funds and the fair market value of any property or equipment that is acquired under lease or comparable arrangement or by donation.

[2001, c. 664, §2 (NEW) .]

3-A. **Capital investment fund.**

[2011, c. 213, §2 (RP) .]

4. **Construction.** "Construction," when used in connection with "health care facility," means the establishment, erection, building, purchase or other acquisition of a health care facility.

[2001, c. 664, §2 (NEW) .]

5. **Development.** "Development," when used in connection with health service, means the undertaking of those activities that on their completion will result in the offering of a new health service to the public.

[2001, c. 664, §2 (NEW) .]

6. **Expenditure minimum for annual operating costs.** "Expenditure minimum for annual operating costs" means, for services commenced after October 1, 1998, $400,000 for the 3rd fiscal year, including a partial first year.

[2001, c. 664, §2 (NEW) .]

7. **Generally accepted accounting principles.** "Generally accepted accounting principles" means accounting principles approved by the American Institute of Certified Public Accountants or a successor organization.

[2001, c. 664, §2 (NEW) .]

8. **Health care facility.** "Health care facility" means a hospital, psychiatric hospital, nursing facility, kidney disease treatment center including a freestanding hemodialysis facility, rehabilitation facility, ambulatory surgical facility, independent radiological service center, independent cardiac catheterization center or cancer treatment center. "Health care facility" does not include the office of a private health care practitioner, as defined in Title 24, section 2502, subsection 1-A, whether in individual or group practice. In an ambulatory surgical facility that functions also as the office of a health care practitioner, the following portions of the ambulatory surgical facility are considered to be a health care facility:

A. Operating rooms; [2003, c. 469, Pt. C, §3 (NEW).]

B. Recovery rooms; [2003, c. 469, Pt. C, §3 (NEW).]

C. Waiting areas for ambulatory surgical facility patients; [2009, c. 383, §1 (AMD).]

C-1. Any space with major medical equipment; and [2009, c. 383, §2 (NEW).]

D. Any other space used primarily to support the activities of the ambulatory surgical facility. [2003, c. 469, Pt. C, §3 (NEW).]

[2009, c. 383, §§1, 2 (AMD) .]

9. **Health maintenance organization.** "Health maintenance organization" means a public or private organization that:

A. Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health services: usual physician services, hospitalization services, laboratory services, x-ray services, emergency and preventive health services and out-of-area coverage; [2001, c. 664, §2 (NEW).]

B. Is compensated, except for copayments, for the provision of the basic health services to enrolled participants on a predetermined periodic rate basis; and [2001, c. 664, §2 (NEW).]

C. Provides physicians' services primarily through physicians who are either employees or partners of the organization or through arrangements with individual physicians or one or more groups of physicians. [2001, c. 664, §2 (NEW).]

[2001, c. 664, §2 (NEW) .]

10. **Health need.** "Health need" means a situation or a condition of a person, expressed in health outcome measures such as mortality, morbidity or disability, that is considered undesirable and is likely to exist in the future.

[2001, c. 664, §2 (NEW) .]

11. **Health planning.** "Health planning" means data assembly and analysis, goal determination and the formulation of action recommendations regarding health services.

[2001, c. 664, §2 (NEW) .]

12. **Health services.** "Health services" means clinically related services that are diagnostic, treatment, rehabilitative services or nursing services provided by a nursing facility. "Health services" includes alcohol abuse, drug abuse and mental health services.

[2001, c. 664, §2 (NEW) .]

13. **Health status.** "Health status" means patient or population measures, or both, of good and poor health practices, rates of death and disease, both chronic and infectious, and the prevalence of symptoms or conditions, or both, of illness and wellness.

[2001, c. 664, §2 (NEW) .]

14. **Hospital.** "Hospital" means an institution that primarily provides to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick persons or rehabilitation services for the rehabilitation of injured, disabled or sick persons. "Hospital" also includes psychiatric and tuberculosis hospitals.

[2001, c. 664, §2 (NEW) .]

15. **Hospital swing bed.** "Hospital swing bed" means an acute care bed licensed by the Bureau of Medical Services, Division of Licensing and Regulatory Services for the use also as a nursing care bed. Swing beds may be established only in rural hospitals with fewer than 100 licensed acute care beds.

[2001, c. 664, §2 (NEW); 2007, c. 324, §17 (REV) .]

16. **Major medical equipment.** "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions used to provide medical and other health services that costs $3,200,000 or more. "Major medical equipment" does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and has been determined to meet the requirements of the United States Social Security Act, Title XVIII, Section 1861(s), paragraphs 10 and 11. In determining whether medical equipment costs more than the threshold provided in this subsection, the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to acquiring the equipment must be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value. Beginning January 1, 2013 and annually thereafter, the threshold amount for review must be updated by the commissioner to reflect the change in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care services index, with an effective date of January 1st each year.

[2011, c. 424, Pt. A, §1 (AMD); 2011, c. 424, Pt. E, §1 (AFF) .]

17. **Modification.** "Modification" means the alteration, improvement, expansion, extension, renovation or replacement of a health care facility or health maintenance organization or portions thereof, including the initial equipment, and the replacement of equipment or existing buildings.

[2001, c. 664, §2 (NEW) .]

17-A. **New health service.** "New health service" means:

A. The obligation of any capital expenditures by or on behalf of a new or existing health care facility of $3,000,000 or more that is associated with the addition of a health service that was not offered on a regular basis by or on behalf of the health care facility within the 12-month period prior to the time the services would be offered; [2011, c. 424, Pt. A, §2 (AMD); 2011, c. 424, Pt. E, §1 (AFF).]

B. The addition of a health service that is to be offered by or on behalf of a new or existing health care facility that was not offered on a regular basis by or on behalf of the health care facility within the 12-month period prior to the time the services would be offered and that, for the 3rd fiscal year of operation, including a partial first year following addition of that service, is projected to entail incremental annual operating costs directly attributable to the addition of that health service of at least $1,000,000. For the purposes of this paragraph, the compensation attributable to the health care practitioner is not included in the calculation of 3rd-year operating costs; or [2011, c. 424, Pt. A, §2 (AMD); 2011, c. 424, Pt. E, §1 (AFF).]

C. The addition in the private office of a health care practitioner, as defined in Title 24, section 2502, subsection 1-A, of new technology that costs $3,200,000 or more. The department shall consult with the Maine Quality Forum Advisory Council established pursuant to Title 24-A, section 6952, prior to determining whether a project qualifies as a new technology in the office of a private practitioner. With regard to the private office of a health care practitioner, "new health service" does not include the location of a new practitioner in a geographic area. [2011, c. 424, Pt. A, §2 (AMD); 2011, c. 424, Pt. E, §1 (AFF).]

Beginning January 1, 2013 and annually thereafter, the threshold amounts for review in paragraphs A, B and C must be updated by the commissioner to reflect the change in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care services index, with an effective date of January 1st each year.

"New health service" does not include a health care facility that extends a current service within the defined primary service area of the health care facility by purchasing within a 12-month time period new equipment costing in the aggregate less than the threshold provided in subsection 16;

[2011, c. 424, Pt. A, §2 (AMD); 2011, c. 424, Pt. E, §1 (AFF) .]

18. **Nursing facility.** "Nursing facility" means any facility defined under section 1812-A.

[2001, c. 664, §2 (NEW) .]

18-A. **Nursing facility MaineCare funding pool.** "Nursing facility MaineCare funding pool" means that limit established in accordance with section 333-A for nursing facility projects.

[2007, c. 440, §1 (NEW) .]

19. **Obligation.** An "obligation" for a capital expenditure that is considered to be incurred by or on behalf of a health care facility:

A. When a contract, enforceable under the law of the State, is entered into by or on behalf of the health care facility for the construction, acquisition, lease or financing of a capital asset; [2001, c. 664, §2 (NEW).]

B. When the governing board of the health care facility takes formal action to commit its own funds for a construction project undertaken by the health care facility as its own contractor; or [2001, c. 664, §2 (NEW).]

C. In the case of donated property, on the date on which the gift is completed under the applicable law of the State. [2001, c. 664, §2 (NEW).]

[2001, c. 664, §2 (NEW) .]

20. **Offer.** "Offer," when used in connection with "health services," means that the health care facility or health maintenance organization holds itself out as capable of providing or having the means to provide a health service.

[2001, c. 664, §2 (NEW) .]

21. **Person.** "Person" means an individual; trust or estate; partnership; corporation, including associations, joint stock companies and insurance companies; the State or a political subdivision or instrumentality of the State, including a municipal corporation of the State; or any other legal entity recognized by state law.

[2001, c. 664, §2 (NEW) .]

22. **Person directly affected by a review.** "Person directly affected by a review" includes:

A. The applicant; [2001, c. 664, §2 (NEW).]

B. A group of 5 persons residing or located within the health service area served or to be served by the applicant; [2011, c. 648, §1 (AMD).]

C. A health care facility, a health maintenance organization or a health care practitioner that demonstrates that it provides similar services or, by timely filing a letter of intent with the department for inclusion in the record, indicates an intention to provide similar services in the future to patients residing in the health service area and whose services would be directly and substantially affected by the application under review; [2001, c. 664, §2 (NEW).]

D. A 3rd-party payor, including, without limitation, a health maintenance organization, that pays health care facilities for services in the health service area in which the project is proposed to be located and whose payments would be directly and substantially affected by the application under review; and [2001, c. 664, §2 (NEW).]

E. A person who demonstrates a direct and substantial effect upon that person's health care as a result of the application under review. [2001, c. 664, §2 (NEW).]

[2011, c. 648, §1 (AMD) .]

23. **Predevelopment activity.** "Predevelopment activity" means any appropriately capitalized expenditure by or on behalf of a health care facility made in preparation for the offering or development of a new health service for which a certificate of need would be required and arrangements or commitments made for financing the offering or development of the new health service and includes site acquisitions, surveys, studies, expenditures for architectural designs, plans, working drawings and specifications.

[2001, c. 664, §2 (NEW) .]

24. **Project.** "Project" means any acquisition, capital expenditure, new health service or change in a health service, predevelopment activity or other activity that requires a certificate of need under section 329.

[2001, c. 664, §2 (NEW) .]

25. **Rehabilitation facility.** "Rehabilitation facility" means an inpatient facility that is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical services and other services that are provided under competent professional supervision.

[2001, c. 664, §2 (NEW) .]

26. **Replacement equipment.** "Replacement equipment" means a piece of capital equipment that replaces another piece of capital equipment that performs essentially the same functions as the replaced equipment.

[2001, c. 664, §2 (NEW) .]

27. **State Health Plan.**

[2011, c. 90, Pt. J, §3 (RP) .]

SECTION HISTORY
2001, c. 664, §2 (NEW). RR 2003, c. 1, §15 (COR). 2003, c. 469, §§C2-6 (AMD). 2007, c. 324, §17 (REV). 2007, c. 440, §1 (AMD). 2007, c. 681, §§1, 2 (AMD). 2009, c. 383, §§1-4 (AMD). 2011, c. 90, Pt. J, §§2, 3 (AMD). 2011, c. 213, §2 (AMD). 2011, c. 424, Pt. A, §§1, 2 (AMD). 2011, c. 424, Pt. E, §1 (AFF). 2011, c. 648, §1 (AMD).

§329. CERTIFICATE OF NEED REQUIRED

A person may not enter into any commitment for financing a project that requires a certificate of need or incur an expenditure for the project without having sought and received a certificate of need, except that this prohibition does not apply to obligations for financing conditioned upon the receipt of a certificate of need or to obligations for predevelopment activities. [2001, c. 664, §2 (NEW).]

A certificate of need from the department is required for: [2001, c. 664, §2 (NEW).]

1. **Transfer of ownership; acquisition by lease, donation, transfer; acquisition of control.** Any transfer of ownership or acquisition under lease or comparable arrangement or through donation or any acquisition of control of a health care facility under lease, management agreement or comparable arrangement or through donation that would have required review if the transfer or acquisition had been by purchase, except in emergencies when that acquisition of control is at the direction of the department or except if the transfer of ownership or acquisition of control involves only entities or health care facilities that are direct or indirect subsidiaries of the same parent corporation, is between a parent corporation and its direct or indirect subsidiaries or is between entities or health care facilities all under direct or indirect ownership of or ultimate control by the same parent corporation immediately prior to the transfer or acquisition;

[2015, c. 453, §1 (AMD) .]

2. **Acquisitions of major medical equipment.**

[2007, c. 440, §2 (RP) .]

2-A. **Acquisitions of major medical equipment.** Acquisitions of major medical equipment. The following provisions apply to acquisitions of major medical equipment.

A. The cost of all major medical equipment must be declared at fair market value.

(1) If an entity purchases major medical equipment from an unrelated entity, the purchase price is assumed to reflect the fair market value.

(2) If an entity purchases major medical equipment from a related entity and the department finds that the fair market value is greater than the purchase price, the department may revise the cost of the major medical equipment to reflect the correct fair market value. [2007, c. 440, §3 (NEW).]

B. The following acquisitions of major medical equipment do not require a certificate of need:

(1) Major medical equipment being replaced by the owner; and

(2) The use of major medical equipment on a temporary basis in the case of a natural disaster, major accident or major medical equipment failure. [2011, c. 424, Pt. A, §3 (AMD); 2011, c. 424, Pt. E, §1 (AFF).]

C. All replaced major medical equipment must be removed from service. [2007, c. 440, §3 (NEW).]

[2011, c. 424, Pt. A, §3 (AMD); 2011, c. 424, Pt. E, §1 (AFF) .]

3. **Capital expenditures.** Except as provided in subsection 6, the obligation by or on behalf of a new or existing health care facility of any capital expenditure of $10,000,000 or more. Capital expenditures in the case of a natural disaster, major accident or equipment failure or for replacement equipment that is not major medical equipment as defined in section 328, subsection 16 or for parking lots and garages, information and communications systems or physician office space or projects directed solely at reducing energy costs through energy efficiency, renewable energy technology or smart grid technology and that have been certified as likely to be cost-effective by the Efficiency Maine Trust pursuant to Title 35-A, section 10122 do not require a certificate of need. Beginning January 1, 2013 and annually thereafter, the threshold amount for review must be updated by the commissioner to reflect the change in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care services index, with an effective date of January 1st each year;

[2011, c. 424, Pt. A, §4 (AMD); 2011, c. 424, Pt. E, §1 (AFF) .]

4. **New health service.** The offering or development of any new health service;

A. [2003, c. 469, Pt. C, §7 (RP).]

B. [2003, c. 469, Pt. C, §7 (RP).]

[2003, c. 469, Pt. C, §7 (AMD) .]

4-A. **New health care facility.** The construction, development or other establishment of a new health care facility. The following requirements apply to certificate of need for new health care facilities.

A. A new health care facility that is a nursing facility must obtain a certificate of need:

(1) If it requires a capital expenditure of more than $5,000,000; or

(2) If it proposes to add new nursing facility beds to the inventory of nursing facility beds within the State, in which case it must satisfy all applicable requirements of section 334-A. [2011, c. 424, Pt. A, §5 (NEW); 2011, c. 424, Pt. E, §1 (AFF).]

B. A new health care facility other than a nursing facility must obtain a certificate of need:

(1) If it requires a capital expenditure of more than $3,000,000; or

(2) If it is a new health service; [2011, c. 424, Pt. A, §5 (NEW); 2011, c. 424, Pt. E, §1 (AFF).]

[2011, c. 424, Pt. A, §5 (AMD); 2011, c. 424, Pt. E, §1 (AFF) .]

5. **Changes in bed complement.** An increase in the existing licensed bed complement or an increase in the licensed bed category of a health care facility, other than a nursing facility, of greater than 10%;

[2001, c. 664, §2 (NEW) .]

6. **Nursing facilities.** The obligation by a new or existing nursing facility, when related to nursing services provided by the nursing facility, of any capital expenditures of $5,000,000 or more. Beginning January 1, 2013 and annually thereafter, the threshold amount for review must be updated by the commissioner to reflect the change in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care services index, with an effective date of January 1st each year.

A certificate of need is not required for the following:

A. A nursing facility converting beds used for the provision of nursing services to beds to be used for the provision of residential care services. If such a conversion occurs, MaineCare and other public funds may not be obligated for payment of services provided in the converted beds unless approved by the department pursuant to the provisions of sections 333-A and 334-A. In order to approve a conversion under this paragraph, the department must determine that any increased MaineCare residential care costs associated with the converted beds are fully offset by reductions in the MaineCare costs from the reduction in MaineCare nursing facility costs associated with the converted beds; [2011, c. 424, Pt. B, §1 (AMD); 2011, c. 424, Pt. E, §1 (AFF).]

B. Capital expenditures in the case of a natural disaster, major accident or equipment failure; [2009, c. 652, Pt. A, §29 (RPR).]

C. Replacement equipment, other than major medical equipment as defined in section 328, subsection 16; [2009, c. 652, Pt. A, §29 (RPR).]

D. Information systems, communication systems, parking lots and garages; and [2009, c. 652, Pt. A, §29 (RPR).]

E. Certain energy-efficient improvements, as described in section 334-A, subsection 4. [2009, c. 652, Pt. A, §29 (RPR).]

[2011, c. 424, Pt. B, §1 (AMD); 2011, c. 424, Pt. E, §1 (AFF) .]

7. **Other circumstances.** The following circumstances:

A. Any proposed use of major medical equipment to serve inpatients of a hospital, if the equipment is not located in a health care facility and was acquired without a certificate of need, except acquisitions exempt from review under subsection 3; or [2007, c. 440, §5 (AMD).]

B. If a person adds a health service not subject to review under subsection 4 at the time it was established and not reviewed and approved prior to establishment at the request of the applicant, and its actual 3rd fiscal year operating cost exceeds the expenditure minimum for annual operating costs in the 3rd fiscal year of operation following addition of these services; and [2007, c. 440, §6 (AMD).]

[2007, c. 440, §§5, 6 (AMD) .]

8. **Related projects.** Any projects that the department determines are related projects if such projects, considered in the aggregate, would otherwise require a certificate of need under this section.

[2001, c. 664, §2 (NEW) .]

SECTION HISTORY
2001, c. 664, §2 (NEW). 2003, c. 469, §C7 (AMD). 2007, c. 440, §§2-6 (AMD). 2007, c. 681, §3 (AMD). 2009, c. 383, §§5, 6 (AMD). 2009, c. 383, §16 (AFF). 2009, c. 429, §1 (AMD). 2009, c. 430, §1 (AMD). 2009, c. 652, Pt. A, §29 (AMD). 2011, c. 424, Pt. A, §§3-5 (AMD). 2011, c. 424, Pt. B, §1 (AMD). 2011, c. 424, Pt. E, §1 (AFF). 2015, c. 453, §1 (AMD).

§330. EXCEPTIONS

Notwithstanding section 329, the requirements of this Act do not apply with respect to: [2001, c. 664, §2 (NEW).]

1. **Healing through prayer.** A health care facility operated by a religious group relying solely on spiritual means through prayer for healing;

[2001, c. 664, §2 (NEW) .]

2. **Activities; acquisitions.** Activities or acquisitions by or on behalf of a health maintenance organization or a health care facility controlled, directly or indirectly, by a health maintenance organization or combination of health maintenance organizations to the extent mandated by the National Health Policy, Planning and Resources Development Act of 1974, as amended, and its accompanying regulations;

[2001, c. 664, §2 (NEW) .]

3. **Home health care services.** Home health care services offered by a home health care provider;

[2001, c. 664, §2 (NEW) .]

4. **Hospice.** Hospice services and programs;

[2001, c. 664, §2 (NEW) .]

5. **Assisted living.**

[2003, c. 510, Pt. B, §6 (RP) .]

5-A. **Assisted housing.** Assisted housing programs and services regulated under chapter 1664;

[2003, c. 510, Pt. A, §15 (NEW) .]

6. **Existing capacity.** The use by an ambulatory surgical facility licensed on January 1, 1998 of capacity in existence on January 1, 1998; and

[2001, c. 664, §2 (NEW) .]

7. **Critical access hospitals.** Conversion by a critical access hospital or a hospital in the process of becoming a critical access hospital of licensed acute care beds to hospital swing beds.

[2003, c. 621, §1 (AMD) .]

SECTION HISTORY
2001, c. 664, §2 (NEW). 2003, c. 510, §§A15,B6 (AMD). 2003, c. 621, §1 (AMD).

§331. SUBSEQUENT REVIEW FOLLOWING CHANGES IN PROJECT

When a certificate of need has been issued and changes occur as specified in this section, a subsequent review is required. [2001, c. 664, §2 (NEW).]

1. **Criteria for subsequent review.** The following activities require subsequent review and approval if the department has previously issued a certificate of need and one or more of the following circumstances occur within 3 years after the approved activity is undertaken:

A. There is a significant change in financing; [2001, c. 664, §2 (NEW).]

B. There is a change affecting the licensed or certified bed capacity as approved in the certificate of need; [2001, c. 664, §2 (NEW).]

C. There is a change involving the addition or termination of the health services proposed to be rendered; [2001, c. 664, §2 (NEW).]

D. There is a change in the site or the location of the proposed health care facility; or [2001, c. 664, §2 (NEW).]

E. There is a substantial change proposed in the design of the health care facility or the type of construction. [2001, c. 664, §2 (NEW).]

[2001, c. 664, §2 (NEW) .]

2. **Procedures for subsequent review.** Any person proposing to undertake any activity requiring subsequent review and approval shall file with the department, within 30 days of the time that person first has actual knowledge of the circumstances requiring subsequent review, a notice setting forth the following information:

A. The nature of the proposed change; [2001, c. 664, §2 (NEW).]

B. The rationale for the change including, where appropriate, an explanation of why the change was not set forth in the original application or letter of intent; and [2001, c. 664, §2 (NEW).]

C. Other pertinent detail subject to the procedures and criteria set forth in section 335. [2001, c. 664, §2 (NEW).]

The department shall, within 30 days of receipt of the information, advise that person in writing whether the proposed change is approved. If not approved, the application must be treated as a new application under this Act. If approved, the department shall amend the certificate of need as appropriate.

[2001, c. 664, §2 (NEW) .]

SECTION HISTORY
2001, c. 664, §2 (NEW).

§332. SUBSEQUENT REVIEW

1. **Subsequent review following approval.** When the commissioner has approved an application filed unconditionally or subject to conditions pursuant to section 335, subsection 8, the commissioner may conduct a subsequent review to ensure compliance with any terms or conditions of approval within 3 years after the approved activity is undertaken. In this subsequent review, the commissioner may hold a public hearing and may consider any material or significant changes in factors or circumstances relied upon by the commissioner in approving the application and significant and relevant information that either is new or was withheld by the applicant at the time of the process under section 335. If, upon review, the commissioner determines that any terms or conditions of the approval have not been met, the commissioner may take enforcement action consistent with subsection 3 and other applicable provisions of this Act.

[2007, c. 440, §7 (NEW) .]

2. **Subsequent review following determination of nonapplicability.** The commissioner may hold a public hearing to determine whether the proponent of the expenditure knowingly withheld significant and relevant information or made any material misrepresentations at the time the nonapplicability determination was rendered. The commissioner may take enforcement action consistent with the provisions of this Act if, upon review, the commissioner determines that:

A. At the time the nonapplicability determination was rendered the proponent of the expenditure knowingly withheld significant and relevant information or made any material misrepresentations; and [2007, c. 440, §7 (NEW).]

B. If the proponent had provided proper information, a certificate of need would have been required for the expenditure or action. [2007, c. 440, §7 (NEW).]

[2007, c. 440, §7 (NEW) .]

3. **Enforcement actions.** When the commissioner determines, following the procedures set forth in subsections 1 and 2, that the holder of a certificate of need when properly required has failed to meet the conditions set forth in the certificate of need approval or that a person covered by this Act has improperly obtained a nonapplicability ruling, the commissioner may take one or more of the following actions.

A. The commissioner may, pursuant to section 347, condition the person's license to prohibit the unauthorized activity and determine the ongoing conduct of that activity to be in violation of the respective chapter under which the person is licensed. A person that is subject to a ruling under this paragraph may request, and the commissioner shall grant pursuant to the Maine Administrative Procedure Act, a stay of the effect of any such determination to condition the person's license to prohibit the particular activity pending final agency action. [2007, c. 440, §7 (NEW).]

B. The commissioner may seek to enjoin the unlawful activity pursuant to section 349. [2007, c. 440, §7 (NEW).]

C. The commissioner may impose civil penalties against the person pursuant to section 350. [2007, c. 440, §7 (NEW).]

D. The commissioner may, pursuant to section 348, petition the Superior Court to withhold prospectively the reimbursement, payment or other financial assistance, either directly or indirectly, from a state agency or other 3rd-party payor that is directly related to the project or activity that required a certificate of need. [2007, c. 440, §7 (NEW).]

E. In determining the appropriate sanction, the commissioner or the court shall consider a range of factors and public interests, as applicable to the circumstances, including but not limited to:

(1) The degree of negligent or intentional conduct;

(2) The clarity or vagueness of the relevant statute or rule;

(3) The clarity or vagueness of the prior approval or condition;

(4) The efforts of the person to maintain compliance;

(5) Whether the person knowingly withheld significant and relevant information or made any material misrepresentations at the time the nonapplicability determination was rendered;

(6) The public interest in maintaining the service; and

(7) All other proper factors at law and in equity. [2007, c. 440, §7 (NEW).]

[2007, c. 440, §7 (NEW) .]

SECTION HISTORY
2001, c. 664, §2 (NEW). 2001, c. 710, §9 (AMD). 2001, c. 710, §10 (AFF). 2007, c. 440, §7 (RPR).

§333. PROCEDURES AFTER VOLUNTARY NURSING FACILITY REDUCTIONS

1. **Procedures.** A nursing facility that voluntarily reduces the number of its licensed beds at any time prior to July 1, 2007, for any reason except to create private rooms may convert the beds back and thereby increase the number of nursing facility beds to no more than the previously licensed number of nursing facility beds, after obtaining a certificate of need in accordance with this section, as long as the nursing facility has been in continuous operation without material change of ownership. For purposes of this section and sections 333-A and 334-A, beds voluntarily removed from service prior to July 1, 2007 and available to be reinstated under this section are referred to as "reserved beds." Reserved beds remain facility property until they lapse as provided for in this section or are transferred. To reinstate reserved beds under this subsection, the nursing facility must:

A. Give notice of the number of beds it is reserving no later than 30 days after the effective date of the license reduction; [2007, c. 440, §8 (AMD).]

A-1. Annually provide notice to the department no later than July 1st of each year of the nursing facility's intent to retain these reserved beds, subject to the limitations set forth in subsection 2, paragraph B. Notice provided under this paragraph preserves the reserved beds through June 30th of the following year. The annual notice on reserved beds may be filed by an individual nursing facility or by multiple nursing facilities through a membership organization approved by the department by a single filing; and [2011, c. 648, §2 (AMD).]

B. Obtain a certificate of need to convert beds back under section 335, except that, if no construction is required for the conversion of beds back, the application must be processed in accordance with subsection 2. The department in its review shall evaluate the impact that the nursing facility beds to be converted back would have on those existing nursing facility beds and facilities within 30 miles of the applicant's facility and shall determine whether to approve the request based on current certificate of need criteria and methodology. [2011, c. 424, Pt. B, §3 (AMD); 2011, c. 424, Pt. E, §1 (AFF).]

[2011, c. 648, §2 (AMD) .]

2. **Expedited review.** Except as provided in subsection 1, paragraph B, an application for a certificate of need to reopen beds reserved in accordance with this section must be processed on an expedited basis in accordance with rules adopted by the department providing for shortened review time and for a public hearing if requested by a person directly affected by a review. The department shall consider and decide upon these applications as follows:

A. Review of applications that meet the requirements of this section must be based on the requirements of section 335, subsection 7, except that the determinations required by section 335, subsection 7, paragraph B must be based on the historical costs of operating the beds and must consider whether the projected costs are consistent with the costs of the beds prior to closure, adjusted for inflation; and [2001, c. 664, §2 (NEW).]

B. If the nursing facility fails to provide the annual notices required by subsection 1, paragraph B, the nursing facility's ability to convert beds back under this section lapses, and the beds must be treated as lapsed beds for purposes of this section and sections 333-A and 334-A. [2011, c. 424, Pt. B, §4 (AMD); 2011, c. 424, Pt. E, §1 (AFF).]

[2011, c. 648, §3 (AMD) .]

3. **Effect on other review proceedings.** Lapsed beds may not be treated as available nursing facility beds for the purpose of evaluating need under section 335. Reserved beds must be counted as available nursing facility beds for the purpose of evaluating need under section 335 only if:

A. The nursing facility retains the ability to convert the reserved beds back to nursing facility use under the terms of this section; [2007, c. 440, §10 (NEW).]

B. The nursing facility having the reserved beds is located within a reasonable distance of the population projected to be served by the project under review; and [2007, c. 440, §10 (NEW).]

C. The nursing facility having the reserved beds is willing to convert them to meet a need identified in that project review. The department shall inquire of facilities having reserved beds in the area of the State to be served by a proposed project before determining whether reserved beds will be counted as available. [2007, c. 440, §10 (NEW).]

[2007, c. 440, §10 (RPR) .]

4. **Rulemaking.** Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

[2009, c. 383, §7 (AMD) .]

SECTION HISTORY
2001, c. 664, §2 (NEW). 2007, c. 440, §§8-10 (AMD). 2009, c. 383, §7 (AMD). 2011, c. 424, Pt. B, §§2-4 (AMD). 2011, c. 424, Pt. E, §1 (AFF). 2011, c. 648, §§2, 3 (AMD).

§335. APPROVAL; RECORD

This section applies to determinations by the commissioner under this chapter. [2001, c. 664, §2 (NEW).]

1. **Basis for decision.** Based solely on a review of the record maintained under subsection 6, the commissioner shall approve an application for a certificate of need if the commissioner determines that the project:

A. Meets the conditions set forth in subsection 7; [2003, c. 469, Pt. C, §8 (NEW).]

B. [2011, c. 90, Pt. J, §5 (RP).]

C. Ensures high-quality outcomes and does not negatively affect the quality of care delivered by existing service providers; [2003, c. 469, Pt. C, §8 (NEW).]

D. Does not result in inappropriate increases in service utilization, according to the principles of evidence-based medicine adopted by the Maine Quality Forum, as established in Title 24-A, section 6951, when the principles adopted by the Maine Quality Forum are directly applicable to the application; and [2011, c. 424, Pt. B, §15 (AMD); 2011, c. 424, Pt. E, §1 (AFF).]

E. [2013, c. 424, Pt. A, §10 (RP).]

F. In the case of a nursing facility project that proposes to add new nursing facility beds to the inventory of nursing facility beds within the State, is consistent with the nursing facility MaineCare funding pool and other applicable provisions of sections 333-A and 334-A. [2011, c. 424, Pt. B, §15 (NEW); 2011, c. 424, Pt. E, §1 (AFF).]

[2013, c. 424, Pt. A, §10 (AMD) .]

1-A. **Competitive review.** The commissioner may review applications on a competitive basis if the applications propose the same or similar services.

[2011, c. 648, §6 (AMD) .]

2. **Communications.** Staff of the department with responsibility for the certificate of need program may meet with, or otherwise communicate with, any person who is not a department employee and who wants to provide information to be considered in connection with an application for a certificate of need.

[2011, c. 648, §7 (AMD) .]

3. **Limited communications.** All communications regarding any letter of intent or application with the commissioner or with department staff responsible for the certificate of need program from any person who is not a department employee that the department staff reasonably believes is intended to influence the analyses relating to or the decision regarding an application for certificate of need must be made part of the record described in subsection 5-A. If such communications are not in written form or part of public meetings, these communications must be noted in writing by the commissioner or by department staff and that notation must be made part of the application record.

[2011, c. 648, §8 (AMD) .]

4. **Decision.** The commissioner's decision must be in writing and must contain appropriate references to the record. If the application is denied, the decision must specifically address comments received and made part of the record that favor granting the application. If the application is approved, the decision must specifically address comments received and made part of the record that favor denial of the application.

[2001, c. 664, §2 (NEW) .]

5. **Record.**

[2007, c. 440, §17 (RP) .]

5-A. **Record.** The record created by the department in the course of its review of an application must contain the following:

A. The letter of intent described in section 337, subsection 1, all other materials submitted by the applicant relating to the letter of intent and any written materials relating to the letter of intent; [2007, c. 440, §18 (NEW).]

B. The application and all other materials submitted by the applicant for the purpose of making those documents part of the record; [2007, c. 440, §18 (NEW).]

C. All information generated by or for the department in the course of gathering material to assist the commissioner in determining whether the conditions for granting an application for a certificate of need have or have not been met. This information may include, without limitation, the report of consultants, including reports by panels of experts assembled by the department to advise it on the application, memoranda of meetings or conversations with any person interested in commenting on the application, letters, memoranda and documents from other interested agencies of State Government and memoranda describing officially noticed facts; [2007, c. 440, §18 (NEW).]

D. Stenographic or electronic recordings of any public hearing held by the commissioner or the staff of the department at the direction of the commissioner regarding the application; [2007, c. 440, §18 (NEW).]

E. Stenographic or electronic recording of any public informational meeting held by the department pursuant to section 337, subsection 5; [2007, c. 440, §18 (NEW).]

F. Any documents submitted by any person for the purpose of making those documents part of the record regarding any application for a certificate of need or for the purpose of influencing the outcome of any analyses or decisions regarding an application for certificate of need, except documents that have been submitted anonymously. Such source-identified documents automatically become part of the record upon receipt by the department; [2007, c. 440, §18 (NEW).]

G. Preliminary and final analyses of the record prepared by the staff; [2007, c. 440, §18 (NEW).]

H. Except with regard to a project related to nursing facility services, a written assessment by the Director of the Maine Center for Disease Control and Prevention of the impact of the project on the health of Maine citizens; and [2007, c. 440, §18 (NEW).]

I. Except with regard to a project related to nursing facility services, or a project that qualifies for a simplified review process under section 336, a written assessment by the Superintendent of Insurance of the impact of the project on the cost of insurance in the region and the State when required by the commissioner. The superintendent may request additional information from the applicant for the purpose of reviewing the application. Any such request must be transmitted through the department and becomes part of the official record. The applicant shall respond to the request within 30 days. Any such response must be transmitted through the department and becomes part of the official record. The inability of the superintendent to complete the review of the application due to the failure of the applicant to respond timely must be noted in the superintendent's assessment filed with the department and may be cause for the commissioner to deny approval of the project. [2013, c. 424, Pt. B, §9 (AMD).]

[2013, c. 424, Pt. B, §9 (AMD) .]

6. **Maintenance of the record.** The record created pursuant to subsection 5-A first opens on the day the department receives a certificate of need application. From that day, all of the record is a public record. The letter of intent becomes a public record upon the receipt of the letter and is available for review from the date of receipt. Any person may examine all or part of the public record and purchase copies of any or all of that record during the normal business hours of the department.

A. The department shall accept public comments and additional information from the applicant for a period of 30 days after the public informational meeting held under section 337, subsection 5 or the public hearing held under section 339, subsection 2, whichever is later. The record will then close until public notice that the preliminary staff analysis has been made part of the record. [2011, c. 648, §10 (NEW).]

B. A technical assistance meeting with the department must be scheduled at least 10 days before the department publishes the preliminary analysis of a certificate of need application. At the technical assistance meeting the department shall:

(1) Give applicants an opportunity to hear whether the certificate of need application is likely to be approved or denied;

(2) Give applicants an opportunity to address issues and concerns expressed by the department regarding compliance with this chapter; and

(3) Give applicants an opportunity to offer additional information to the department.

Any additional information submitted by the applicant becomes part of the public record. The department shall complete its review after the technical assistance meeting and before the department publishes the preliminary analysis. [2011, c. 648, §10 (NEW).]

C. The department shall give notice that the preliminary analysis is complete and part of the public record by publication in a newspaper of general circulation in Kennebec County, in a newspaper published within the service area of the project and on the department's publicly accessible website. [2011, c. 648, §10 (NEW).]

D. The public and the applicant may submit comments on the preliminary analysis for 15 business days after the notice is published under paragraph C. [2011, c. 648, §10 (NEW).]

E. The department may determine to reopen the record in circumstances that it determines to be appropriate for a limited time to permit submission of additional information, as long as the department gives public notice consistent with the provisions of this subsection. [2011, c. 648, §10 (NEW).]

[2011, c. 648, §10 (RPR) .]

7. **Expanded review process; approval.** Except as provided in section 334-A, subsection 2-B with respect to emergency nursing facility projects, section 336 with respect to the simplified review process and subsection 9 of this section with respect to emergency certificates of need, the commissioner, or the commissioner's designee in the case of a simplified review under section 336 or an emergency review, shall issue a certificate of need if the commissioner or the commissioner's designee determines and makes specific written findings regarding that determination that:

A. The applicant is fit, willing and able to provide the proposed services at the proper standard of care as demonstrated by, among other factors, whether the quality of any health care provided in the past by the applicant or a related party under the applicant's control meets industry standards. If the applicant is a provider of health care services that are substantially similar to those services being reviewed and is licensed in the State, the requirements of this paragraph are deemed to have been met if the services previously provided in the State by the applicant are consistent with applicable licensing and certification standards; [2011, c. 648, §11 (AMD).]

B. The economic feasibility of the proposed services is demonstrated in terms of the:

(1) Capacity of the applicant to support the project financially over its useful life, in light of the rates the applicant expects to be able to charge for the services to be provided by the project; and

(2) Applicant's ability to establish and operate the project in accordance with existing and reasonably anticipated future changes in federal, state and local licensure and other applicable or potentially applicable rules. If the applicant is a provider of health care services that are substantially similar to those services being reviewed and is licensed in the State, the applicant is deemed to have fulfilled the requirements of this subparagraph if the services provided in the State by the applicant during the most recent 3-year period are of similar size and scope and are consistent with applicable licensing and certification standards; [2011, c. 648, §11 (AMD).]

C. There is a public need for the proposed services as demonstrated by certain factors, including, but not limited to:

(1) Whether, and the extent to which, the project will substantially address specific health problems as measured by health needs in the area to be served by the project;

(2) Whether the project will have a positive impact on the health status indicators of the population to be served;

(3) Whether the services affected by the project will be accessible to all residents of the area proposed to be served; and

(4) Whether the project will provide demonstrable improvements in quality and outcome measures applicable to the services proposed in the project; [2003, c. 469, Pt. C, §11 (AMD).]

D. The proposed services are consistent with the orderly and economic development of health facilities and health resources for the State as demonstrated by:

(1) The impact of the project on total health care expenditures after taking into account, to the extent practical, both the costs and benefits of the project and the competing demands in the local service area and statewide for available resources for health care;

(2) The availability of state funds to cover any increase in state costs associated with utilization of the project's services; and

(3) The likelihood that more effective, more accessible or less costly alternative technologies or methods of service delivery may become available; and [2003, c. 469, Pt. C, §11 (AMD).]

E. The project meets the criteria set forth in subsection 1. [2003, c. 469, Pt. C, §12 (NEW).]

In making a determination under this subsection, the commissioner may use data from the Maine Health Data Organization established in chapter 1683 and other information available to the commissioner to the extent such data and information is applicable to the determination being made. The commissioner may give appropriate weight to information that indicates that the proposed health services are innovations in high-quality health care delivery, that the proposed health services are not reasonably available in the proposed area and that the facility proposing the new health services is designed to provide excellent quality health care.

[2011, c. 648, §11 (AMD) .]

8. **Conditional approvals.** The commissioner may grant an application subject to conditions that relate to the criteria for approval of the application.

[2001, c. 664, §2 (NEW) .]

9. **Emergency certificate of need.** Upon the written or oral request of an applicant asserting that an emergency situation exists, the department shall immediately determine whether an emergency situation exists and upon finding that an emergency situation does exist shall issue a certificate of need for a project necessary on account of the emergency situation. The scope of the certificate of need may not exceed that which is necessary to remedy or otherwise effectively address the emergency situation. The certificate of need may be subject to conditions consistent with the purpose of this Act that do not interfere with the applicant's ability to respond effectively to the emergency.

The commissioner shall find an emergency situation exists whenever the commissioner finds that an applicant has demonstrated:

A. The necessity for immediate or temporary relief due to a natural disaster, a fire, an unforeseen safety consideration, a major accident, equipment failure, foreclosure, receivership or an action of the department or other circumstances determined appropriate by the department; [2001, c. 664, §2 (NEW).]

B. The serious adverse effect of delay on the applicant and the community that would be occasioned by compliance with the regular requirements of this chapter and the rules adopted by the department; and [2001, c. 664, §2 (NEW).]

C. The lack of substantial change in the facility or services that existed before the emergency situation. [2001, c. 664, §2 (NEW).]

[2001, c. 664, §2 (NEW) .]

SECTION HISTORY

2001, c. 664, §2 (NEW). 2003, c. 469, §§C8-12 (AMD). 2003, c. 514, §1 (AMD). 2005, c. 369, §§7,8 (AMD). 2007, c. 440, §§14-19 (AMD). 2009, c. 383, §8 (AMD). 2011, c. 90, Pt. J, §§5, 6 (AMD). 2011, c. 213, §3 (AMD). 2011, c. 424, Pt. B, §15 (AMD). 2011, c. 424, Pt. E, §1 (AFF). 2011, c. 648, §§6-11 (AMD). 2013, c. 424, Pt. A, §10 (AMD). 2013, c. 424, Pt. B, §9 (AMD).

§333-A. PROCEDURES FOR ALLOWING REALLOCATION OF NURSING FACILITY CAPACITY

1. **Nursing facility MaineCare funding pool.** Except as set forth in subsection 3-A and section 334-A, savings to the MaineCare program as a result of delicensing of nursing facility beds on or after July 1, 2005, including savings from lapsed beds but excluding savings from reserved beds, must be credited to the nursing facility MaineCare funding pool, which must be maintained by the department to provide for the development of new beds or other improvements requiring a certificate of need. For those nursing facility projects that propose to add new nursing facility beds to the inventory of beds within the State, the balance of the nursing facility MaineCare funding pool, as adjusted to reflect current costs consistent with the rules and statutes governing reimbursement of nursing facilities, serves as a limit on the MaineCare share of all incremental 3rd-year operating costs of such projects unless such projects are approved under applicable provisions of section 334-A. Nursing facility projects that do not add new nursing facility beds to the inventory of beds within the State are not subject to the nursing facility MaineCare funding pool.

[2011, c. 424, Pt. B, §5 (AMD); 2011, c. 424, Pt. E, §1 (AFF) .]

2. **Procedure.** The balance of the nursing facility MaineCare funding pool must be used for development of additional nursing facility beds in areas of the State where additional beds are needed to meet the community need. The department must assess needs throughout the State and issue requests for proposals for the development of additional beds in areas where need has been identified by the department, except in the event of an emergency, when the department may use a sole source process. Proposals must be evaluated based on consideration of quality of care and cost, and preference must be given to existing nursing facilities in the identified need area that may increase licensed capacity by adding on to or renovating the existing facility.

[2011, c. 424, Pt. B, §6 (AMD); 2011, c. 424, Pt. E, §1 (AFF) .]

3. **Emergencies and necessary renovations.**

[2011, c. 424, Pt. B, §7 (RP); 2011, c. 424, Pt. E, §1 (AFF) .]

3-A. **Transfers between nursing facility and residential care facility.** A nursing facility may delicense and sell or transfer beds to a residential care facility for the purpose of permitting the residential care facility to add MaineCare-funded beds to meet identified needs for such beds. Such a transfer does not require a certificate of need but is subject to prior approval of the department on an expedited basis. The divisions within the department that are responsible for licensing and MaineCare reimbursement for nursing facilities and residential care facilities shall work cooperatively to review and consider whether to approve such transfers on an expedited basis. When the average then current occupancy rate for existing state-funded residential care beds within 30 miles of the applicant facility is 80% or less, the department in its review under section 335 shall evaluate the impact that the proposed additional state-funded residential care beds would have on these existing state-funded residential care beds and facilities. Beds and MaineCare resources transferred pursuant to this subsection are not subject to the nursing facility MaineCare funding pool. In order for the department to approve delicensing, selling or transferring under this subsection, the department must

determine that any increased MaineCare residential care costs associated with the converted beds are fully offset by reductions in the MaineCare costs from the reduction in MaineCare nursing facility costs associated with the converted beds.

[2011, c. 648, §4 (AMD) .]

4. **Rulemaking.** The department may establish 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.

[2007, c. 681, §6 (AMD) .]

SECTION HISTORY
2007, c. 440, §11 (NEW). 2007, c. 681, §§4-6 (AMD). 2009, c. 429, §2 (AMD). 2011, c. 90, Pt. J, §4 (AMD). 2011, c. 424, Pt. B, §§5-8 (AMD). 2011, c. 424, Pt. E, §1 (AFF). 2011, c. 648, §4 (AMD).

§334. NURSING FACILITY PROJECTS

(REPEALED)

SECTION HISTORY
2001, c. 664, §2 (NEW). 2003, c. 416, §1 (AMD). 2007, c. 440, §12 (RP).

§334-A. NURSING FACILITY PROJECTS

1. **Projects that expand current bed capacity.**

[2011, c. 424, Pt. B, §9 (RP); 2011, c. 424, Pt. E, §1 (AFF) .]

1-A. **Projects that expand current bed capacity.** Nursing facility projects that propose to add new nursing facility beds to the inventory of nursing facility beds within the State may be considered under either of the following 2 options:

A. These projects may be grouped for competitive review purposes consistent with funds available from the nursing facility MaineCare funding pool and may be approved if sufficient funds are available from the nursing facility MaineCare funding pool or are added to the pool by an act of the Legislature, except that the department may approve, without available funds from the pool, projects to reopen beds previously reserved by a nursing facility through a voluntary reduction pursuant to section 333 if the annual total of reopened beds approved does not exceed 100; or [2011, c. 424, Pt. B, §10 (NEW); 2011, c. 424, Pt. E, §1 (AFF).]

B. Petitioners proposing such projects may elect not to participate in a competitive review under paragraph A and the projects may be approved if:

(1) The petitioner, or one or more nursing facilities or residential care facilities or combinations thereof under common ownership or control, has agreed to delicense a sufficient number of beds from the total number of currently licensed or reserved beds, or is otherwise reconfiguring the operations of such facilities, so that the MaineCare savings associated with such actions are sufficient to fully offset any incremental MaineCare costs that would otherwise arise from implementation of the certificate of need project and, as a result, there are no net incremental MaineCare costs arising from implementation of the certificate of need project; or

(2) The petitioner, or one or more nursing facilities or residential care facilities or combinations thereof under common ownership or control, has acquired bed rights from another nursing facility or facilities or residential care facility or facilities or combinations thereof that agree to delicense beds or that are ceasing operations or otherwise reconfiguring their operations, and the MaineCare

revenues associated with these acquired bed rights and related actions are sufficient to cover the additional requested MaineCare costs associated with the project. The divisions within the department that are responsible for licensing and MaineCare reimbursement for nursing facilities and residential care facilities shall work cooperatively to review and consider whether to approve such projects.

With respect to the option described in this paragraph, when the average then current occupancy rate for existing nursing facility beds at facilities within 30 miles of the applicant facility exceeds 85%, the department in its review under section 335 shall evaluate the impact that the proposed additional nursing facility beds would have on those existing nursing facility beds and facilities and shall determine whether to approve the request based on current certificate of need criteria and methodology.

Certificate of need projects described in this paragraph are not subject to or limited by the nursing facility MaineCare funding pool. [2011, c. 648, §5 (AMD).]

[2011, c. 648, §5 (AMD) .]

2. **Projects to relocate beds.** Nursing facility projects that do not add new nursing facility beds to the inventory of nursing facility beds within the State, but instead propose to relocate beds from one or more nursing facilities to one or more existing or new nursing facilities:

A. May also propose renovation, replacement or other actions requiring certificate of need review; and [2007, c. 440, §13 (NEW).]

B. May be approved by the department upon a showing by the petitioner that the project fulfills all pertinent requirements and the review criteria set forth in section 335. [2011, c. 424, Pt. B, §11 (AMD); 2011, c. 424, Pt. E, §1 (AFF).]

Certificate of need projects described in this subsection are not subject to or limited by the nursing facility MaineCare funding pool.

[2011, c. 424, Pt. B, §11 (AMD); 2011, c. 424, Pt. E, §1 (AFF) .]

2-A. **Other types of certificate of need projects.** Other types of nursing facility projects that do not add new nursing facility beds to the inventory of nursing facility beds within the State and do not propose to relocate beds from one facility to another existing or new facility and that propose any renovation, replacement, transfer of ownership or other actions requiring certificate of need review, such as capital expenditures for equipment and renovations that are above applicable thresholds, may be approved by the department upon a showing that the project fulfills all pertinent requirements and the review criteria set forth in section 335.

A. [2011, c. 424, Pt. B, §12 (RP); 2011, c. 424, Pt. E, §1 (AFF).]

B. [2011, c. 424, Pt. B, §12 (RP); 2011, c. 424, Pt. E, §1 (AFF).]

Certificate of need projects described in this subsection are not subject to or limited by the nursing facility MaineCare funding pool.

[2011, c. 424, Pt. B, §12 (AMD); 2011, c. 424, Pt. E, §1 (AFF) .]

2-B. **Emergencies and necessary nursing facility projects.** If the department determines that an emergency exists, it may approve a necessary nursing facility certificate of need application on an expedited basis when the applicant proposes capital expenditures for renovations and improvements that are necessary:

A. To achieve compliance with code and related regulatory requirements; [2011, c. 424, Pt. B, §13 (NEW); 2011, c. 424, Pt. E, §1 (AFF).]

B. To comply with the federal Health Insurance Portability and Accountability Act of 1996 and related patient privacy standards; [2011, c. 424, Pt. B, §13 (NEW); 2011, c. 424, Pt. E, §1 (AFF).]

C. To address other patient safety requirements and standards; or [2011, c. 424, Pt. B, §13 (NEW); 2011, c. 424, Pt. E, §1 (AFF).]

D. To address other necessary and time-sensitive patient safety or compliance issues. [2011, c. 424, Pt. B, §13 (NEW); 2011, c. 424, Pt. E, §1 (AFF).]

Certificate of need projects described in this subsection are not subject to or limited by the nursing facility MaineCare funding pool.

[2011, c. 424, Pt. B, §13 (NEW); 2011, c. 424, Pt. E, §1 (AFF) .]

3. **Evaluating costs.** Beginning with all applications pending on February 15, 2012, in evaluating whether a project will increase MaineCare expenditures for a nursing facility for the purposes of this section, the department shall:

A. Allow gross square footage per licensed bed of not less than 500 square feet unless the applicant specifies a smaller allowance for the project. [2011, c. 424, Pt. B, §14 (AMD); 2011, c. 424, Pt. E, §1 (AFF).]

B. [2011, c. 424, Pt. B, §14 (RP); 2011, c. 424, Pt. E, §1 (AFF).]

C. [2011, c. 424, Pt. B, §14 (RP); 2011, c. 424, Pt. E, §1 (AFF).]

[2011, c. 424, Pt. B, §14 (AMD); 2011, c. 424, Pt. E, §1 (AFF) .]

4. **Cost associated with energy-efficient improvements.** The cost associated with energy-efficient improvements in nursing facilities, as set forth in rules governing special reimbursement provisions for energy-efficient improvements adopted by the department, must be excluded from the cost of a project in determining whether the project is subject to review.

[2009, c. 430, §5 (NEW) .]

SECTION HISTORY
2007, c. 440, §13 (NEW). 2009, c. 429, §§3-5 (AMD). 2009, c. 430, §§2-5 (AMD). 2011, c. 424, Pt. B, §§9-14 (AMD). 2011, c. 424, Pt. E, §1 (AFF). 2011, c. 648, §5 (AMD).

§336. SIMPLIFIED REVIEW AND APPROVAL PROCESS

Notwithstanding the requirements set forth in section 335, the department shall conduct a simplified review and approval process in accordance with this section unless a public hearing has been requested pursuant to section 339, subsection 2, paragraph D, in which case the project is subject to the expanded review in section 335. The department shall by rule set forth this simplified review and approval process. To the extent practicable, a simplified review must be completed and the commissioner shall make a decision within 60 days after the application has been certified as complete by the applicant pursuant to section 337, subsection 4, unless a hearing is requested by a person directly affected by a review or the commissioner determines to hold a hearing. The following projects may qualify for a simplified review process: [2011, c. 648, §12 (AMD).]

1. **Maintenance projects.** The commissioner shall issue a certificate of need for a project that primarily involves the maintenance of a health facility if the commissioner determines that the project:

A. Will result in no or a minimal additional expense to the public or to the health care facility's clients; [2001, c. 664, §2 (NEW).]

B. Will be in compliance with other applicable state and local laws and regulations; and [2001, c. 664, §2 (NEW).]

C. Will significantly improve or, in the alternative, not significantly adversely affect the health and welfare of any person currently being served by the health care facility. [2001, c. 664, §2 (NEW).]

[2001, c. 664, §2 (NEW) .]

2. **Life safety codes; previous certificate of need.** The commissioner shall issue a certificate of need for a project that is required to meet federal, state or local life safety codes.

[2011, c. 648, §12 (AMD) .]

3. **Acquisition of control.** The commissioner shall issue a certificate of need for a project that involves the acquisition of control of a health facility when the acquisition consists of a management agreement or similar arrangement and primarily involves the day-to-day operation of the facility in its current form, or transfers ownership of a nursing facility to an existing provider of nursing facility services licensed in this State if the commissioner determines that the project meets the requirements of section 335, subsection 7, paragraph B and that the project is economically feasible in light of its impact on:

A. The operating budget of the facility and the applicant; and [2001, c. 664, §2 (NEW).]

B. The applicant's ability to operate the facility without increases in the facility's rates beyond those that would otherwise occur absent the acquisition. [2001, c. 664, §2 (NEW).]

[2011, c. 648, §12 (AMD) .]

4. **Capital expenditures for compliance or quality improvement.** The commissioner shall issue a certificate of need for a proposed capital expenditure upon determining that:

A. The capital expenditure is required to eliminate or prevent imminent safety hazards, as defined by applicable fire, building or life safety codes and regulations; to comply with state licensure standards; to provide demonstrable improvements in patient safety or quality of care; or to comply with accreditation or certification standards that must be met to receive reimbursement under the United States Social Security Act, Title XVIII or payments under a state plan for medical assistance approved under Title XIX of that Act; [2011, c. 648, §12 (AMD).]

B. The economic feasibility of the project is demonstrated in terms of its effects on the operating budget of the applicant, including its existing rate structure; [2001, c. 664, §2 (NEW).]

C. There remains a public need for the service to be provided; and [2001, c. 664, §2 (NEW).]

D. The corrective action proposed by the applicant is a cost-effective alternative available under the circumstances. [2011, c. 648, §12 (AMD).]

[2011, c. 648, §12 (AMD) .]

5. **Major medical equipment.** The commissioner shall issue a certificate of need for replacement of major medical equipment that is not otherwise exempt from review pursuant to section 329, subsection 2-A, paragraph B, subparagraph (1) upon determining that a project meets the requirements of section 335, subsection 7.

[2009, c. 383, §9 (NEW) .]

6. **Other projects.** The commissioner may by rule identify other categories of projects that qualify for simplified review under this section that are consistent with the purposes of this section and will foster timely review and approval for qualifying projects.

[2011, c. 648, §12 (NEW) .]

SECTION HISTORY
2001, c. 664, §2 (NEW). 2009, c. 383, §9 (AMD). 2011, c. 648, §12 (AMD).

§337. APPLICATION PROCESS FOR CERTIFICATE OF NEED

1. **Letter of intent.** Prior to filing an application for a certificate of need, an applicant shall file a letter of intent with the department. The letter of intent forms the basis for determining the applicability of this chapter to the proposed expenditure or action. A letter of intent is deemed withdrawn one year after receipt by the department, unless sooner superseded by an application, except that the applicant is not precluded from resubmitting the same letter of intent.

[2001, c. 664, §2 (NEW) .]

2. **Application filed.** Paragraphs A to C apply in the given order to the application process for certificate of need.

A. After receiving the letter of intent, the department shall issue a letter or checklist, or both, to an applicant that stipulates and clarifies what will be required in the application. [2001, c. 664, §2 (NEW).]

B. Within 15 days of filing the letter of intent, the applicant shall schedule a meeting with the department staff in order to assist the department in understanding the application and to receive technical assistance concerning the nature, extent and format of the documentary evidence, statistical data and financial data required for the department to evaluate the proposal. The applicant may waive the technical assistance meeting requirement under this paragraph. [2011, c. 648, §13 (AMD).]

C. After receiving notice from the department that a certificate of need is required for a proposed expenditure or action, if the applicant wishes to proceed with the project, the applicant must file an application for a certificate of need. [2001, c. 664, §2 (NEW).]

[2011, c. 648, §13 (AMD) .]

3. **Application content; department-approved forms.** An application for a certificate of need must describe with specificity how the proposed project meets each of the standards for granting a certificate of need that are applicable to the project. A statement or statements that the project will meet the standards without supporting facts backed by relevant documentation and analysis constitute sufficient cause to deny the application. An application subject to an expanded review must contain, if available and relevant to the particular service or technology, information on health status, public health need for the service or technology, quality assurance processes and prevention programs.

A. The department shall make available on the department's publicly accessible website multiple project-specific, department-approved certificate of need forms for at least the following certificate of need categories:

(1) Nursing facility projects;

(2) Hospital projects; and

(3) Other projects subject to review. [2011, c. 648, §14 (NEW).]

B. The department-approved forms must set forth application elements that are relevant to each category and must elicit the information and data reasonably necessary to permit the department to carry out the review and approval process in a timely and cost-effective manner, with consideration for the costs and responsiblities imposed on applicants. [2011, c. 648, §14 (NEW).]

C. Submission of the completed applicable department-approved forms and required information, together with other information that is appropriate to the application, and the applicant's certification that the application is complete pursuant to subsection 4 constitutes a sufficient record for the department to make a determination regarding the application for a certificate of need, unless a hearing is requested either by the department or by a person directly affected by a review. [2011, c. 648, §14 (NEW).]

D. If an application is contested by another provider of services or a person directly affected by a review or the department determines that a public hearing must be held pursuant to section 339, subsection 2, additional information may be required by the department. [2011, c. 648, §14 (NEW).]

[2011, c. 648, §14 (AMD) .]

4. **Application complete.** An application is certified as complete when the applicant delivers to the department a certification in writing that states that the application should be considered complete by the department. Subsequent to the applicant's certification under this subsection, the applicant may submit information that is responsive to any concern, issue, question or allegation of facts contrary to those in the application made by the department or any other person.

[2001, c. 664, §2 (NEW) .]

5. **Public notice; public informational meeting.** Within 5 business days of the filing of a certificate by an applicant that a complete certificate of need application is on file with the department, public notice that the application has been filed must be given by publication in a newspaper of general circulation in Kennebec County and in a newspaper published within the service area in which the proposed expenditure will occur. If an existing health care facility may close or lose bed capacity as a result of a proposal for which a certificate of need application has been filed, the department shall notify the municipal officers of the municipality in which that health care facility is located and the members of the State House of Representatives and the State Senate representing any part of that municipality. The notice must also be provided to all persons who have requested notification by means of asking that their names be placed on a mailing list maintained by the department for this purpose. The notice must also be published on the department's publicly accessible website. This notice must include:

A. A brief description of the proposed expenditure or other action, including the name and location of any existing health care facility that may close or lose bed capacity as a result of a proposal for which a certificate of need application has been filed; [2013, c. 424, Pt. A, §11 (RPR).]

B. A description of the review process and schedule; [2013, c. 424, Pt. A, §11 (RPR).]

C. A statement that any person may examine the application, submit comments in writing to the department regarding the application and examine the entire record assembled by the department at any time from the date of publication of the notice until the application process is closed for comment; [2013, c. 424, Pt. A, §11 (RPR).]

D. If a public informational meeting is being held, the time and location of the public informational meeting, a statement that any person may appear at the meeting to question the applicant regarding the project or the department regarding the conditions the applicant must satisfy in order to receive a certificate of need for the project, and a statement that a public hearing may be requested by any person directly affected by a review if the request is received by the commissioner within 15 days following the public informational meeting pursuant to the provisions of section 339, subsection 2; and [2013, c. 424, Pt. A, §11 (RPR).]

E. If a public informational meeting is not being held, a statement that a public hearing may be requested by any person directly affected by a review if the request is received by the commissioner within 15 days following the publication of the notice that an application has been filed. [2013, c. 424, Pt. A, §11 (RPR).]

The department shall make an electronic or stenographic record of the public informational meeting.

A public informational meeting is not required for the simplified review and approval process in section 336 unless requested by the applicant, the department or a person directly affected by a review.

[2013, c. 424, Pt. A, §11 (RPR) .]

6. **Voluntary withdrawal of application.** During the review period, prior to the date that department staff submits a final report to the commissioner, an applicant may withdraw an application without prejudice by filing written notice of the withdrawal with the department. A withdrawn application may be resubmitted and will be processed as an entirely new application under this chapter.

[2001, c. 664, §2 (NEW) .]

7. **Fees.** The department shall adopt rules setting minimum and maximum filing fees under this chapter. A nonrefundable filing fee must be paid at the time an application is filed. If the approved capital expenditure or operating cost upon which a fee is based is higher than the initially proposed capital expenditure, then the filing fee must be recalculated and the difference, if any, must be paid before the certificate of need may be issued. In addition to filing fees, the department shall adopt rules to establish reasonable and necessary fees to carry out the provisions of this chapter. All fees received by the department under this subsection must be placed in a separate, nonlapsing account to be used in accordance with this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2011, c. 648, §16 (AMD) .]

8. **Suspension of review.** An applicant may request and be granted a suspension of the review process prior to the date on which the department staff submits its final analysis to the commissioner.

A. A request for suspension of the review process must be for specific periods of no less than 10 days and not greater than 12 months. [2011, c. 648, §17 (NEW).]

B. If there are no competing applicants, a request under this subsection must be granted. [2011, c. 648, §17 (NEW).]

C. If there are competing applicants, the request under this subsection must be reviewed and approved or disapproved within 3 business days, taking into account the interests of the public and of competing applicants. [2011, c. 648, §17 (NEW).]

D. If a request to suspend the review is granted, the department shall determine:

(1) If the suspension will suspend review of all competing applications; or

(2) If the suspension will not affect competing applications, which will continue to be reviewed without interruption. [2011, c. 648, §17 (NEW).]

E. Failure to reactivate an application within the time period approved by the department results in automatic withdrawal of the suspended application. [2011, c. 648, §17 (NEW).]

[2011, c. 648, §17 (NEW) .]

SECTION HISTORY
2001, c. 664, §2 (NEW). 2009, c. 383, §§10, 11 (AMD). 2011, c. 424, Pt. D, §§1, 2 (AMD). 2011, c. 424, Pt. E, §1 (AFF). 2011, c. 636, §1 (AMD). 2011, c. 648, §§13-17 (AMD). 2013, c. 424, Pt. A, §11 (AMD).

§338. CONSULTATION

1. **Consultation on new technologies and needs.** In connection with the development of policies and procedures to implement this Act, the commissioner may, from time to time, consult with persons with relevant skills and experience regarding:

A. New medical technologies and the impact of those technologies on the health care delivery system in the State; [2003, c. 469, Pt. C, §13 (AMD).]

B. Unmet need for health care services in the State; [2011, c. 648, §18 (AMD).]

C. The quality of health care; and [2011, c. 648, §18 (AMD).]

D. The need to replace, renovate or upgrade health care facilities to meet current and future needs. [2011, c. 648, §18 (NEW).]

[2011, c. 648, §18 (AMD) .]

SECTION HISTORY
2001, c. 664, §2 (NEW). 2003, c. 469, §§C13,14 (AMD). 2011, c. 648, §18 (AMD).

§339. REVIEW PROCESS; PUBLIC HEARING

1. **Review process.** The review process consists of an evaluation of the project application for a certificate of need by the department in light of:

A. The application itself; [2001, c. 664, §2 (NEW).]

B. Material collected or developed by or for the department staff to test the assertions in the application; [2001, c. 664, §2 (NEW).]

C. All comments received by any person regarding the project; and [2001, c. 664, §2 (NEW).]

D. Any other material made part of the record. [2001, c. 664, §2 (NEW).]

[2001, c. 664, §2 (NEW) .]

2. **Public hearing.** The following provisions apply to a public hearing under this chapter.

A. The commissioner or the commissioner's designee may hold a public hearing regarding the application. [2001, c. 664, §2 (NEW).]

B. The commissioner, or the commissioner's designee, shall hold a public hearing if any person directly affected by a review requests, in writing, that such a public hearing be held and the request is timely received by the commissioner. If a public informational meeting on the application is conducted pursuant to section 337, subsection 5, the request for a public hearing must be received by the commissioner no later than 15 days following the informational hearing. If no public informational meeting is conducted, the request for a public hearing must be received within 15 days following the publication of the public notice required by section 337, subsection 5. [2011, c. 648, §19 (AMD).]

C. An electronic or stenographic record of the public hearing must be made part of the record. [2001, c. 664, §2 (NEW).]

D. A public hearing is not required for the simplified review and approval process set forth in section 336 unless requested by the applicant, the department or a person directly affected by a review. [2011, c. 648, §20 (AMD).]

[2011, c. 648, §§19, 20 (AMD) .]

3. **Preliminary staff analyses.** As soon as practicable, the department staff shall provide the preliminary analyses of the application and the record to the applicant, the commissioner and any person who requests the analyses and record. Notice of the availability of the analyses must be published in a newspaper in general circulation in Kennebec County and a newspaper of general circulation serving the area in which the project is to be located and on the department's publicly accessible site on the Internet.

[2001, c. 664, §2 (NEW) .]

4. **Final department staff analysis.** A final department staff analysis must be submitted to the commissioner, together with the documentary record described in section 335, subsection 2, as soon as practicable after the closing of the record.

[2001, c. 664, §2 (NEW) .]

5. **Reviews.** To the extent practicable, a review must be completed and the commissioner shall make a decision within 60 days after the application has been certified as complete by the applicant for a simplified review, or within 90 days for an expanded review. The department shall establish criteria for determining when it is not practicable to complete a review within these time frames. Whenever it is not practicable to complete a review within these time frames, the department may extend the review period for up to an additional 30 days.

[2011, c. 648, §21 (AMD) .]

6. **Public necessity.** The department may delay action on an otherwise complete application for up to 120 days from the time the application has been certified as complete by the applicant if the department finds that a public necessity exists. The department shall provide written notice of the delay to the applicant and any other person who has requested in writing information regarding the application. For purposes of this subsection, the department shall find that a public necessity exists if:

A. The application represents a new service or technology not previously provided within the State; [2001, c. 664, §2 (NEW).]

B. The application represents a potential significant impact on health care system costs; [2001, c. 664, §2 (NEW).]

C. The application represents a new service or technology for which a health care system need has not been previously established; or [2001, c. 664, §2 (NEW).]

D. There are several applications for the same or similar projects before the department. [2001, c. 664, §2 (NEW).]

[2011, c. 648, §22 (AMD) .]

SECTION HISTORY
2001, c. 664, §2 (NEW). 2009, c. 383, §12 (AMD). 2011, c. 424, Pt. D, §§3-5 (AMD). 2011, c. 424, Pt. E, §1 (AFF). 2011, c. 648, §§19-22 (AMD).

§340. RECONSIDERATION

Any person directly affected by a review under this chapter may, for good cause shown, request in writing a hearing for the purpose of reconsideration of the decision of the department to issue or to deny a certificate of need. [2001, c. 664, §2 (NEW).]

1. **Timing for request.** A request for hearing for reconsideration under this section must be received within 30 days of the department's decision.

[2001, c. 664, §2 (NEW) .]

2. **Hearing.** If the department determines that good cause for a hearing under this section has been demonstrated, the department shall commence a hearing within 30 days of receipt of the request. For purposes of this section, a request for a hearing is considered to show good cause if it:

A. Presents significant, relevant information not previously considered by the department; [2001, c. 664, §2 (NEW).]

B. Demonstrates that there have been significant changes in factors or circumstances relied upon by the department in reaching its decision; [2001, c. 664, §2 (NEW).]

C. Demonstrates that the department has materially failed to follow its adopted procedures in reaching its decision; or [2001, c. 664, §2 (NEW).]

D. Provides other bases for a hearing that the department has determined constitute good cause. [2001, c. 664, §2 (NEW).]

[2001, c. 664, §2 (NEW) .]

3. **Decision.** A decision must be rendered within 60 days of the commencement of a hearing under this section, except that the parties may agree to a longer time period.

[2001, c. 664, §2 (NEW) .]

SECTION HISTORY
2001, c. 664, §2 (NEW).

§341. REMEDY

Any person aggrieved by a final decision of the department made under the provisions of this Act is entitled to review in accordance with this chapter and with Title 5, chapter 375, subchapter VII. [2001, c. 664, §2 (NEW).]

1. **Finality.** A decision of the department to issue a certificate of need or to deny an application for a certificate of need is not considered final until the department has taken final action on a request for reconsideration under section 340. A decision by the department is not final when opportunity for reconsideration exists with respect to matters involving new information or changes in circumstances pursuant to section 340, subsection 2, paragraphs A and B.

[2001, c. 664, §2 (NEW) .]

2. **Competitive reviews.** If a person or persons file for review under Title 5, chapter 375, regarding competitive reviews of proposals to construct new nursing facility beds, the court shall require the party seeking judicial review to give security in such sums as the court determines proper for the payment of costs and damages that may be incurred or suffered by any other party who is found to have been wrongfully delayed or restrained from proceeding to implement the certificate of need, except that, for good cause shown and recited in the order, the court may waive the giving of security. A surety upon a bond or undertaking under this subsection submits the surety to the jurisdiction of the court and irrevocably appoints the clerk of the court as the agent for the surety upon whom any papers affecting liability on the bond or undertaking

may be served. The liability of the surety may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall mail copies to the persons giving the security if their addresses are known.

[2001, c. 664, §2 (NEW) .]

SECTION HISTORY
2001, c. 664, §2 (NEW).

§342. RULES

The department shall adopt any rules, standards, criteria, plans or procedures that may be necessary to carry out the provisions and purposes of this Act. The department shall provide for public notice and hearing on all proposed rules, standards, criteria, plans, procedures or schedules pursuant to Title 5, chapter 375. Unless otherwise provided by this chapter, rules adopted pursuant to this chapter are routine technical rules as defined by Title 5, chapter 375, subchapter II-A. [2001, c. 664, §2 (NEW).]

SECTION HISTORY
2001, c. 664, §2 (NEW).

§343. PUBLIC INFORMATION

The department shall prepare and publish at least annually a report on its activities conducted pursuant to this Act. The annual report must include information on all certificates of need granted and denied and on the assessment of penalties. With regard to all certificates granted on a conditional basis, the report must include a summary of information reported pursuant to section 332 and any accompanying statements by the commissioner or department staff submitted regarding the reports. [2009, c. 383, §13 (AMD).]

SECTION HISTORY
2001, c. 664, §2 (NEW). 2009, c. 383, §13 (AMD).

§344. CONFLICT OF INTEREST

In addition to the limitations of Title 5, section 18, a member or employee of the department who has a substantial economic or fiduciary interest that would be affected by a recommendation or decision to issue or deny a certificate of need or who has a close relative or economic associate whose interest would be so affected is ineligible to participate in the review, recommendation or decision-making process with respect to any application for which the conflict of interest exists. [2001, c. 664, §2 (NEW).]

SECTION HISTORY
2001, c. 664, §2 (NEW).

§345. DIVISION OF PROJECT TO EVADE COST LIMITATION PROHIBITED

A health care facility or other party required to obtain a certificate of need may not separate portions of a single project into components, including, but not limited to, site facility and equipment, to evade the cost limitations or other requirements of section 329. [2001, c. 664, §2 (NEW).]

SECTION HISTORY
2001, c. 664, §2 (NEW).

§346. SCOPE OF CERTIFICATE OF NEED

1. **Application determinative.** A certificate of need is valid only for the defined scope, premises and facility or person named in the application and is not transferable or assignable.

[2001, c. 664, §2 (NEW) .]

2. **Maximum expenditure.** In issuing a certificate of need, the department shall specify the maximum capital expenditures that may be obligated under this certificate. The department shall adopt rules regarding the determination of capital expenditure maximums, procedures to monitor capital expenditures obligated under certificates and procedures to review projects for which the capital expenditure maximum is exceeded or expected to be exceeded.

[2001, c. 664, §2 (NEW) .]

3. **Issued certificate; duration and expiration.** After the issuance of a certificate of need, the department shall periodically review the progress of the holder of the certificate in meeting the timetable for making the service or equipment available or for completing the project specified in the approved application. A certificate of need expires if the project for which the certificate has been issued is not commenced within 24 months following the issuance of the certificate. The department may grant an extension of a certificate for an additional specified time not to exceed 12 months if good cause is shown why the project has not commenced. The department may require evidence of the continuing feasibility and availability of financing for a project as a condition for extending the life of the certificate. In addition, if on the basis of its periodic review of progress under the certificate the department determines that the holder of a certificate is not otherwise meeting the timetable and is not making a good faith effort to meet it, the department may, after a hearing, withdraw the certificate of need. The department shall adopt rules for the withdrawal of certificates of need.

[2011, c. 648, §23 (AMD) .]

SECTION HISTORY
2001, c. 664, §2 (NEW). 2011, c. 648, §23 (AMD).

§347. WITHHOLDING OF LICENSE

A new health care facility, as defined in section 328, is eligible to obtain a license under the applicable state law if the facility has obtained a certificate of need as required by this chapter. The license of any facility does not extend to include and may not otherwise be deemed to allow the delivery of any services, the use of any equipment that has been acquired, the use of any portion of a facility or any other change for which a certificate of need as required by this chapter has not been obtained. Any unauthorized delivery of services, use of equipment or a portion of a facility or other change is in violation of the respective chapter under which the facility is licensed. [2001, c. 664, §2 (NEW).]

SECTION HISTORY
2001, c. 664, §2 (NEW).

§348. WITHHOLDING OF FUNDS

A health care facility or other provider may be eligible to apply for or receive any reimbursement, payment or other financial assistance from any state agency or other 3rd-party payor, either directly or indirectly, for any capital expenditure or operating costs attributable to any project for which a certificate of need is required by this chapter only if the certificate of need has been obtained. Reimbursement, payment or other financial assistance, either directly or indirectly, from a state agency or other 3rd-party payor may be subject to an enforcement action by the commissioner to withhold or deny reimbursement, in whole or in part, with respect to a project granted a certificate of need when the commissioner determines that the

applicant fails to meet any of the conditions set forth in the certificate of need approval in accordance with the procedures set forth in section 332. For the purposes of this section, the department shall determine the eligibility of a facility to receive reimbursement for all projects subject to the provisions of this chapter. [2007, c. 440, §20 (AMD).]

SECTION HISTORY
RR 2001, c. 2, §A29 (COR). 2001, c. 664, §2 (NEW). 2007, c. 440, §20 (AMD).

§349. INJUNCTION

The Attorney General, upon the request of the department, shall seek to enjoin any project for which a certificate of need as required by this chapter has not been obtained and shall take any other action as may be appropriate to enforce this chapter. [2001, c. 664, §2 (NEW).]

SECTION HISTORY
2001, c. 664, §2 (NEW).

§349-A. COMPLIANCE INVESTIGATION

To ensure compliance with this chapter or rules adopted under this chapter, the department may investigate a health care facility or other entity subject to this chapter when the department has a reasonable basis to suspect that a violation has occurred. The health care facility or other entity subject to this chapter may not interfere with or impede the investigation. [2009, c. 556, §1 (NEW).]

1. **Right of entry.** The department may enter and inspect the premises of a health care facility or other entity subject to this chapter with the permission of the owner or person in charge, or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court authorizing entry and inspection, when the department has a reasonable basis to suspect that a provision of this chapter or a rule adopted under this chapter has been violated. The right of entry extends to any premises that the department has reason to believe is operated and maintained in violation of this chapter or rules adopted under this chapter. A letter of intent or an application for a certificate of need made pursuant to this chapter and rules adopted under this chapter constitutes permission for entry or inspection of the premises for which the certificate of need is sought in order to facilitate verification of the information submitted on or in connection with a letter of intent or an application for a certificate of need.

[2009, c. 556, §1 (NEW) .]

2. **Access to information.** The department, at any reasonable time, upon demand, has the right to inspect and copy books, accounts, papers, records and other documents or information, whether stored electronically, on paper or in other forms, including, but not limited to, documents and information regarding total capital expenditures and operating costs for a project, ownership or control of a health care facility or other entity subject to this chapter or health services provided, when the department has a reasonable basis to suspect that a provision of this chapter or a rule adopted under this chapter has been violated.

[2009, c. 556, §1 (NEW) .]

3. **Findings of fact.** Upon completion of an investigation pursuant to this section, the department shall prepare findings of fact and make a recommendation to the commissioner as to whether a provision of this chapter or a rule adopted under this chapter has been violated. If the commissioner determines that a violation has occurred, the commissioner may pursue one or more of the remedies authorized under this Act.

[2009, c. 556, §1 (NEW) .]

4. **Rules.** The department may 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.

[2009, c. 556, §1 (NEW) .]

SECTION HISTORY
2009, c. 556, §1 (NEW).

§350. PENALTY

1. **Violation.** An individual, partnership, association, organization, corporation or trust that violates any provision of this chapter or any rate, rule or regulation pursuant to this chapter is subject to a fine imposed in conformance with the Maine Administrative Procedure Act and payable to the State of not more than $10,000. The department may hold these funds in a special revenue account that may be used only to support certificate of need reviews, such as for hiring expert analysts on a short-term consulting basis.

[2009, c. 383, §14 (NEW) .]

2. **Administrative hearing and appeal.** To contest the imposition of a fine under this section, the individual, partnership, association, organization, corporation or trust shall submit to the department a written request for an administrative hearing within 10 days of notice of imposition of a fine pursuant to this section. Judicial appeal must be in accordance with Title 5, chapter 375, subchapter 7.

[2009, c. 383, §14 (NEW) .]

SECTION HISTORY
2001, c. 664, §2 (NEW). 2009, c. 383, §14 (RPR).

§350-A. COST-OF-LIVING ADJUSTMENT

(REALLOCATED FROM TITLE 22, SECTION 351)
(REPEALED)

SECTION HISTORY
RR 2001, c. 2, §A30 (RAL). 2007, c. 440, §21 (AMD). 2007, c. 681, §7 (AMD). 2009, c. 383, §15 (RP).

§350-B. FEDERAL FUNDING

(REALLOCATED FROM TITLE 22, SECTION 352)

The department is authorized to accept any federal funds to be used for the purposes of carrying out this chapter. [2001, c. 2, Pt. A, §31 (RAL).]

SECTION HISTORY
RR 2001, c. 2, §A31 (RAL).

§350-C. IMPLEMENTATION REPORTS

(REALLOCATED FROM TITLE 22, SECTION 353)

The holder of a certificate of need shall make written reports as provided in this section and as required by rule adopted by the department. [2001, c. 2, Pt. A, §32 (RAL).]

1. **Final plans and specifications.** A holder of a certificate of need that has been issued for the construction or modification of a facility or portion of a facility shall file final plans and specifications for the project as required by the department to determine that the plans and specifications are in compliance with the certificate of need and with applicable licensure, life safety code and accreditation standards.

[2001, c. 2, Pt. A, §32 (RAL) .]

2. **Reports.** The department may require periodic reports, summary reports and cost and utilization reports as well as reports regarding the effect of the project on the health status, quality of care and health outcomes of the population served for no longer than 3 years following the completion of the project as set out in rule.

[2011, c. 648, §24 (AMD) .]

3. **Summary report.**

[2011, c. 648, §24 (RP) .]

4. **Cost and utilization reports.**

[2011, c. 648, §24 (RP) .]

5. **Department action.** The department may revoke any certificate of need the department has issued when the person to whom it has been issued fails to file reports or plans and specifications required by the department on a timely basis. The department shall review services that fall below the required volume and quality standards of a certificate of need.

[2011, c. 648, §24 (AMD) .]

SECTION HISTORY
RR 2001, c. 2, §A32 (RAL). 2011, c. 648, §24 (AMD).

Chapter 105: HEALTH FACILITIES INFORMATION DISCLOSURE ACT

§351. COST-OF-LIVING ADJUSTMENT

(REPEALED)
(REALLOCATED TO TITLE 22, SECTION 350-A)

SECTION HISTORY
1977, c. 691, §1 (NEW). RR 2001, c. 2, §A30 (RAL). 2001, c. 664, §2 (NEW). MRSA T. 22, §370 (RP).

§352. FEDERAL FUNDING

(REPEALED)
(REALLOCATED TO TITLE 22, SECTION 350-B)

SECTION HISTORY
1977, c. 691, §1 (NEW). 1979, c. 662, §§1,2 (AMD). RR 2001, c. 2, §A31 (RAL). 2001, c. 664, §2 (NEW). MRSA T. 22, §370 (RP).

§353. IMPLEMENTATION REPORTS

(REPEALED)

(REALLOCATED TO TITLE 22, SECTION 350-C)

SECTION HISTORY
1977, c. 691, §1 (NEW). 1979, c. 147, §1 (AMD). 1981, c. 470, §A60 (AMD). RR 2001, c. 2, §A32 (RAL). 2001, c. 664, §2 (NEW). MRSA T. 22, §370 (RP).

§354. MEETINGS; CHAIRMAN; COMPENSATION

(REPEALED)

SECTION HISTORY
1977, c. 691, §1 (NEW). MRSA T. 22, §370 (RP).

§355. EXECUTIVE DIRECTOR

(REPEALED)

SECTION HISTORY
1977, c. 691, §1 (NEW). MRSA T. 22, §370 (RP).

§356. STAFF

(REPEALED)

SECTION HISTORY
1977, c. 691, §1 (NEW). MRSA T. 22, §370 (RP).

§357. POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1977, c. 691, §1 (NEW). 1979, c. 662, §3 (AMD). MRSA T. 22, §370 (RP).

§358. UNIFORM SYSTEMS OF REPORTING

(REPEALED)

SECTION HISTORY
1977, c. 691, §1 (NEW). 1979, c. 662, §4 (AMD). MRSA T. 22, §370 (RP).

§359. REVIEW OF BUDGETS

(REPEALED)

SECTION HISTORY
1977, c. 691, §1 (NEW). 1979, c. 662, §§5-7 (AMD). MRSA T. 22, §370 (RP).

§360. STUDIES AND ANALYSES

(REPEALED)

SECTION HISTORY
1977, c. 691, §1 (NEW). 1981, c. 705, §U1 (AMD). MRSA T. 22, §370 (RP).

§361. ANNUAL REPORT

(REPEALED)

SECTION HISTORY
1977, c. 691, §1 (NEW). MRSA T. 22, §370 (RP).

§362. RECEIPT OF GRANTS, GIFTS AND OTHER PAYMENTS

(REPEALED)

SECTION HISTORY
1977, c. 691, §1 (NEW). MRSA T. 22, §370 (RP).

§363. CONTRACTS

(REPEALED)

SECTION HISTORY
1977, c. 691, §1 (NEW). MRSA T. 22, §370 (RP).

§364. APPROVAL OF A VOLUNTARY BUDGET REVIEW ORGANIZATION

(REPEALED)

SECTION HISTORY
1977, c. 691, §1 (NEW). 1979, c. 147, §§2,3 (AMD). 1979, c. 662, §8 (AMD). MRSA T. 22, §370 (RP).

§365. PUBLIC INFORMATION; AVAILABILITY OF DATA

(REPEALED)

SECTION HISTORY
1977, c. 691, §1 (NEW). MRSA T. 22, §370 (RP).

§366. RULES AND REGULATIONS; PUBLIC HEARINGS; AUDIT

(REPEALED)

SECTION HISTORY
1977, c. 691, §1 (NEW). MRSA T. 22, §370 (RP).

§367. ENFORCEMENT

(REPEALED)

SECTION HISTORY
1977, c. 691, §1 (NEW). MRSA T. 22, §370 (RP).

§368. PENALTY

(REPEALED)

SECTION HISTORY
1977, c. 691, §1 (NEW). MRSA T. 22, §370 (RP).

§369. PARTIAL INVALIDITY

(REPEALED)

SECTION HISTORY
1977, c. 691, §1 (NEW). MRSA T. 22, §370 (RP).

§370. REPEAL

(REPEALED)

SECTION HISTORY
1977, c. 691, §1 (NEW). 1981, c. 705, §U2 (AMD). MRSA T. 22, §370 (RP).

Chapter 107: MAINE HEALTH CARE FINANCE COMMISSION

Subchapter 1: GENERAL PROVISIONS

§381. FINDINGS AND DECLARATION OF PURPOSE

(REPEALED)

SECTION HISTORY
1983, c. 579, §10 (NEW). 1985, c. 278, (AMD). 1989, c. 565, §1 (AMD). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§382. DEFINITIONS

(REPEALED)

SECTION HISTORY
1983, c. 579, §10 (NEW). 1985, c. 418, §21 (AMD). 1989, c. 565, §2 (AMD). 1989, c. 588, §§A5,A6 (AMD). 1989, c. 919, §§10,18 (AMD). 1991, c. 485, §3 (AMD). 1995, c. 497, §1 (AMD). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§383. MAINE HEALTH CARE FINANCE COMMISSION

(REPEALED)

SECTION HISTORY
1983, c. 579, §10 (NEW). 1983, c. 812, §§116,117 (AMD). 1989, c. 503, §B80 (AMD). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§384. EXECUTIVE DIRECTOR AND STAFF

(REPEALED)

SECTION HISTORY
1983, c. 579, §10 (NEW). 1985, c. 785, §B84 (AMD). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§385. LEGAL COUNSEL

(REPEALED)

SECTION HISTORY

1983, c. 579, §10 (NEW). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§386. POWERS OF COMMISSION GENERALLY

(REPEALED)

SECTION HISTORY
1983, c. 579, §10 (NEW). 1991, c. 485, §4 (AMD). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§387. PUBLIC INFORMATION

(REPEALED)

SECTION HISTORY
1983, c. 579, §10 (NEW). 1989, c. 844, §1 (RPR). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§388. REPORTS

(REPEALED)

SECTION HISTORY
1983, c. 579, §10 (NEW). 1985, c. 778, §§1,2 (AMD). 1987, c. 73, (AMD). 1989, c. 588, §§A7,A8 (AMD). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§389. PENALTIES

(REPEALED)

SECTION HISTORY
1983, c. 579, §10 (NEW). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§390. ENFORCEMENT

(REPEALED)

SECTION HISTORY
1983, c. 579, §10 (NEW). 1989, c. 565, §3 (AMD). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§391. FUNDING OF THE COMMISSION

(REPEALED)

SECTION HISTORY
1983, c. 579, §10 (NEW). 1989, c. 565, §4 (AMD). 1991, c. 622, §Z1 (AMD). 1993, c. 410, §UUU1 (AMD). 1995, c. 368, §§W1-3 (AMD). 1995, c. 395, §R1 (AMD). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§392. PROGRAM AUDIT AND EVALUATION

(REPEALED)

SECTION HISTORY

1983, c. 579, §10 (NEW). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

Subchapter 2: HEALTH FACILITIES INFORMATION DISCLOSURE

§394. UNIFORM SYSTEMS OF REPORTING GENERALLY

(REPEALED)

SECTION HISTORY
1983, c. 579, §10 (NEW). 1989, c. 565, §§5-10 (AMD). 1989, c. 595, (AMD). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§395. HOSPITAL REPORTING; ADDITIONAL REQUIREMENTS

(REPEALED)

SECTION HISTORY
1983, c. 579, §10 (NEW). 1995, c. 497, §2 (AMD). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§395-A. HEALTH CARE INFORMATION

(REPEALED)

SECTION HISTORY
1989, c. 565, §11 (NEW). 1989, c. 875, §I1 (AMD). 1993, c. 121, §§1-3 (AMD). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§395-B. CHARITY CARE

(REPEALED)

SECTION HISTORY
1995, c. 368, §W4 (NEW). 1995, c. 596, §1 (AMD). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP). 1997, c. 393, §A21 (AMD).

Subchapter 3: HOSPITAL CARE FINANCING SYSTEM

§396. ESTABLISHMENT OF REVENUE LIMITS AND APPORTIONMENT METHODS

(REPEALED)

SECTION HISTORY
1983, c. 579, §10 (NEW). 1989, c. 588, §A9 (RPR). 1991, c. 485, §5 (AMD). 1991, c. 786, §1 (AMD). 1993, c. 458, §1 (AMD). 1995, c. 497, §3 (AMD). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§396-A. DEFINITION OF ELEMENTS OF BASE YEAR FINANCIAL REQUIREMENTS

(REPEALED)

SECTION HISTORY
1983, c. 579, §10 (NEW). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§396-B. COMPUTATION OF BASE YEAR FINANCIAL REQUIREMENTS

(REPEALED)

SECTION HISTORY
1983, c. 579, §10 (NEW). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§396-C. COMPUTATION OF PAYMENT YEAR FINANCIAL REQUIREMENTS

(REPEALED)

SECTION HISTORY
1983, c. 579, §10 (NEW). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§396-D. ADJUSTMENTS TO FINANCIAL REQUIREMENTS

(REPEALED)

SECTION HISTORY
1983, c. 579, §10 (NEW). 1985, c. 339, §§1,2 (AMD). 1985, c. 661, §§7-9 (AMD). 1985, c. 778, §§3,4 (AMD). 1987, c. 51, §1 (AMD). 1987, c. 402, §§A136,A137 (AMD). 1987, c. 440, §§2,3 (AMD). 1987, c. 542, §§H2,H8 (AMD). 1987, c. 769, §§A64-A66 (AMD). 1987, c. 777, §§1,6 (AMD). 1987, c. 811, §12 (AMD). 1987, c. 847, §1 (AMD). 1989, c. 386, §1 (AMD). 1989, c. 494, (AMD). 1989, c. 588, §§A10-29 (AMD). 1989, c. 878, §§A56,57 (AMD). 1991, c. 84, §2 (AMD). 1991, c. 485, §§6,7 (AMD). 1991, c. 528, §§Q1,2 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §§Q1,2 (AMD). 1993, c. 587, §1 (AMD). 1995, c. 497, §4 (AMD). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§396-E. APPLICATION OF AVAILABLE RESOURCES; REPORTING REQUIREMENTS

(REPEALED)

SECTION HISTORY
1983, c. 579, §10 (NEW). 1985, c. 339, §§3,4 (AMD). 1989, c. 502, §A66 (AMD). 1991, c. 545, §§3,4 (AMD). 1991, c. 830, §§5,6 (AMD). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§396-F. REVENUE DEDUCTIONS

(REPEALED)

SECTION HISTORY
1983, c. 579, §10 (NEW). 1987, c. 542, §§H3,H8 (AMD). 1987, c. 847, §2 (AMD). 1989, c. 588, §§A30,A31 (AMD). 1991, c. 830, §7 (AMD). 1993, c. 458, §2 (AMD). 1993, c. 587, §2 (AMD). 1993, c. 733, §1 (AMD). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§396-G. DIFFERENTIALS

(REPEALED)

SECTION HISTORY

1983, c. 579, §10 (NEW). 1987, c. 656, (AMD). 1991, c. 9, §N7 (AMD). 1991, c. 9, §N11 (AFF). 1991, c. 528, §Q3 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §Q3 (AMD). 1991, c. 622, §M6 (AMD). 1991, c. 622, §M7 (AFF). 1993, c. 410, §§I7,FFF3,4 (AMD). 1993, c. 673, §1 (AMD). 1993, c. 673, §10 (AFF). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§396-H. ESTABLISHMENT AND ADJUSTMENT OF GROSS PATIENT SERVICE REVENUE LIMITS

(REPEALED)

SECTION HISTORY
1983, c. 579, §10 (NEW). 1989, c. 588, §A32 (RPR). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§396-I. PAYMENTS TO HOSPITALS

(REPEALED)

SECTION HISTORY
1983, c. 579, §10 (NEW). 1989, c. 588, §A33 (RPR). 1991, c. 485, §§8,9 (AMD). 1991, c. 786, §2 (AMD). 1993, c. 645, §A1 (AMD). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§396-J. ESTABLISHMENT AND ADMINISTRATION OF MANAGEMENT SUPPORT FUND; DISBURSEMENTS FROM FUND

(REPEALED)

SECTION HISTORY
1983, c. 579, §10 (NEW). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§396-K. ESTABLISHMENT OF HOSPITAL DEVELOPMENT ACCOUNT

(REPEALED)

SECTION HISTORY
1983, c. 579, §10 (NEW). 1985, c. 347, §§1-3 (AMD). 1985, c. 661, §10 (RPR). 1987, c. 835, §1 (AMD). 1989, c. 588, §§A34-40 (AMD). 1991, c. 84, §3 (AMD). 1991, c. 771, §1 (AMD). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§396-L. AFFILIATED INTERESTS

(REPEALED)

SECTION HISTORY
1983, c. 579, §10 (NEW). 1985, c. 778, §5 (RPR). 1987, c. 402, §A138 (AMD). 1989, c. 919, §§11-14,18 (AMD). 1991, c. 786, §§3,4 (AMD). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§396-M. MEDICARE WAIVER

(REPEALED)

SECTION HISTORY
1983, c. 579, §10 (NEW). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§396-N. COORDINATION WITH DEPARTMENT

(REPEALED)

SECTION HISTORY
1983, c. 579, §10 (NEW). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§396-O. EXPERIMENTAL AND DEMONSTRATION PROJECTS

(REPEALED)

SECTION HISTORY
1983, c. 579, §10 (NEW). 1989, c. 588, §A41 (AMD). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§396-P. ADVISORY COMMITTEES

(REPEALED)

SECTION HISTORY
1983, c. 579, §10 (NEW). 1983, c. 812, §118 (AMD). 1985, c. 778, §6 (AMD). 1989, c. 503, §B81 (AMD). RR 1991, c. 2, §73 (COR). 1991, c. 84, §§4,5 (AMD). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§396-Q. QUARTERLY REPORT

(REPEALED)

SECTION HISTORY
1987, c. 847, §3 (NEW). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§396-R. APPROVAL OF PRIMARY CARE RESIDENT SPACES

(REPEALED)

SECTION HISTORY
1991, c. 830, §8 (NEW). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§396-S. APPROVAL OF EMERGENCY MEDICINE RESIDENT SPACES

(REPEALED)

SECTION HISTORY
1993, c. 733, §2 (NEW). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

Subchapter 4: PROCEDURES

§397. PROCEEDINGS GENERALLY

(REPEALED)

SECTION HISTORY
1983, c. 579, §10 (NEW). 1985, c. 109, §1 (AMD). 1991, c. 771, §2 (AMD). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§398. PROCEDURES FOR ESTABLISHMENT OF REVENUE LIMITS AND INTERIM ADJUSTMENTS

(REPEALED)

SECTION HISTORY
1983, c. 579, §10 (NEW). 1985, c. 109, §2 (AMD). 1985, c. 778, §7 (AMD). 1987, c. 51, §2 (AMD). 1989, c. 386, §2 (AMD). 1991, c. 771, §3 (AMD). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§399. OTHER POWERS

(REPEALED)

SECTION HISTORY
1983, c. 579, §10 (NEW). 1995, c. 653, §B8 (AFF). 1995, c. 653, §B4 (RP).

§400. SUNSET OF THE MAINE HEALTH CARE FINANCE COMMISSION

(REPEALED)

SECTION HISTORY
1987, c. 440, §4 (NEW). 1989, c. 588, §A42 (RP).

Part 2: STATE AND LOCAL HEALTH AGENCIES

Chapter 151: DISTRICT HEALTH OFFICERS

§401. APPOINTMENT; DUTIES; QUALIFICATIONS

(REPEALED)

SECTION HISTORY
1981, c. 703, §A6 (RP).

Chapter 152: PUBLIC HEALTH INFRASTRUCTURE

§411. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2009, c. 355, §5 (NEW).]

1. **Accreditation.** "Accreditation" means a national federally recognized credentialing process resulting in the approval of a public health system or a municipal health department by a national federally recognized review board certifying that a public health system or a municipal health department has met

specific performance requirements and standards. Accreditation provides quality assurance, credibility and accountability to the public, to government officials and to public health fund sources. As applicable to a tribal health department or health clinic, "accreditation" means a recognized credentialing process by a national federally recognized review board for Indian health.

[2011, c. 306, §1 (AMD) .]

2. **Comprehensive community health coalition.** "Comprehensive community health coalition" means a multisector coalition that serves a defined local geographic area and is composed of designated organizational representatives and interested community members who share a commitment to improving their communities' health and quality of life and that includes public health in its core mission.

[2009, c. 355, §5 (NEW) .]

3. **District coordinating council for public health.** "District coordinating council for public health" means a representative districtwide body of local public health stakeholders working toward collaborative public health planning and coordination to ensure effectiveness and efficiencies in the public health system.

[2009, c. 355, §5 (NEW) .]

4. **District public health unit.** "District public health unit" means a unit of public health staff set up whenever possible in a district in department offices. A staff must include when possible public health nurses, field epidemiologists, drinking water engineers, health inspectors and district public health liaisons.

[2009, c. 355, §5 (NEW) .]

5. **District.** "District" means one of the 8 districts of the department, including Aroostook District, composed of Aroostook County; Penquis District, composed of Penobscot County and Piscataquis County; Downeast District, composed of Washington County and Hancock County; Midcoast District, composed of Waldo County, Lincoln County, Knox County and Sagadahoc County; Central District, composed of Kennebec County and Somerset County; Western District, composed of Androscoggin County, Franklin County and Oxford County; Cumberland District, composed of Cumberland County; and York District, composed of York County, and the tribal district, composed of any lands belonging to the Indian tribes in the State and including any member of a tribe living outside of tribal lands.

[2011, c. 306, §1 (AMD) .]

6. **Essential public health services.** "Essential public health services" means core public health functions identified by a national public health performance standards program, a national federally recognized review board or a national federally recognized review board for Indian health that help provide the guiding framework for the work and accreditation of public health systems or municipal health departments.

[2011, c. 306, §1 (AMD) .]

7. **Health risk assessment.** "Health risk assessment" means a customized process by which an individual confidentially responds to questions and receives a feedback report to help that individual understand the individual's personal risks of developing preventable health problems, know what preventive actions the individual can take and learn what local and state resources are available to help the individual take these actions.

[2009, c. 355, §5 (NEW) .]

8. **Healthy Maine Partnerships.** "Healthy Maine Partnerships" means a statewide system of comprehensive community health coalitions that meet the standards for department funding that is established under section 412, including the tribal district.

[2011, c. 306, §1 (AMD) .]

8-A. **Indian tribe.** "Indian tribe" or "tribe" means a federally recognized Indian nation, tribe or band in the State.

[2011, c. 306, §1 (NEW) .]

9. **Local health officer.** "Local health officer" means a municipal employee who has knowledge of the employee's community and meets educational, training and experience standards as set by the department in rule to comply with section 451.

[2009, c. 355, §5 (NEW) .]

10. **Municipal health department.** "Municipal health department" means a health department or division that is established pursuant to municipal charter or ordinance in accordance with Title 30-A, chapter 141 and accredited by a national federally recognized credentialing process.

[2009, c. 355, §5 (NEW) .]

11. **Statewide Coordinating Council for Public Health.** "Statewide Coordinating Council for Public Health" means the council established under Title 5, section 12004-G, subsection 14-G.

[2009, c. 355, §5 (NEW) .]

12. **Tribal district.** "Tribal district" means an administrative district established in a memorandum of understanding or legal contract among all Indian tribes in the State that is recognized by the department. The tribal district's jurisdiction includes tribal lands, tribal health departments or health clinics and members of the tribes anywhere in the State.

[2011, c. 306, §1 (NEW) .]

13. **Tribal health department or health clinic.** "Tribal health department or health clinic" means a health department or health clinic managed by an Indian tribe that is eligible for funds from the United States Department of the Interior, Bureau of Indian Affairs, Indian Health Service and other federal funds. For the purposes of this subsection, each director of a tribal health department or health clinic has a tribal role and a role defined by the Indian Health Service that is equivalent to the role of a director of an accreditation-eligible municipal health department.

[2011, c. 306, §1 (NEW) .]

SECTION HISTORY
2009, c. 355, §5 (NEW). 2011, c. 306, §1 (AMD).

§412. COORDINATION OF PUBLIC HEALTH INFRASTRUCTURE COMPONENTS

1. **Local health officers.** Local health officers shall provide a link between the Maine Center for Disease Control and Prevention and every municipality. Duties of local health officers are set out in section 454-A.

[2009, c. 355, §5 (NEW) .]

2. **Healthy Maine Partnerships.** Healthy Maine Partnerships is established to provide appropriate essential public health services at the local level, including coordinated community-based public health promotion, active community engagement in local, district and state public health priorities and standardized community-based health assessment, that inform and link to districtwide and statewide public health system activities.

Healthy Maine Partnerships must include interested community members; leaders of formal and informal civic groups; leaders of youth, parent and older adult groups; leaders of hospitals, health centers, mental health and substance abuse providers; emergency responders; local government officials; leaders in early childhood development and education; leaders of school administrative units and colleges and universities; community, social service and other nonprofit agency leaders; leaders of issue-specific networks, coalitions and associations; business leaders; leaders of faith-based groups; and law enforcement representatives. Where a service area of Healthy Maine Partnerships includes a tribal health department or health clinic, Healthy Maine Partnerships shall seek a membership or consultative relationship with leaders and members of Indian tribes or designees of health departments or health clinics of Indian tribes.

The department and other appropriate state agencies shall provide funds as available to coalitions in Healthy Maine Partnerships that meet measurable criteria as set by the department for comprehensive community health coalitions. As funds are available, a minimum of one tribal comprehensive community health coalition must be provided funding as a member of a Healthy Maine Partnerships coalition. The tribal district is eligible for the same funding opportunities offered to any other district. The tribal district or a tribe is eligible to partner with any coalition in Healthy Maine Partnerships for collaborative funding opportunities that are approved by the tribal district coordinating council or a tribal health director.

[2011, c. 306, §2 (AMD) .]

3. **District public health units.** District public health units shall help to improve the efficiency of the administration and coordination of state public health programs and policies and communications at the district and local levels and shall ensure that state policy reflects the different needs of each district. Tribal public health programs and services delivered by the tribal district or a tribal health department or health clinic must help improve the efficiency of the administration and coordination of publicly and privately funded public health programs and policies and communications at local, district, state and federal levels.

[2011, c. 306, §2 (AMD) .]

4. **District coordinating councils for public health.** The Maine Center for Disease Control and Prevention, in consultation with Healthy Maine Partnerships, shall maintain a district coordinating council for public health in each of the 9 districts as resources permit. If the district jurisdiction includes tribal lands and tribal members, and is not the tribal district, the district coordinating council for public health may not represent the tribe or tribes but shall consider Indian health status and pursue a consultative relationship with the tribe or tribes. Tribal representatives may choose to participate in the district coordinating council for public health as members or function in a consultative relationship. The tribal district shall have a tribal district coordinating council.

A district coordinating council for public health, after consulting with the Maine Center for Disease Control and Prevention, shall develop membership and governance structures that are subject to approval by the Statewide Coordinating Council for Public Health except that approval of the Statewide Coordinating Council for Public Health is not required for the membership and governance structures of the tribal district coordinating council.

A. A district coordinating council for public health shall:

(1) Participate as appropriate in district-level activities to help ensure the state public health system in each district is ready and maintained for accreditation; and

(4) Ensure that the essential public health services and resources are provided for in each district in the most efficient, effective and evidence-based manner possible. [2011, c. 90, Pt. J, §7 (AMD).]

A-1. The tribal district coordinating council shall:

(1) Participate as appropriate in department district-level activities to help ensure the tribal public health system in the tribal district is ready and maintained for tribal public health accreditation; and

(2) Ensure that the national goals and strategies for health in tribal lands and the tribal district health goals and strategies are aligned and that tribal district health goals and strategies are appropriately tailored for each tribe and tribal health department or health clinic. [2011, c. 306, §2 (NEW).]

B. The Maine Center for Disease Control and Prevention, in consultation with Healthy Maine Partnerships, shall ensure the invitation of persons to participate on a district coordinating council for public health and shall strive to include persons who represent the Maine Center for Disease Control and Prevention, county governments, municipal governments, Indian tribes and their tribal health departments or health clinics, city health departments, local health officers, hospitals, health systems, emergency management agencies, emergency medical services, Healthy Maine Partnerships, school districts, institutions of higher education, physicians and other health care providers, clinics and community health centers, voluntary health organizations, family planning organizations, area agencies on aging, mental health services, substance abuse services, organizations seeking to improve environmental health and other community-based organizations. [2011, c. 306, §2 (AMD).]

C. In districts, other than the tribal district, that contain tribal members, population health assessments and health improvement plans and strategies developed by municipal health departments, Healthy Maine Partnerships and district coordinating councils for public health must consider Indian health issues and disparities. Data used for these assessments must be sound and at the most local level available. Assessments must include any quantitative or qualitative data the tribes agree to share. Tribal health assessments and tribal health improvement plans and strategies may focus exclusively on tribal members but may be conducted only at any tribe's discretion. [2011, c. 306, §2 (NEW).]

D. Population and personal health programs, interventions and services that formally include or focus on tribal members must be developed in close consultation with tribes and must be culturally competent in design and implementation. In addition, tribes must be consulted prior to their inclusion in any grant applications. [2011, c. 306, §2 (NEW).]

[2011, c. 306, §2 (AMD) .]

5. **Municipal and tribal health departments.** Municipal health departments or tribal health departments or health clinics may enter into data-sharing agreements with the department for the exchange of public health data determined by the department to be necessary for protection of the public health. A data-sharing agreement under this subsection must protect the confidentiality and security of individually identifiable health information as required by state and federal law.

[2011, c. 306, §2 (AMD) .]

5-A. **Tribal district.** The tribal district shall deliver components of essential public health services through the tribal district's public health liaisons, who are tribal employees, and report to the tribes, the department's office of minority health and any other sources of funding. Responses to federal and state requests for applications may be issued by one tribe, 2 or more tribes collectively or the tribal district as the recipient of funds. The directors of the tribal health departments or health clinics serve as the tribal district coordinating council for public health in an advisory role to the tribal district. The council may establish subcommittees to work on specific projects approved by the council.

[2011, c. 306, §2 (NEW) .]

6. **Statewide Coordinating Council for Public Health.** The Statewide Coordinating Council for Public Health, established under Title 5, section 12004-G, subsection 14-G, is a representative statewide body of public health stakeholders for collaborative public health planning and coordination.

A. The Statewide Coordinating Council for Public Health shall:

(1) Participate as appropriate to help ensure the state public health system is ready and maintained for accreditation;

(4) Assist the Maine Center for Disease Control and Prevention in planning for the essential public health services and resources to be provided in each district and across the State in the most efficient, effective and evidence-based manner possible;

(5) Receive reports from the tribal district coordinating council for public health regarding readiness for tribal public health systems for accreditation if offered; and

(6) Participate as appropriate and as resources permit to help support tribal public health systems to prepare for and maintain accreditation if assistance is requested from any tribe.

The Maine Center for Disease Control and Prevention shall provide staff support to the Statewide Coordinating Council for Public Health as resources permit. Other agencies of State Government as necessary and appropriate shall provide additional staff support or assistance to the Statewide Coordinating Council for Public Health as resources permit. [2011, c. 306, §2 (AMD).]

B. Members of the Statewide Coordinating Council for Public Health are appointed as follows.

(1) Each district coordinating council for public health, including the tribal district coordinating council, shall appoint one member.

(2) The Director of the Maine Center for Disease Control and Prevention or the director's designee shall serve as a member.

(3) The commissioner shall appoint an expert in behavioral health from the department to serve as a member.

(4) The Commissioner of Education shall appoint a health expert from the Department of Education to serve as a member.

(5) The Commissioner of Environmental Protection shall appoint an environmental health expert from the Department of Environmental Protection to serve as a member.

(6) The Director of the Maine Center for Disease Control and Prevention, in collaboration with the cochairs of the Statewide Coordinating Council for Public Health, shall convene a membership committee. After evaluation of the appointments to the Statewide Coordinating Council for Public Health, the membership committee shall appoint no more than 10 additional members and ensure that the total membership has at least one member who is a recognized content expert in each of the essential public health services and has representation from populations in the State facing health disparities. The membership committee shall also strive to ensure diverse representation on the Statewide Coordinating Council for Public Health from county governments, municipal governments, tribal governments, tribal health departments or health clinics, city health departments, local health officers, hospitals, health systems, emergency management agencies, emergency medical services, Healthy Maine Partnerships, school districts, institutions of higher education, physicians and other health care providers, clinics and community health centers, voluntary health organizations, family planning organizations, area agencies on aging, mental health services, substance abuse services, organizations seeking to improve environmental health and other community-based organizations. [2011, c. 306, §2 (AMD).]

C. The term of office of each member is 3 years. All vacancies must be filled for the balance of the unexpired term in the same manner as the original appointment. [2009, c. 355, §5 (NEW).]

D. Members of the Statewide Coordinating Council for Public Health shall elect annually a chair and cochair. The chair is the presiding member of the Statewide Coordinating Council for Public Health. [2009, c. 355, §5 (NEW).]

E. The Statewide Coordinating Council for Public Health shall meet at least quarterly, must be staffed by the department as resources permit and shall develop a governance structure, including determining criteria for what constitutes a member in good standing. [2009, c. 355, §5 (NEW).]

F. The Statewide Coordinating Council for Public Health shall report annually to the joint standing committee of the Legislature having jurisdiction over health and human services matters and the Governor's office on progress made toward achieving and maintaining accreditation of the state public health system and on districtwide and statewide streamlining and other strategies leading to improved efficiencies and effectiveness in the delivery of essential public health services. [2011, c. 90, Pt. J, §9 (RPR).]

[2011, c. 306, §2 (AMD) .]

SECTION HISTORY
2009, c. 355, §5 (NEW). 2011, c. 90, Pt. J, §§7-9 (AMD). 2011, c. 306, §2 (AMD).

§413. UNIVERSAL WELLNESS INITIATIVE

The Maine Center for Disease Control and Prevention, the Statewide Coordinating Council for Public Health, the district coordinating councils for public health and Healthy Maine Partnerships shall undertake a universal wellness initiative to ensure that all people of the State, including members of Indian Tribes, have access to resources and evidence-based interventions in order to know, understand and address health risks and to improve health and prevent disease. A particular focus must be on the uninsured and others facing health disparities. [2011, c. 306, §3 (AMD).]

1. **Resource toolkit for the uninsured.** The Maine Center for Disease Control and Prevention and the Governor's office shall develop a resource toolkit for the uninsured with information on access to disease prevention, health care and other methods for health improvement. Healthy Maine Partnerships, the district coordinating councils for public health, the Maine Center for Disease Control and Prevention and the Statewide Coordinating Council for Public Health shall promote and distribute the toolkit materials, in particular through small businesses, schools, school-based health centers, tribal health departments or health clinics, and other health centers. Healthy Maine Partnerships, each district coordinating council for public health and the Statewide Coordinating Council for Public Health shall report annually to the Maine Center for Disease Control and Prevention on strategies employed for promotion of the toolkit materials.

[2011, c. 306, §3 (AMD) .]

2. **Health risk assessment.** Healthy Maine Partnerships, the district coordinating councils for public health, the Statewide Coordinating Council for Public Health and the Maine Center for Disease Control and Prevention shall promote an evidence-based health risk assessment that is available to all people of the State, with a particular emphasis on outreach to the uninsured population, members of Indian tribes and others facing health disparities. These health risk assessments and their promotion must provide linkages to existing local disease prevention efforts and be collaborative with and not duplicative of existing efforts.

[2011, c. 306, §3 (AMD) .]

3. **Report card on health.** The Maine Center for Disease Control and Prevention, in consultation with the Statewide Coordinating Council for Public Health, shall develop, distribute and publicize an annual brief report card on health status statewide and for each district by June 1st of each year. The report card must include major diseases, evidence-based health risks and determinants that impact health.

[2009, c. 355, §5 (NEW) .]

The Maine Center for Disease Control and Prevention and the Governor's Office of Health Policy and Finance shall provide staff support to implement the universal wellness initiative in this section as resources permit. Other agencies of State Government as necessary and appropriate shall provide additional staff support or assistance. [2009, c. 355, §5 (NEW).]

SECTION HISTORY
2009, c. 355, §5 (NEW). 2011, c. 306, §3 (AMD).

Chapter 153: LOCAL HEALTH OFFICERS

§451. APPOINTMENT

The following provisions govern the appointment and employment of local health officers. [2007, c. 462, §1 (NEW).]

1. **Role of municipality.** Every municipality in the State shall employ a local health officer who is appointed by the municipal officers of that municipality. A person may be appointed and employed as a local health officer by more than one municipality.

[2007, c. 462, §1 (NEW) .]

2. **Qualifications.** The local health officer must be qualified by education, training or experience in the field of public health or a combination as determined by standards adopted by department rule no later than June 1, 2008. A person who is employed as a local health officer who is not qualified by education, training or experience must meet qualification standards adopted by department rule no later than 6 months after appointment. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 598, §5 (AMD) .]

3. **Duration of appointment; notification.** A local health officer is appointed for a term of 3 years and until that officer’s successor is appointed. The municipal officers shall appoint a successor within 30 days of any resignation or expiration of term. The municipal officers or clerk of each municipality shall within 10 days notify the department in writing of the appointment of a local health officer. Notification to the department must include the local health officer's name, age and address and the dates of the appointment and the beginning of the 3-year term. A local health officer in a town or plantation contiguous to unorganized territory shall perform the duties of a local health officer in that territory.

[2007, c. 462, §1 (NEW) .]

4. **Incapacity or absence.** In the event of incapacity or absence of the local health officer, the municipal officers shall appoint a person to act as local health officer during that incapacity or absence. The chair of the municipal officers shall perform the duties of a local health officer until the regular local health officer is returned to duty or another person has been appointed and employed. In a municipality with a manager form

of government, when the charter so provides, the appointments provided for in this subsection may be made by the manager and the duties prescribed for the chair of the municipal officers during incapacity or absence of the local health officer are performed by the manager.

[2007, c. 462, §1 (NEW) .]

5. **Conflict of interest.** A person may not be appointed to hold office as a local health officer or to serve as a member of the local board of health under section 453 if that person has a pecuniary interest, directly or indirectly, in any corporation or other entity over which that officer or board has general supervision.

[2007, c. 462, §1 (NEW) .]

6. **Duties.** Local health officers may be employed on a part-time or full-time basis. The offices of local health officer and town or school physician may be combined when, in the opinion of the municipal officers, the health needs of the public would be better served.

[2007, c. 462, §1 (NEW) .]

SECTION HISTORY
1981, c. 703, §A7 (AMD). 1989, c. 487, §3 (AMD). 2007, c. 462, §1 (RPR). 2007, c. 598, §5 (AMD).

§452. COMPENSATION

(REPEALED)

SECTION HISTORY
1981, c. 703, §A8 (RP).

§453. LOCAL BOARD OF HEALTH

Any municipality may appoint, in addition to the local health officer, a board of health consisting of 3 members besides the local health officer, one of whom shall be a physician if available in the community, and one a woman. When first appointed members of the board shall be appointed one for one year, one for 2 years and one for 3 years. Subsequent appointments shall be for 3-year terms.

The local health officer shall be secretary ex officio of said board and keep a record of all proceedings. The local board of health shall constitute an advisory body to the local health officer.

§454. DUTIES

(REPEALED)

SECTION HISTORY
1987, c. 600, (AMD). 1989, c. 487, §4 (AMD). 1997, c. 387, §1 (RPR). 2003, c. 689, §B7 (REV). 2007, c. 598, §6 (RP).

§454-A. POWERS AND DUTIES

1. **Supervision.** For the purposes of this section, a local health officer is subject to the supervision and direction of the commissioner or the commissioner's designee.

[2007, c. 598, §7 (NEW) .]

2. **Duties.** Within jurisdictional limits, a local health officer shall:

A. Make and keep a record of all the proceedings, transactions, ordinances, orders and rules acted upon by the local health officer; [2007, c. 598, §7 (NEW).]

B. Report to the commissioner or the commissioner's designee facts that relate to communicable diseases and cases of communicable disease as required by department rules; [2007, c. 598, §7 (NEW).]

C. During a declared health emergency, as defined in section 802, subsections 2 and 2-A, report to the commissioner or the commissioner's designee facts regarding potential notifiable diseases and cases that directly relate to the declared health emergency, as the rules of the department require; [2007, c. 598, §7 (NEW).]

D. Receive and examine the nature of complaints made by members of the public concerning conditions posing a public health threat or a potential public health threat; [2007, c. 598, §7 (NEW).]

E. With the consent of the owner, agent or occupant, enter, inspect and examine any place or premises where filth, whether or not the cause of sickness, or conditions posing a public health threat are known or believed to exist. An agent with special expertise appointed by the local health officer may inspect and examine the place or premises. If entry is refused, the local health officer shall apply for an inspection warrant from the District Court, pursuant to Title 4, section 179, prior to conducting the inspection; [2007, c. 598, §7 (NEW).]

F. After consulting with the commissioner or the commissioner's designee, order the suppression and removal of nuisances and conditions suspected of posing or found to pose a public health threat; [2007, c. 598, §7 (NEW).]

G. Act as a resource for connecting residents with the public health services and resources provided by the Maine Center for Disease Control and Prevention; and [2007, c. 598, §7 (NEW).]

H. Enforce public health safety laws, including:

(1) Laws pertaining to the exclusion of students from school under Title 20-A, section 6356;

(2) Laws pertaining to control of browntail moths under section 1444;

(3) Laws pertaining to the removal of a private nuisance or nuisance of a dead animal under sections 1561 and 1562;

(4) Laws pertaining to the establishment of temporary health care facilities under section 1762; and

(5) Laws pertaining to prohibited dumping under Title 30-A, section 3352. [2007, c. 598, §7 (NEW).]

For purposes of this subsection, "public health threat" means any condition or behavior that can reasonably be expected to place others at significant risk of exposure to infection with a communicable disease.

[2007, c. 598, §7 (NEW) .]

SECTION HISTORY
2007, c. 598, §7 (NEW).

§455. REPORTS

(REPEALED)

SECTION HISTORY
1989, c. 487, §5 (RP).

§456. EMPLOYMENT BY SEVERAL LOCALITIES

(REPEALED)

SECTION HISTORY

1981, c. 703, §A8 (RP).

§457. NOTICE TO TOWN OF CHARGE FOR INFECTED PERSONS

(REPEALED)

SECTION HISTORY
1989, c. 487, §5 (RP).

§458. MEDICAL SUPPLIES FOR INDIGENT NONRESIDENTS

(REPEALED)

SECTION HISTORY
1977, c. 457, §1 (RP).

§459. PROVIDING FOR FREE VACCINATIONS

(REPEALED)

SECTION HISTORY
1975, c. 293, §4 (AMD). 1981, c. 470, §A61 (AMD). 1989, c. 487, §§6,7 (AMD). 2003, c. 689, §B6 (REV). 2007, c. 598, §8 (RP).

§460. NOTICE TO OWNER OF INFECTED HOUSE REQUIRING DISINFECTING

(REPEALED)

SECTION HISTORY
1989, c. 487, §8 (RP).

§461. NOTICE TO OWNER TO CLEAN PREMISES; EXPENSES ON REFUSAL

The local health officer, when satisfied upon due examination, that a cellar, room, tenement or building in the town, occupied as a dwelling place, has become, by reason of want of cleanliness or other cause, unfit for such purpose and a cause of sickness to the occupants or the public, may issue, in consultation with the department, a notice in writing to such occupants, or the owner or the owner's agent, or any one of them, requiring the premises to be put into a proper condition as to cleanliness, or, if they see fit, requiring the occupants to quit the premises within such time as the local health officer may deem reasonable. If the persons so notified, or any of them, neglect or refuse to comply with the terms of the notice, the local health officer may cause the premises to be properly cleansed at the expense of the owner, or may close the premises, and the same shall not be again occupied as a dwelling place until put in a proper sanitary condition. If the owner thereafter occupies or knowingly permits the same to be occupied without putting the same in proper sanitary condition, the owner shall forfeit not less than $10 nor more than $50 for each day that the premises remain unfit following written notification that the premises are unfit. [1989, c. 487, §9 (AMD).]

SECTION HISTORY
1989, c. 487, §9 (AMD).

§462. ASSISTANCE IF OBSTRUCTED IN DUTY

Any health officer or other person employed by the local health officer may, when obstructed in the performance of the person's duty, call for assistance from a law enforcement officer. [1989, c. 487, §10 (AMD).]

SECTION HISTORY
1989, c. 487, §10 (AMD).

Chapter 155: MEDICAL EXAMINERS AND AUTOPSIES

§511. APPOINTMENT; DUTIES

(REPEALED)

SECTION HISTORY
1967, c. 251, (AMD). 1967, c. 328, (AMD). 1967, c. 534, §1 (RP). 1967, c. 544, §57 (AMD). 1969, c. 504, §36 (RP).

§512. NOTICE OF FINDING OF BODY

(REPEALED)

SECTION HISTORY
1967, c. 534, §1 (RP).

§513. DEATH WITHOUT MEDICAL ATTENDANCE

(REPEALED)

SECTION HISTORY
1967, c. 534, §1 (RP).

§514. PROCEEDINGS ON RECEIPT OF NOTICE OF FINDING OF BODY

(REPEALED)

SECTION HISTORY
1967, c. 534, §1 (RP).

§515. NOTICE TO ATTORNEY GENERAL; RETURN OF DEATH TO TOWN CLERK

(REPEALED)

SECTION HISTORY
1967, c. 534, §1 (RP).

§516. AUTOPSY; INQUEST

(REPEALED)

SECTION HISTORY
1967, c. 534, §1 (RP).

§517. INQUEST ON OFFICIAL DISAGREEMENT

(REPEALED)

SECTION HISTORY
1967, c. 534, §1 (RP).

§518. EXPERTS; COMPENSATION

(REPEALED)

SECTION HISTORY
1967, c. 534, §1 (RP).

§519. DISPOSAL OF BODY AFTER AUTOPSY; UNIDENTIFIED BODIES; EXPENSE OF BURIAL

(REPEALED)

SECTION HISTORY
1967, c. 534, §1 (RP).

§520. PERSONAL EFFECTS

(REPEALED)

SECTION HISTORY
1967, c. 534, §1 (RP).

§521. COMPENSATION OF MEDICAL EXAMINER

(REPEALED)

SECTION HISTORY
1967, c. 534, §1 (RP).

§522. PREPARATION AND DISTRIBUTION OF RECORD BOOKS AND BLANKS

(REPEALED)

SECTION HISTORY
1967, c. 534, §1 (RP).

Chapter 157: DIAGNOSTIC LABORATORY

§561. LABORATORY OF HYGIENE

(REPEALED)

SECTION HISTORY
1991, c. 499, §1 (RP).

§562. SUPERINTENDENT; APPOINTMENT; DUTIES; FEES CHARGED FOR CERTAIN SERVICES; CERTAIN SERVICES FREE

(REPEALED)

SECTION HISTORY
1971, c. 466, (AMD). 1975, c. 618, (AMD). 1975, c. 771, §214 (AMD). 1979, c. 348, §§1,2 (AMD). 1991, c. 499, §1 (RP).

§563. RECORD OF TESTS FOR WATER SAMPLES

(REPEALED)

SECTION HISTORY
1965, c. 293, (NEW). 1991, c. 499, §1 (RP).

Chapter 157-A: HEALTH AND ENVIRONMENTAL TESTING LABORATORY

§565. HEALTH AND ENVIRONMENTAL TESTING LABORATORY

The Health and Environmental Testing Laboratory is established within the department for the chemical and microbiological testing and examination of water supplies, food products, drinking water, environmental and forensic samples and the testing and examination of cases and suspected cases of infectious and communicable diseases. [1991, c. 499, §2 (NEW); 1991, c. 499, §26 (AFF).]

1. **Coordination with the Department of Environmental Protection.** In coordination with the Department of Environmental Protection, the department shall also provide laboratory services for environmental testing and analysis as necessary to implement the programs and duties of the Department of Environmental Protection, pursuant to Title 38, section 342, subsection 4. The commissioner and the Commissioner of Environmental Protection shall enter into joint agreements and establish joint policies as necessary to ensure the provision of appropriate laboratory services.

[1991, c. 499, §2 (NEW); 1991, c. 499, §26 (AFF) .]

2. **Director; duties.** The Director of the Bureau of Health shall appoint a Director of the Health and Environmental Testing Laboratory, subject to the Civil Service Law and in this chapter known as the "laboratory director." The laboratory director or a designated chief of laboratory operations shall administer the laboratory to safeguard the public health and environment.

[1999, c. 62, §1 (AMD) .]

3. **Fees for services.** The department shall establish by rule a schedule of charges for services rendered by the Health and Environmental Testing Laboratory based on the average costs for those services. The department shall establish services essential to the public health. These services must be provided free to residents of the State.

[1991, c. 499, §2 (NEW); 1991, c. 499, §26 (AFF) .]

SECTION HISTORY
1991, c. 499, §2 (NEW). 1991, c. 499, §26 (AFF). 1999, c. 62, §1 (AMD).

§565-A. COORDINATION WITH STATE RADIATION CONTROL AGENCY

The Health and Environmental Testing Laboratory shall provide laboratory services for environmental testing and analysis as necessary to implement the radiation protection services of the department conducted pursuant to section 680, subsection 2, paragraph D. [2005, c. 254, Pt. B, §1 (AMD).]

SECTION HISTORY
1993, c. 664, §5 (NEW). 1997, c. 686, §1 (AMD). 2005, c. 254, §B1 (AMD).

§566. RECORD OF TESTS FOR WATER SAMPLES

A person requesting a water sample test must indicate the source of the water sample. A laboratory that tests any public water system for drinking water program compliance mandates shall forward a copy of the test results to the department. [1999, c. 62, §2 (AMD).]

SECTION HISTORY
1991, c. 499, §2 (NEW). 1991, c. 499, §26 (AFF). 1999, c. 62, §2 (AMD).

§567. CERTIFICATION OR ACCREDITATION PROGRAM

The Director of the Bureau of Health shall establish a laboratory certification or accreditation program to ensure that all generated data of laboratories subject to the program is of known and appropriate quality of precision and accuracy when utilized for departmental programs and programs administered by the Department of Environmental Protection. The Director of the Bureau of Health shall designate a laboratory certification officer to administer this program. [1999, c. 62, §3 (AMD).]

1. **Acceptable data.** Except as provided in this subsection, 6 months after the adoption of rules specified in subsection 2, certification is required of any commercial, industrial, municipal, state or federal laboratory that analyzes water, soil, air, solid or hazardous waste, or radiological samples for the use of programs of the department or the Department of Environmental Protection, except as provided under chapter 411, the Maine Medical Laboratory Act; Title 26, chapter 7, subchapter 3-A, Substance Abuse Testing; and Title 29-A, section 2524, administration of tests to determine an alcohol level or drug concentration.

A laboratory operated by a waste discharge facility licensed pursuant to Title 38, section 413 may analyze waste discharges for total suspended solids, settleable solids, biological or biochemical oxygen demand, chemical oxygen demand, pH, chlorine residual, fecal coliform, E. coli, conductivity, color, temperature and dissolved oxygen without being certified under this section. The exception provided under this paragraph applies to a laboratory testing its own samples for pollutants listed in its permit or license; pretreatment samples; and samples from other wastewater treatment plants for up to 60 days per year. The time period provided in this paragraph, which is a maximum period for each treatment plant for which analysis is provided, may be extended by memorandum of agreement between the Department of Environmental Protection and the Health and Environmental Testing Laboratory.

[2009, c. 447, §21 (AMD) .]

2. **Certification or accreditation program requirements.** The department and the Department of Environmental Protection shall establish by rule program requirements, standards and criteria for the evaluation and certification or accreditation of laboratories.

[1999, c. 62, §3 (AMD) .]

3. **Certificate issued.** A laboratory must be issued a certificate when the laboratory certification officer determines that the laboratory has the capability to analyze samples with known and appropriate quality of precision and accuracy and is in compliance with other certification or accreditation requirements. Certificates are effective for 2 years from date of issuance provided the laboratory continues to be in compliance with certification or accreditation requirements.

[1999, c. 62, §3 (AMD) .]

4. **Certification or accreditation fees.** A certification or accreditation fee schedule based on the cost of certifying or accrediting laboratories must be established by rule. Certification or accreditation fees are payable upon application for certification or accreditation and must be deposited in the Health and Environmental Testing Laboratory Special Revenue Account.

[1999, c. 62, §3 (AMD) .]

SECTION HISTORY
1991, c. 499, §2 (NEW). 1991, c. 499, §26 (AFF). 1993, c. 537, §§1,2 (AMD). 1995, c. 65, §A59 (AMD). 1995, c. 65, §§A153,C15 (AFF). 1999, c. 62, §3 (AMD). 2009, c. 447, §21 (AMD).

§568. HEALTH AND ENVIRONMENTAL TESTING LABORATORY SPECIAL REVENUE ACCOUNT

The Health and Environmental Testing Laboratory Special Revenue Account is established as a dedicated account for the operation of the laboratory's analytical and certification programs and may be known in this chapter as the "account." Funds deposited to the account include, but are not limited to, appropriations made to the account, funds transferred to the account from within the department and revenues received from analytical services and the certification or accreditation of laboratories. [1999, c. 62, §4 (AMD).]

SECTION HISTORY
1991, c. 499, §2 (NEW). 1991, c. 499, §26 (AFF). 1999, c. 62, §4 (AMD).

Chapter 159: NORTHERN NEW ENGLAND MEDICAL NEEDS COMPACT

Subchapter 1: MEDICAL NEEDS COMPACT

§601. PURPOSE -- ARTICLE I

(REPEALED)

SECTION HISTORY
1981, c. 703, §A9 (RP).

§602. TRI-STATE REGIONAL MEDICAL NEEDS BOARD -- ARTICLE II

(REPEALED)

SECTION HISTORY
1981, c. 703, §A9 (RP).

§603. WHEN OPERATIVE -- ARTICLE III

(REPEALED)

SECTION HISTORY
1981, c. 703, §A9 (RP).

§604. OFFICERS; DUTIES; POWERS; CONDUCT OF BUSINESS -- ARTICLE IV

(REPEALED)

SECTION HISTORY
1981, c. 703, §A9 (RP).

§605. DATA; REPORTS; RESEARCH; FEES -- ARTICLE V

(REPEALED)

SECTION HISTORY
1981, c. 703, §A9 (RP).

§606. GIFTS -- ARTICLE VI

(REPEALED)

SECTION HISTORY
1981, c. 703, §A9 (RP).

§607. SEPARABILITY OF PROVISIONS -- ARTICLE VII

(REPEALED)

SECTION HISTORY
1981, c. 703, §A9 (RP).

§608. DURATION; WITHDRAWAL OF MEMBERSHIP -- ARTICLE VIII

(REPEALED)

SECTION HISTORY
1981, c. 703, §A9 (RP).

§609. DEFAULT -- ARTICLE IX

SECTION HISTORY
1981, c. 703, §A9 (RP).

Subchapter 2: PROVISIONS RELATING TO COMPACT

§651. RATIFICATION

(REPEALED)

SECTION HISTORY
1981, c. 703, §A9 (RP).

§652. COPIES

(REPEALED)

SECTION HISTORY

1981, c. 703, §A9 (RP).

§653. EXCHANGE AND FILING OF DOCUMENTS

(REPEALED)

SECTION HISTORY
1981, c. 703, §A9 (RP).

§654. REPORT

(REPEALED)

SECTION HISTORY
1981, c. 703, §A9 (RP).

Chapter 159-A: STATE NUCLEAR SAFETY PROGRAM

§661. PUBLIC POLICY

In the interests of the public health and welfare of the people of this State, it is the declared public policy of this State that a facility licensed by the United States Nuclear Regulatory Commission and situated in the State must be accomplished in a manner consistent with protection of the public health and safety and in compliance with the environmental protection policies of this State. It is the purpose of this chapter, in conjunction with sections 671 to 690; Title 25, section 51; and Title 35-A, sections 4351 to 4393, to exercise the jurisdiction of the State to the maximum extent permitted by the United States Constitution and federal law and to establish in cooperation with the Federal Government a state nuclear safety inspector program for the on-site monitoring, regulatory review and oversight of a facility within the State that holds a license issued by the United States Nuclear Regulatory Commission. Nothing in this chapter may be construed as an attempt by the State to regulate radiological health and safety reserved to the Federal Government by reason of the United States Atomic Energy Act of 1954, as amended. [2007, c. 539, Pt. KK, §1 (AMD).]

SECTION HISTORY
1987, c. 519, §1 (NEW). 1991, c. 824, §A40 (AMD). 1997, c. 686, §2 (AMD). 1999, c. 174, §2 (AMD). 2005, c. 254, §B2 (AMD). 2005, c. 683, §A33 (AMD). 2007, c. 539, Pt. KK, §1 (AMD).

§662. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 519, §1 (NEW).]

1. **Facility.** A "facility" means a production or utilization facility situated in this State that holds an operating permit or license issued by the United States Nuclear Regulatory Commission. It also means a power reactor licensee situated in the State, whether decommissioned or not, with a possession-only license issued by the United States Nuclear Regulatory Commission for special nuclear material, by-product material and source material. It also includes spent fuel or high-level waste storage facilities.

[1997, c. 686, §3 (AMD) .]

SECTION HISTORY
1987, c. 519, §1 (NEW). 1997, c. 686, §3 (AMD).

§663. STATE NUCLEAR SAFETY INSPECTOR

(REPEALED)

SECTION HISTORY
1987, c. 519, §1 (NEW). 1987, c. 882, §1 (AMD). 1997, c. 686, §4 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 254, §D2 (AFF). 2005, c. 254, §D1 (RP).

§663-A. STATE NUCLEAR SAFETY INSPECTOR

There is established within the department the State Nuclear Safety Inspector Office administered by the State Nuclear Safety Inspector. The State Nuclear Safety Inspector is a classified employee, subject to the Civil Service Law. [2007, c. 539, Pt. KK, §2 (NEW).]

1. **Qualifications.** The State Nuclear Safety Inspector must be an individual knowledgeable in the field of commercial nuclear power production and possess, at a minimum, a master's degree with major work in nuclear, mechanical, electrical or chemical engineering and have at least 3 years' experience in nuclear operations.

[2007, c. 539, Pt. KK, §2 (NEW) .]

2. **Duties.** The State Nuclear Safety Inspector shall serve as an on-site nuclear safety inspector of a facility and of the on-site storage and transportation of high-level and low-level nuclear waste.

[2007, c. 539, Pt. KK, §2 (NEW) .]

3. **Staff.** The State Nuclear Safety Inspector may employ other personnel as necessary to carry out the purposes of this chapter.

[2007, c. 539, Pt. KK, §2 (NEW) .]

SECTION HISTORY
2007, c. 539, Pt. KK, §2 (NEW).

§664. RESPONSIBILITY OF FACILITY LICENSEES

The responsibility of facility licensees is as follows. [1997, c. 686, §5 (AMD).]

1. **Records.** Each facility licensee shall permit the inspection and copying, for the purposes of this chapter, of its books and records, maintained in any form, except that books and records that are privileged as a matter of law, proprietary, security-related or restricted by federal law, are not open to inspection. Subject to the approval of the United States Nuclear Regulatory Commission and of the facility licensee, access to books and records that are proprietary, security-related or restricted by federal law may be granted if the State Nuclear Safety Inspector, on behalf of the State, enters into a nondisclosure agreement. For purposes of this section, proprietary information includes personnel records, manufacturers' proprietary information, licensee proprietary information and trade secrets. For purposes of this subsection, "trade secrets" means any confidential formula, pattern, process, device, information or compilation of information, including chemical name, that is used in any employer's business that gives the employer an opportunity to obtain any advantage over competitors who do not know or use it.

[2007, c. 539, Pt. KK, §3 (AMD) .]

2. **Monitoring.** Each facility licensee shall permit monitoring, for the purposes of this chapter, of the premises, equipment and materials, including source, special nuclear and by-product materials, in its possession or use, or subject to its control and any vehicle or means of transportation used to remove

materials or equipment from the site, including, but not limited to, by rail, water, roadway or air. Monitoring of vehicles or other means of transportation used to remove materials or equipment from the site must be undertaken in a manner that is safe, that employs properly calibrated instruments and that does not result in unreasonable delays in the removal of materials or equipment from the site.

For the purposes of this subsection, "monitoring" means any one or combination of the following:

A. Observing the conduct of operations, including maintenance, quality assurance activities, the preparation, transportation and handling of radioactive waste, emissions monitoring, radiation protection and the observation of emergency preparedness tests and drills; [1999, c. 739, §1 (NEW).]

B. Taking analytical radiological measurements using properly calibrated instruments to confirm:

(1) The results of quality assurance activities undertaken by or on behalf of the facility licensee;

(2) That the preparation, transportation and handling of radioactive waste is undertaken in accordance with applicable standards;

(3) The results of emissions monitoring undertaken by or on behalf of the facility licensee; or

(4) That adequate radiation protection measures are in place; and [2005, c. 254, Pt. B, §4 (AMD).]

C. Taking radiological measurements for the purpose of verifying compliance with applicable state laws, including, but not limited to, Title 38, section 1455, and confirming and verifying compliance with the standards of the United States Nuclear Regulatory Commission for unrestricted license termination, provided that the taking of such measurements employs techniques, protocols, instruments and quality assurance practices in accordance with generally accepted scientific or industry practices, including, but not limited to, those described in the federal Multi-Agency Radiation Survey and Site Investigation Manual. [1999, c. 739, §1 (NEW).]

The licensee shall, upon request, provide split samples to the State Nuclear Safety Inspector. All analytical measurements taken pursuant to this subsection must be shared with the licensee. The licensee may provide data to explain any conflicts between measurements taken by the licensee and measurements taken pursuant to this subsection.

[2007, c. 539, Pt. KK, §4 (AMD) .]

3. Access.

[2005, c. 254, Pt. B, §5 (RP) .]

4. On-site facilities.

[2005, c. 254, Pt. B, §5 (RP) .]

5. Fees.

[2005, c. 254, Pt. B, §5 (RP) .]

SECTION HISTORY
1987, c. 519, §1 (NEW). 1987, c. 882, §2 (AMD). 1991, c. 496, §1 (AMD). 1993, c. 664, §6 (AMD). 1997, c. 395, §F1 (AMD). 1997, c. 686, §5 (AMD). 1999, c. 57, §B1 (AMD). 1999, c. 739, §1 (AMD). 2005, c. 254, §§B3-5 (AMD). 2007, c. 539, Pt. KK, §§3, 4 (AMD).

§665. UNITED STATES NUCLEAR REGULATORY COMMISSION ACTIVITIES

(REPEALED)

SECTION HISTORY
1987, c. 519, §1 (NEW). 1997, c. 686, §6 (AMD). 2005, c. 254, §B6 (RP).

§666. RESPONSIBILITIES OF THE STATE NUCLEAR SAFETY INSPECTOR

The responsibilities of the State Nuclear Safety Inspector are as follows. [2007, c. 539, Pt. KK, §5 (REEN).]

1. **Damages to public health and safety.** If the State Nuclear Safety Inspector has reason to believe that any activity poses a danger to public health and safety, and after notifying the facility licensee and the United States Nuclear Regulatory Commission, the inspector shall immediately notify the Governor and the Commissioner of Health and Human Services. This subsection may not be construed as precluding the State Nuclear Safety Inspector from discussing the safety inspector's concerns with the United States Nuclear Regulatory Commission or others before making a determination that any activity poses a danger to public health and safety.

[2011, c. 655, Pt. MM, §12 (AMD); 2011, c. 655, Pt. MM, §26 (AFF) .]

2. **Reports.** The State Nuclear Safety Inspector, with the cooperation of the Director of Health Engineering, shall prepare a report of the safety inspector's activities under this chapter to be submitted July 1st of each year to the Governor's Energy Office and the Legislature. The State Nuclear Safety Inspector shall prepare monthly reports for the Governor's Energy Office, the President of the Senate and the Speaker of the House, with copies to the United States Nuclear Regulatory Commission and the facility licensee.

[2011, c. 655, Pt. MM, §12 (AMD); 2011, c. 655, Pt. MM, §26 (AFF) .]

3. **Confidential and privileged information.** The State Nuclear Safety Inspector shall keep confidential and privileged the identity of any person providing communications that, in the opinion of the State Nuclear Safety Inspector, support a presumption of unsafe activities, conduct or operation of a facility or that indicate any violation of the facility licensee's license issued by the United States Nuclear Regulatory Commission, unless the request for confidentiality is waived or withdrawn by such person. The safety inspector shall make all prudent efforts to investigate the basis for any related allegation of unsafe or improper activities and shall cooperate to the extent feasible with the United States Nuclear Regulatory Commission personnel in this effort. Any information brought to the attention of the safety inspector that involves the safety of the plant or a possible violation of United States Nuclear Regulatory Commission regulations must be immediately brought to the attention of the United States Nuclear Regulatory Commission and the facility licensee.

[2007, c. 539, Pt. KK, §5 (REEN) .]

SECTION HISTORY
1987, c. 519, §1 (NEW). 1991, c. 151, §1 (AMD). 1997, c. 686, §7 (AMD). 2003, c. 689, §B7 (REV). 2005, c. 254, §B7 (RP). 2007, c. 539, Pt. KK, §5 (REEN). 2011, c. 655, Pt. MM, §12 (AMD). 2011, c. 655, Pt. MM, §26 (AFF).

§667. LIABILITY

(REPEALED)

SECTION HISTORY
1987, c. 519, §1 (NEW). 1997, c. 686, §8 (AMD). 2005, c. 254, §B8 (RP).

§668. INTERIM SPENT FUEL STORAGE FACILITY OVERSIGHT FUND

The Interim Spent Fuel Storage Facility Oversight Fund, referred to in this section as "the fund," is established as a nonlapsing fund within the radiation control program in the department. All fees paid under this subchapter are collected by the department for deposit in the fund. The Radiation Control Program shall oversee the fund and may disburse amounts in the fund to agencies or to other appropriate state funds in order to pay or contribute to the payment of costs incurred by agencies with respect to federal or state proceedings; safety, radiation and environmental monitoring; and security or other oversight-related activities related to the decommissioning of a nuclear power plant or the development or operation of an interim spent fuel storage facility in this State. The State Nuclear Safety Inspector shall keep an annual accounting of all funds received by the fund and all disbursements from the fund and shall make a report of this accounting to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters by the first Monday in February of each year. [2007, c. 539, Pt. KK, §6 (NEW).]

SECTION HISTORY
2007, c. 539, Pt. KK, §6 (NEW).

§669. STATE ASSESSMENT

1. **Annual fee.** Any licensee operating an interim spent fuel storage facility in this State shall pay a fixed annual fee to cover all present and reasonably foreseeable future state fees, costs and assessments with respect to the licensee, including, but not limited to, the costs of any commission investigation; the commission's participation in wholesale rate proceedings; safety, radiation and environmental monitoring; and security oversight-related costs. This annual fee consolidates the various fees and assessments imposed by the State on the licensee.

[2007, c. 539, Pt. KK, §7 (NEW) .]

2. **Amount.** The amount of the fixed payment is as follows:

A. Calendar year 2008, $296,667; and [2007, c. 539, Pt. KK, §7 (NEW).]

B. Calendar years 2009 to the 12th month of the year following the year the spent nuclear fuel is removed from the site, $220,000 per year. [2007, c. 539, Pt. KK, §7 (NEW).]

[2007, c. 539, Pt. KK, §7 (NEW) .]

3. **Compliance costs.** The fees paid under this section are independent of and in addition to any compliance costs incurred either by the licensee or by any contractor hired by the Department of Environmental Protection to oversee, monitor or implement measures necessary to ensure compliance pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended.

[2007, c. 539, Pt. KK, §7 (NEW) .]

SECTION HISTORY
2007, c. 539, Pt. KK, §7 (NEW).

§670. REVIEW OF OVERSIGHT ACTIVITIES AND FUNDING; REPORT

1. **Review.** Representatives of the Office of the Public Advocate, the Department of Public Safety, the radiation control program of the department and the Department of Environmental Protection; an independent expert in radiological and nuclear engineering selected by the radiation control program in the department; and a licensee operating an interim spent fuel storage facility in this State, referred to in this section as "the licensee," shall meet on a regular basis and no fewer than 4 times per calendar year:

A. To review activities being undertaken by the licensee, the radiation control program in the department, the Department of Public Safety and other agencies of State Government, including, but not limited to, the department and the Department of Environmental Protection, with respect to ensuring:

(1) The protection of public health and safety at the site of the interim spent fuel storage facility; and

(2) Timely contract performance by the United States Department of Energy regarding the removal of spent nuclear fuel from the site; [2007, c. 539, Pt. KK, §8 (NEW).]

B. To identify necessary activities to be undertaken by the parties in paragraph A for the next calendar year to ensure the protection of public health and safety at the site of the interim spent fuel storage facility and timely contract performance by the United States Department of Energy regarding the removal of spent nuclear fuel from the site; and [2007, c. 539, Pt. KK, §8 (NEW).]

C. To develop recommendations regarding funding requirements to carry out the activities identified in paragraph B. [2007, c. 539, Pt. KK, §8 (NEW).]

[2007, c. 539, Pt. KK, §8 (NEW) .]

2. **Report.** Based on the activities conducted under subsection 1, the radiation control program in the department, in consultation with the Office of the Public Advocate, the Department of Public Safety, the Department of Environmental Protection, the independent expert in radiological and nuclear engineering selected under subsection 1 and the licensee, referred to in this subsection as "the consulting parties," shall prepare and submit an annual report to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters no later than February 15th of each year. The report must provide a summary of the review conducted pursuant to subsection 1 and include specific recommendations regarding funding requirements for the next calendar year pursuant to subsection 1, paragraph C. If the radiation control program in the department and the consulting parties are unable to agree on recommendations regarding funding requirements, the consulting parties shall submit their individual recommendations in writing to the radiation control program in the department and the department shall include the individual recommendations of the consulting parties in the report. The radiation control program in the department, with input from the consulting parties, shall determine the format of the report. To assist in the preparation of the report, the Department of Public Safety, the Office of the Public Advocate and the Department of Environmental Protection shall submit to the Department of Health and Human Services no later than December 15th of each year an annual accounting of expenditures of funds from the Interim Spent Fuel Storage Facility Oversight Fund established pursuant to section 668.

[2007, c. 539, Pt. KK, §8 (NEW) .]

3. **Authority for legislation; annual fee.** The joint standing committee of the Legislature having jurisdiction over utilities and energy matters shall review the report submitted under subsection 2, including, but not limited to, the recommendations regarding funding requirements. On the basis of its review, the committee may submit legislation to amend the level of the annual fee required of the licensee under section 669.

[2007, c. 539, Pt. KK, §8 (NEW) .]

SECTION HISTORY
2007, c. 539, Pt. KK, §8 (NEW).

Chapter 160: RADIATION PROTECTION ACT

§671. DECLARATION OF POLICY

It is the policy of this State in furtherance of its responsibility to protect the public health, safety and the environment: [1983, c. 345, §§13, 14 (NEW).]

1. **Compatible regulatory program.** To institute and maintain a regulatory program for sources of ionizing and nonionizing radiation so as to provide for compatibility and equivalency with the standards and regulatory programs of the Federal Government; an integrated effective system of regulation within the State and a system consonant insofar as possible with those of other states;

[1983, c. 345, §§13, 14 (NEW) .]

2. **Safe use of sources.** To institute and maintain a program to permit development and utilization of sources of radiation for peaceful purposes consistent with the health and safety of the public; and

[1983, c. 345, §§13, 14 (NEW) .]

3. **State authority.** Nothing in this Act may be construed to limit the authority of the State to regulate radioactive materials, or the facilities in which they are used or stored, to the fullest extent consistent with federal law.

[1983, c. 345, §§13, 14 (NEW) .]

SECTION HISTORY
1983, c. 345, §§13,14 (NEW).

§672. PURPOSE

It is the purpose of this Act to effectuate the policies set forth in section 671 by providing for: [1983, c. 345, §§13, 14 (NEW).]

1. **Public health and safety.** A program of effective regulation of sources of radiation for the protection of the public health and safety;

[1983, c. 345, §§13, 14 (NEW) .]

2. **Orderly regulatory program.** A program to promote an orderly regulatory pattern within the State, among the states and between the Federal Government and the State, and facilitate intergovernmental cooperation with respect to use and regulation of sources of radiation so that duplication of regulation may be minimized;

[1983, c. 345, §§13, 14 (NEW) .]

3. **Assumption of responsibilities.** A program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to by-product, source and special nuclear materials and radiation-generating equipment; and

[1983, c. 345, §§13, 14 (NEW) .]

4. **Use of sources.** A program to permit utilization of sources of radiation consistent with the health and safety of the public.

[1983, c. 345, §§13, 14 (NEW) .]

SECTION HISTORY
1983, c. 345, §§13,14 (NEW).

§673. DEFINITIONS

As used in this Act, unless the context indicates otherwise, the following terms have the following meanings. [1983, c. 345, §§13, 14 (NEW).]

1. **By-product material.** "By-product material" means:

A. Any radioactive material except special nuclear material yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; and [1983, c. 345, §§13, 14 (NEW).]

B. The tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content. [1983, c. 345, §§13, 14 (NEW).]

[1983, c. 345, §§13, 14 (NEW) .]

2. **Civil penalty.** "Civil penalty" means any monetary penalty levied on a licensee or registrant because of violations of statutes, regulations, licenses or registration certificates, but does not include criminal penalties.

[1983, c. 345, §§13, 14 (NEW) .]

3. **Closure or site closure.** "Closure or site closure" means all activities performed at a waste disposal site, such as stabilization and contouring, to assure that the site is in a stable condition so that only minor custodial care, surveillance and monitoring are necessary at the site following termination of licensed operation.

[1983, c. 345, §§13, 14 (NEW) .]

3-A. **Facility.** A "facility" means a production or utilization facility situated in this State that holds an operating permit or license issued by the United States Nuclear Regulatory Commission. It also means a power reactor licensee situated in the State, whether decommissioned or not, with a possession-only license issued by the United States Nuclear Regulatory Commission for special nuclear material, by-product material and source material. It also includes spent fuel or high-level waste storage facilities.

[1997, c. 686, §9 (AMD) .]

4. **Decommissioning.** "Decommissioning" means the series of activities undertaken beginning at the time of closing of a nuclear power plant or other facility licensed by the United States Nuclear Regulatory Commission or the department to ensure that the final disposition of the site or any radioactive components or material, but not including spent fuel, associated with the plant is accomplished safely in compliance with all applicable state and federal laws. Decommissioning includes activities undertaken to prepare a nuclear power plant or other facility for final disposition, to monitor and maintain it after closing and to effect final disposition of any radioactive components of the nuclear power plant or facility.

[1987, c. 493, §1 (AMD) .]

5. **Disposal of low-level radioactive waste.** "Disposal of low-level radioactive waste" means the isolation of low-level waste from the biosphere inhabited by people and their food chains.

[1983, c. 345, §§13, 14 (NEW) .]

6. **High-level radioactive waste.** "High-level radioactive waste" means the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from that liquid waste that contains fission products in sufficient concentrations; and other highly radioactive material that the United States Nuclear Regulatory Commission, consistent with existing law, determines by rule to require permanent isolation.

[1983, c. 345, §§13, 14 (NEW) .]

7. **License.** "License" means a license, issued to a named person upon application filed pursuant to the regulations promulgated pursuant to this Act, to use, manufacture, produce, transfer, receive, acquire or possess quantities of, or devices or equipment utilizing, radioactive material.

[1983, c. 345, §§13, 14 (NEW) .]

8. **Low-level radioactive waste.** "Low-level radioactive waste" means radioactive material that:

A. Is not high-level radioactive waste, spent nuclear fuel, transuranic waste or by-product material as defined in the United States Code, Title 42, Section 2014(e)(2), the Atomic Energy Act of 1954, Section 11e(2); and [1987, c. 493, §2 (NEW).]

B. The United States Nuclear Regulatory Commission, consistent with existing law and in accordance with paragraph A, classifies as low-level radioactive waste. [1987, c. 493, §2 (NEW).]

[1987, c. 493, §2 (RPR) .]

8-A. **Person.** "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency of this State, political subdivision of this State, any other state or political subdivision or agency of a state or political subdivision and any legal successor, representative, agent or agency of the state or political subdivision or agency, but not including Federal Government agencies.

[1987, c. 493, §3 (NEW) .]

9. **Radiation.** "Radiation" means ionizing radiation and nonionizing radiation.

A. "Ionizing radiation" means gamma rays and x rays; alpha and beta particles, high-speed electrons, neutrons, protons and other nuclear particles; but not sound or radio waves, or visible, infrared or ultraviolet light. [1983, c. 345, §§13, 14 (NEW).]

B. "Nonionizing radiation" means any electromagnetic radiation, other than ionizing electromagnetic radiation, and any sonic, ultrasonic or infrasonic wave. [1983, c. 345, §§13, 14 (NEW).]

[1983, c. 345, §§13, 14 (NEW) .]

10. **Radiation generating equipment.** "Radiation generating equipment" means any manufactured product or device, or component part of such a product or device, or any machine or system which during operation can generate or emit radiation, except those which emit radiation, only from radioactive material.

[1983, c. 345, §§13, 14 (NEW) .]

11. **Radioactive material.** "Radioactive material" means any material which emits ionizing radiation spontaneously. It includes accelerator-produced, by-product, naturally occurring, source and special nuclear materials.

[1983, c. 345, §§13, 14 (NEW) .]

12. **Registration.** "Registration" means registration with the department in accordance with rules adopted pursuant to this Act.

[1983, c. 345, §§13, 14 (NEW) .]

13. **Source material.** "Source material" means:

A. Uranium or thorium, or any combination thereof, in any physical or chemical form; or [1983, c. 345, §§13, 14 (NEW).]

B. Ores which contain by weight 1/20th of 1%, 0.05%, or more of uranium, thorium or any combination thereof. Source material does not include special nuclear material. [1983, c. 345, §§13, 14 (NEW).]

[1983, c. 345, §§13, 14 (NEW) .]

14. **Source material mill tailings.** "Source material mill tailings" means the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from underground solution extraction processes, but not including underground ore bodies depleted by those solution extraction processes.

[1983, c. 345, §§13, 14 (NEW) .]

15. **Source material milling.** "Source material milling" means any processing of ore, primarily for the purpose of extracting or concentrating uranium or thorium therefrom and which results in the production of source material mill tailings.

[1983, c. 345, §§13, 14 (NEW) .]

16. **Sources of radiation.** "Sources of radiation" means, collectively, radioactive material and radiation generating equipment.

[1983, c. 345, §§13, 14 (NEW) .]

17. **Special nuclear material.** "Special nuclear material" means:

A. Plutonium, uranium 233 and uranium enriched in the isotope 233 or in the isotope 235, but does not include source material; or [1983, c. 345, §§13, 14 (NEW).]

B. Any material artificially enriched by any of the material listed in paragraph A, but does not include source material. [1983, c. 345, §§13, 14 (NEW).]

[1983, c. 345, §§13, 14 (NEW) .]

18. **Spent nuclear fuel.** "Spent nuclear fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

[1983, c. 345, §§13, 14 (NEW) .]

19. **Transuranic waste.** "Transuranic waste" means radioactive waste containing alpha emitting transuranic elements, with radioactive half-lives greater than 5 years, in excess of 10 nanocuries per gram.

[1983, c. 345, §§13, 14 (NEW) .]

SECTION HISTORY
1983, c. 345, §§13,14 (NEW). 1987, c. 493, §§1-3 (AMD). 1987, c. 519, §2 (AMD). 1997, c. 686, §9 (AMD).

§674. STATE RADIATION CONTROL AGENCY

1. **Designated.** The Department of Health and Human Services, in this chapter referred to as the "department," is designated as the State Radiation Control Agency.

[1983, c. 345, §§13, 14 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

2. **Commissioner.** The Commissioner of Health and Human Services shall be referred to as the "commissioner," who shall perform the functions vested in the department pursuant to this Act.

[1983, c. 345, §§13, 14 (NEW); 2003, c. 689, Pt. B, §7 (REV) .]

3. **Employees.** In accordance with the laws of this State, the department may employ, compensate and prescribe the powers and duties of such individuals as may be necessary to carry out the provisions of this Act.

[1983, c. 345, §§13, 14 (NEW) .]

4. **Authority.** The department, for the protection of the public health and safety:

A. Shall develop programs for the evaluation and control of hazards associated with use of sources of radiation; [1987, c. 493, §4 (AMD).]

B. Shall develop programs with due regard for compatibility with federal programs for regulation of by-product, source and special nuclear materials; [1987, c. 493, §4 (AMD).]

C. Shall develop programs with due regard for consistency with federal programs for regulation of radiation generating equipment; [1987, c. 493, §4 (AMD).]

D. Shall formulate, adopt, promulgate and repeal codes and rules, which may provide for licensing or registration, relating to control of sources of radiation with due regard for compatibility with the regulatory programs of the Federal Government.

Promulgate such rules in addition to the rule specified in this paragraph as are appropriate to carry out the purposes of this Act, including, but not limited to, rules concerning acquisition, ownership, possession and use of radioactive materials or devices or equipment utilizing radioactive material; [1987, c. 493, §4 (AMD).]

E. Shall issue such orders or modifications thereof as may be necessary in connection with proceedings under section 677; [1987, c. 493, §4 (AMD).]

F. Shall advise, consult and cooperate with other agencies of the State, Federal Government, other states and interstate agencies, political subdivisions and other organizations concerned with control of sources of radiation; [1987, c. 493, §4 (AMD).]

G. May accept and administer loans, grants or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the Federal Government and from other sources, public or private; [1983, c. 345, §§13, 14 (NEW).]

H. Shall encourage, participate in, or conduct studies, investigations, training, research and demonstrations relating to control of sources of radiation; [1987, c. 769, Pt. A, §67 (RPR).]

I. Shall collect and disseminate information relating to control of sources of radiation, including:

(1) Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions and revocations;

(2) Maintenance of a file of registrants possessing sources of radiation requiring registration under this Act and any administrative or judicial action pertaining to this Act; and

(3) Maintenance of a file of all of the department's rules relating to regulation of sources of radiation, pending or promulgated, and any connected proceedings; [1987, c. 769, Pt. A, §67 (RPR).]

J. May investigate and sample sites where radioactive substances or devices are stored or handled to identify uncontrolled radioactive substance sites; [1987, c. 769, Pt. A, §68 (RPR).]

K. May take whatever action is deemed necessary to abate, clean up or mitigate the threats or hazards posed or potentially posed by radioactive material or radiation-generating equipment to protect the public health, safety or welfare or the environment, including administering or carrying out measures to abate, clean up or mitigate the threats or hazards and implementing remedies to remove, store, treat, dispose of or otherwise handle radioactive material, including soil and water contaminated by the material; [1987, c. 769, Pt. A, §68 (RPR).]

L. Shall establish and maintain a continuous radiation monitoring system to record the radioactive levels of gaseous and liquid discharges from any commercial nuclear power facility operating in the State; [1991, c. 496, §2 (AMD).]

M. Shall establish and maintain an off-site monitoring network to provide continuous monitoring of gamma radiation levels within the vicinity of any commercial nuclear power facility operating in the State. Portable off-site monitoring devices must be made available to members of the public to establish a network of volunteer monitors who shall report to the department their findings. For this purpose, the department shall make Geiger Rate meters available to 50 volunteer monitors. In addition to the placement of Geiger Rate meters, the department shall procure 20 Gamma Scintillation Detection Devices and place 16 of them in homes of members of the public who volunteer to participate in the program. The 4 additional devices must be maintained by the department in reserve. The volunteers with Gamma Scintillation Detection Devices must also be provided with 2-way radios so they can report their findings in the case of emergency. All volunteers shall assist the department in its continuous monitoring network. All off-site monitoring devices must be geographically distributed throughout the surveillance area to provide the most effective monitoring network. The department shall adopt rules to provide for the selecting of the volunteers, the appropriate and accurate use of the meters and devices and the method and frequency of reporting to the department and other procedures necessary to implement the program; and [1991, c. 496, §2 (AMD).]

N. Shall provide 24-hour-per-day coverage of existing radiation monitors through the use of a dialer-server computer system and the use of pagers. [1991, c. 496, §3 (NEW).]

[1991, c. 496, §§2, 3 (AMD) .]

5. Coordination. The commissioner shall serve as the coordinator of radiation activities among the Maine Emergency Management Agency, Department of Public Safety, Department of Health and Human Services and Department of Environmental Protection. The commissioner shall:

A. Consult with and review regulations and procedures of the agencies and federal law to assure consistency and to prevent unnecessary duplication, inconsistencies or gaps in regulatory requirements; and [1987, c. 769, Pt. A, §70 (RPR).]

B. Review, prior to adoption, the proposed rules of all agencies of the State relating to use of control of radiation, to assure that these rules are consistent with Title 5, chapter 375, and rules of other agencies of the State. The review must be completed within 15 days. [2007, c. 2, §7 (COR).]

If the commissioner determines that proposed rules are inconsistent with rules of other agencies of the State or federal law, the commissioner shall consult with the agencies involved in an effort to resolve these inconsistencies. In the event no inconsistency is reported within 15 days, the proposed rules are presumed consistent for the purposes of this subsection. Upon notification by the commissioner that the inconsistency has not been resolved, the Governor may find that the proposed rules or parts of rules are inconsistent with rules of other agencies of the State or the Federal Government and may issue an order to that effect, in

which event the proposed rules or parts of rules do not become effective. The Governor may direct, in the alternative, upon a similar determination, the appropriate agency or agencies to amend or repeal existing rules to achieve consistency with the proposed rules.

[2007, c. 2, §7 (COR) .]

6. **Information.** The several agencies of the State shall keep the commissioner fully and currently informed as to their activities relating to regulation of sources of radiation.

[1983, c. 345, §§13, 14 (NEW) .]

7. **Report.** The commissioner shall report prior to January 31, 1984, to the joint standing committee of the Legislature having jurisdiction over natural resources on the need for regulation of nonionizing radiation.

[1983, c. 345, §§13, 14 (NEW) .]

SECTION HISTORY
1983, c. 345, §§13,14 (NEW). 1987, c. 370, §3 (AMD). 1987, c. 493, §4 (AMD). 1987, c. 519, §§3-5 (AMD). 1987, c. 769, §§A67-A70 (AMD). 1991, c. 496, §§2,3 (AMD). 2003, c. 689, §§B6,7 (REV). RR 2007, c. 2, §7 (COR). 2007, c. 539, Pt. KK, §9 (AMD).

§675. ADVISORY COMMITTEE ON RADIATION

SECTION HISTORY
1983, c. 345, §§13,14 (NEW). 1985, c. 295, §33 (AMD). 1987, c. 786, §13 (RP).

§675-A. ADVISORY COMMITTEE ON RADIATION

1. **Appointment.** The Governor shall appoint an Advisory Committee on Radiation consisting of 7 members. One member must be a physician and one member must be a dentist, both of whom must be regularly involved in the medical use of radiation; one member must represent the general public and the remaining 4 members must have training and experience in the various fields in which sources of radiation are used. Members of the committee serve 5-year staggered terms and are not compensated for their services, but may be reimbursed for actual expenses to attend committee meetings or for authorized business of the committee.

[1993, c. 664, §7 (NEW) .]

2. **Duties.** The committee shall make recommendations to the commissioner and furnish advice that is requested by the department on matters relating to the regulation of sources of radiation including enforcement actions, regulation revision and the establishment of fees. The committee may also make recommendations and reports to the joint standing committees of the Legislature.

[1993, c. 664, §7 (NEW) .]

SECTION HISTORY
1993, c. 664, §7 (NEW).

§676. COORDINATION AND LIAISON WITH FEDERAL AGENCIES

The following agencies shall serve as liaison with federal agencies and coordinate administration of the issues indicated. [1983, c. 345, §§13, 14 (NEW).]

1. **Health and safety.** The Department of Health and Human Services shall coordinate monitoring of radiation and health and safety in medical and industrial use of radiation, and shall serve as liaison with the United States Food and Drug Administration and the United States Nuclear Regulatory Commission, except as specified in subsection 4.

[1983, c. 345, §§13, 14 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

2. **Emergency procedures.** The Maine Emergency Management Agency shall coordinate off-site emergency procedures for nuclear facilities, and shall serve as liaison with the federal agencies with jurisdiction over defense activities and emergency response management.

[1987, c. 370, §4 (AMD) .]

3. **Transportation.** The Department of Public Safety shall coordinate transportation of radioactive materials.

[1983, c. 345, §§13, 14 (NEW) .]

4. **Radioactive waste.** The Department of Health and Human Services shall coordinate management of and shall serve as point of contact with the United States Nuclear Regulatory Commission for high-level and low-level radioactive wastes, in consultation with the Department of Environmental Protection and the State Nuclear Safety Inspector in fulfillment of the State Nuclear Safety Inspector's duties pursuant to section 666.

[2007, c. 539, Pt. KK, §10 (AMD) .]

5. **Geology.** The Division of Geology, Natural Areas and Coastal Resources, Maine Geological Survey within the Department of Agriculture, Conservation and Forestry shall provide technical assistance for waste management.

[2013, c. 405, Pt. C, §13 (AMD) .]

6. **Energy.** The Governor's Energy Office shall serve as liaison with the United States Department of Energy.

[2011, c. 655, Pt. MM, §13 (AMD); 2011, c. 655, Pt. MM, §26 (AFF) .]

7. **Environment.** The Department of Environmental Protection shall serve as liaison with the United States Environmental Protection Agency.

[1983, c. 345, §§13, 14 (NEW) .]

SECTION HISTORY
1983, c. 345, §§13,14 (NEW). 1987, c. 370, §4 (AMD). 1987, c. 519, §6 (AMD). 1989, c. 501, §DD31 (AMD). 1993, c. 664, §8 (AMD). 1995, c. 502, §E32 (AMD). 1999, c. 556, §26 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 254, §B9 (AMD). 2007, c. 539, Pt. KK, §10 (AMD). 2011, c. 655, Pt. KK, §17 (AMD). 2011, c. 655, Pt. KK, §34 (AFF). 2011, c. 655, Pt. MM, §13 (AMD). 2011, c. 655, Pt. MM, §26 (AFF). 2013, c. 405, Pt. C, §13 (AMD).

§677. LICENSING AND REGISTRATION OF SOURCES OF RADIATION

1. **Radioactive material, devices or equipment.** The department shall provide by rule for licensing of radioactive material or devices or equipment utilizing those materials except where prohibited by federal law. That rule shall provide for amendment, suspension or revocation of licenses.

[1987, c. 493, §5 (AMD) .]

2. **Other sources.** The department may require registration or licensing of other sources of radiation.

[1983, c. 345, §§ 13 and 14 (NEW) .]

3. **Exemptions.** The department may exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this section when the department makes a finding that the exemption of these sources of radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

[1983, c. 345, §§ 13 and 14 (NEW) .]

4. **Recognition of other licenses.** Rules promulgated pursuant to this Act may provide for recognition of other state or federal licenses as the department may deem desirable, subject to such registration requirements as the department may prescribe.

[1983, c. 345, §§ 13 and 14 (NEW) .]

5. **Federal license or permit required.** No person may manufacture, construct, produce, transfer, acquire or possess any special nuclear material, source material, by-product material, production facility or utilization facility, or act as an operator of a production or utilization facility wholly within this State, unless he has first obtained a license or permit for the activity in which he proposes to engage from the United States Nuclear Regulatory Commission if, pursuant to federal law, the commission requires a license or permit to be obtained by persons proposing to engage in activities of the same type over which it has jurisdiction.

[1983, c. 345, §§ 13 and 14 (NEW) .]

SECTION HISTORY
1983, c. 345, §§13,14 (NEW). 1987, c. 493, §5 (AMD).

§678. SOURCE MATERIAL PROCESSING AND RELATED MATERIAL

State regulation of source material processing shall be subject to the primary jurisdiction of the Department of Environmental Protection, as specified in Title 38. [1983, c. 345, §§ 13 and 14 (NEW).]

SECTION HISTORY
1983, c. 345, §§13,14 (NEW).

§679. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL

State regulation of low-level radioactive waste disposal is subject to the primary jurisdiction of the Department of Health and Human Services, as specified in section 676, except that disposal of low-level radioactive waste in the State is also subject to regulation by the Department of Environmental Protection. [1993, c. 664, §9 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY

1983, c. 345, §§13,14 (NEW). 1993, c. 664, §9 (AMD). 2003, c. 689, §B6 (REV).

§679-A. LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT

1. **Designated.** The department is designated as the agency to fulfill the state regulatory and enforcement requirements for the Texas Low-Level Radioactive Waste Disposal Compact, referred to in this chapter as the "compact." The department shall also execute the administrative requirements of the compact as defined in subsection 2, paragraph B.

[1993, c. 664, §10 (NEW) .]

2. **Duties of the department.** The department shall:

A. Develop rules to fulfill the State's responsibilities and requirements for the compact pursuant to the contract requirements set forth in Article IV, Section 4.05, subsections (1) to (4), (6) and (8) of the compact; and [2011, c. 691, Pt. C, §5 (AMD).]

B. Provide for the disbursement of funds from the Radioactive Waste Fund to fulfill the requirements of Article IV, Section 4.05, subsection (6) of the compact and to compensate the state commission member. [2011, c. 691, Pt. C, §5 (AMD).]

C. [2011, c. 691, Pt. C, §5 (RP).]

[2011, c. 691, Pt. C, §5 (AMD) .]

3. **Employees.** To fulfill the requirements of this section, the department may employ staff subject to the Civil Service Law.

[1993, c. 664, §10 (NEW) .]

SECTION HISTORY
1993, c. 664, §10 (NEW). 2011, c. 691, Pt. C, §5 (AMD).

§679-B. RADIOACTIVE WASTE FUND

1. **Establishment.** There is established the Radioactive Waste Fund to be used to carry out the purposes of this chapter. Money allocated from this fund must be administered by the commissioner in accordance with established budgetary procedures and this section. The commissioner may accept state, federal and private funds to be used as appropriate to ensure safe and effective low-level radioactive waste management and to monitor and evaluate plans for storage and disposal of high-level radioactive waste.

[1993, c. 664, §10 (NEW) .]

2. **Service fee; ceiling.** Except for waste that is exempt in accordance with subsection 4, the department shall assess annually by September 1st each low-level radioactive waste generator a service fee on all low-level radioactive waste generated in this State that is shipped to a low-level radioactive waste disposal facility, stored awaiting disposal at such a facility or stored for any other purpose. The service fee must be based 50% on the volume and 50% on the radioactivity of the waste disposed in a disposal facility in the previous calendar year or placed in storage in the previous calendar year if the State did not have access to a disposal facility for that year, but each generator must be assessed a minimum of $100 annually. Each generator must pay this service fee within 30 days, except that any generator may choose to make quarterly payments instead. Any radioactive waste for which a service fee was assessed and collected under this section can not

be reassessed for the purposes of this section. The radiation control program within the Division of Health Engineering shall adopt rules in accordance with the Maine Administrative Procedure Act concerning the calculation of the fee and the exemptions to the fee, consistent with this section.

[2005, c. 254, Pt. B, §10 (AMD) .]

3. **Compact fee assessment; ceiling.** In addition to the service fee assessed under subsection 2, the commissioner shall annually by September 1st, beginning in 1994, assess any amount necessary to fulfill the payment requirements to the Texas Low-Level Radioactive Waste Disposal Compact Commission pursuant to section 679-A, subsection 2, paragraph B less any balance carried forward under subsection 6. The commissioner shall assess each generator such a fee using the same method for computing individual assessments as set out in subsection 2. Each generator must pay the fee within 30 days, except that any generator may choose to make quarterly payments instead.

[1993, c. 664, §10 (NEW) .]

4. **Fee exemptions.** The following types of low-level radioactive waste are exempt from the fees established in subsections 2 and 3:

A. Waste that is authorized by the United States Nuclear Regulatory Commission for disposal without regard to its radioactivity; [1993, c. 664, §10 (NEW).]

B. Waste that is authorized by the United States Nuclear Regulatory Commission to be stored at the site of generation for decay and ultimate disposal without regard to its radioactivity; and [1993, c. 664, §10 (NEW).]

C. Radioactive waste or other material that is returned to the vendor, including, but not limited to, sealed sources. [1993, c. 664, §10 (NEW).]

[1993, c. 664, §10 (NEW) .]

5. **Allocation from fund.** Money in the Radioactive Waste Fund established by this section must be allocated from time to time by the Legislature to the department for administrative and regulatory activities as described in this section. These amounts become available in accordance with Title 5, chapters 141 to 155.

The department may receive and expend federal grants and payments for the purpose of carrying out its duties set out in section 679-A, subsection 2.

[2007, c. 619, §2 (AMD) .]

6. **Balance carried forward.** Any unexpended balance in the Radioactive Waste Fund may not lapse, but must be carried forward in the same amount for the next fiscal year and must be available for the purposes authorized by this chapter.

[1993, c. 664, §10 (NEW) .]

7. **Financial reports.**

[2007, c. 619, §3 (RP) .]

8. **Transfer of funds.** Notwithstanding Title 5, section 1585, funds allocated under this section must be transferred as necessary to accomplish the purposes of this section and Title 38, chapter 14-A from the department to other agencies, including the Department of Environmental Protection, the Division of Geology, Natural Areas and Coastal Resources, Maine Geological Survey within the Department of Agriculture, Conservation and Forestry and the Maine Land Use Planning Commission.

[2013, c. 405, Pt. C, §14 (AMD) .]

SECTION HISTORY
1993, c. 664, §10 (NEW). 1995, c. 333, §§1,2 (AMD). 1995, c. 502, §E32 (AMD). 1999, c. 556, §27 (AMD). 2005, c. 254, §B10 (AMD). 2007, c. 619, §§2, 3 (AMD). 2011, c. 655, Pt. KK, §18 (AMD). 2011, c. 655, Pt. KK, §34 (AFF). 2011, c. 682, §38 (REV). 2013, c. 405, Pt. C, §14 (AMD).

§680. RADIATION USER FEES

1. **Facilities.** The registration fee for a facility for:

A. Fiscal year 1997-98 is $100,000; and [1997, c. 686, §10 (NEW).]

B. Fiscal year 1998-99 is $25,000. [1997, c. 686, §10 (NEW).]

[1997, c. 686, §10 (RPR) .]

2. **Radiation protection services.** The department shall prescribe and collect such fees as may be established by regulation for radiation protection services provided under this Act. Services for which fees may be established include, but are not limited to:

A. Registration of radiation generating equipment and other sources of radiation; [1983, c. 345, §§13, 14 (NEW).]

B. Issuance, amendment and renewal of licenses for radioactive materials; [1983, c. 345, §§13, 14 (NEW).]

C. Inspections of registrants or licensees; [1987, c. 882, §4 (AMD).]

D. Environmental surveillance activities to assess the radiological impact of activities conducted by licensees; and [1987, c. 882, §4 (AMD).]

E. Off-site monitoring network activities of licensed nuclear power production facilities conducted pursuant to section 674, subsection 4, paragraph M. [1987, c. 882, §5 (NEW).]

[1987, c. 882, §§4, 5 (AMD) .]

3. **Fees.** In determining rates of these fees, the department shall, as an objective, obtain sufficient funds therefrom to reimburse the State for the direct and indirect costs of the radiation protection services specified in subsection 2. The department shall take into account any special arrangements between the State and a registrant, licensee, another state or a federal agency whereby the cost of the service is otherwise partially or fully recovered.

[1983, c. 345, §§13, 14 (NEW) .]

4. **Report.**

[2007, c. 619, §4 (RP) .]

5. **Exemptions.** The department may, upon application by an interested person, or on its own initiative, grant such exemptions from the requirements of this section as it determines are in the public interest. Applications for exemption under this subsection may include activities such as, but not limited to, the use of licensed materials for educational or noncommercial displays or scientific collections.

[1991, c. 824, Pt. B, §6 (AMD) .]

6. **Penalties.** When a registrant or licensee fails to pay the applicable fee, the department may take action in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

[1983, c. 345, §§13, 14 (NEW) .]

7. **Permanent fund.** All fees shall be paid to the Treasurer of State to be maintained in a permanent fund and used to carry out the purposes of this chapter and chapter 159-A.

[1987, c. 519, §7 (RPR) .]

SECTION HISTORY
1983, c. 345, §§13,14 (NEW). 1985, c. 40, §1 (AMD). 1987, c. 519, §7 (AMD). 1987, c. 882, §§3-5 (AMD). 1991, c. 496, §4 (AMD). 1991, c. 824, §B6 (AMD). 1993, c. 664, §11 (AMD). 1997, c. 395, §F2 (AMD). 1997, c. 686, §10 (AMD). 2007, c. 619, §4 (AMD).

§681. SURETY REQUIREMENTS

Licensees shall pay to the department for deposit by the Treasurer of State, into a fund called the Radiation Materials Recovery Fund, adequate funds to permit the department to complete the requirements established by the department for the decontamination, decommissioning, closure and reclamation of sites, structures and equipment used in conjunction with the licensed activity. In lieu of the deposit of funds, the licensee may provide an adequate surety. The condition of the surety shall be to account for the completion of the requirements according to standards established by the department by rule. All sureties forfeited shall be paid to the department for deposit by the Treasurer of State to the aforementioned fund. Money in the fund shall not be used for normal operations of the department. The department shall adopt by rule the standards for determining the amount of financial responsibility required by each licensee and the procedures for the payment of funds or provision of surety. [1987, c. 493, §6 (NEW).]

The funds or sureties required in this section shall be in amounts necessary to comply with standards established by the United States Nuclear Regulatory Commission or the State. [1987, c. 493, §6 (NEW).]

The department may accept gifts or transfers from another agency or individual of land or appurtenances necessary to fulfill the purposes of this section. [1987, c. 493, §6 (NEW).]

SECTION HISTORY
1983, c. 345, §§13,14 (NEW). 1987, c. 493, §6 (RPR).

§682. INSPECTIONS

1. **Authorized.** The department or its duly authorized representatives may enter at all reasonable times upon any private or public property for the purpose of determining whether there is compliance with or violation of the provisions of this Act and the rules issued thereunder, except that entry into areas under the jurisdiction of the Federal Government or its duly designated representative shall be effected only with the concurrence of the Federal Government or its duly designated representative.

[1991, c. 151, §2 (AMD) .]

2. **Equipment inspection.** The department shall promulgate rules requiring periodic inspection, certification and calibration of equipment, capable of emitting ionizing radiation, by certified technicians.

[1987, c. 493, §7 (AMD) .]

3. **Technician certification.** The department shall promulgate rules providing for the qualifications and certification of technicians to inspect, certify and calibrate equipment capable of emitting ionizing radiation. The rules must also provide for the standardization of calibration equipment, inspection and calibration methodology and reporting procedures. The department may grant, modify or refuse to issue a certification in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375 subchapter 5. The District Court has exclusive jurisdiction to suspend or revoke a certification of any person found guilty of noncompliance with the rules pertaining to inspection, certification and reporting procedures or misrepresentation of inspection findings.

[2009, c. 2, §47 (COR) .]

4. **Failure to comply.** Persons failing to have their equipment inspected, certified and calibrated, as required in subsection 2, shall be subject to the penalties of section 690-A.

[1983, c. 345, §§13, 14 (NEW) .]

SECTION HISTORY
1983, c. 345, §§13,14 (NEW). 1987, c. 493, §7 (AMD). 1987, c. 519, §8 (AMD). 1991, c. 151, §2 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). RR 2009, c. 2, §47 (COR).

§683. RECORDS

The department may require by rule, or order, the keeping of such records with respect to activities under licenses and registration certificates issued pursuant to this Act as may be necessary to effectuate the purposes of this Act. These records shall be made available for inspection by, or copies thereof shall be submitted to, the department. [1983, c. 345, §§13, 14 (NEW).]

SECTION HISTORY
1983, c. 345, §§13,14 (NEW).

§684. FEDERAL - STATE AGREEMENTS

1. **General agreements and contracts.** The Governor, on behalf of this State, may enter into agreements with the United States Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, Section 274b, as amended, providing for discontinuance of certain of the commission's licensing and related regulatory authority with respect to by-product, source and special nuclear materials and the assumption of regulatory authority therefor by this State.

[1983, c. 345, §§13, 14 (NEW) .]

2. **Limited agreements.** The Governor, on behalf of this State, may enter into an agreement with the United States Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, Section 274i, as amended, other federal government agencies, where authorized by law, or other states or interstate agencies, whereby this State will perform on a cooperative basis inspections or other functions relating to control of sources of radiation.

[1983, c. 345, §§13, 14 (NEW) .]

3. **Contracts with federal agencies.** The Governor may, subject to the conditions of Title 5, section 1669 and any other provision of law, execute contracts with appropriate federal officers or agencies relating to radiation hazards.

[1983, c. 345, §§13, 14 (NEW) .]

SECTION HISTORY
1983, c. 345, §§13,14 (NEW).

§685. TRAINING PROGRAMS

The department may institute training programs for the purpose of qualifying personnel to carry out the provisions of this Act, and may make the personnel available for participation in any program or programs of the Federal Government, other states or interstate agencies in furtherance of the purposes of this Act. [1983, c. 345, §§13, 14 (NEW).]

SECTION HISTORY
1983, c. 345, §§13,14 (NEW).

§686. CONFLICTING LAWS

Ordinances, resolutions or regulations, now or hereafter in effect, of the governing body of a municipality or county or of state agencies other than the Department of Health and Human Services relating to by-product, source and special nuclear materials, except as provided in sections 678 and 679, shall not be superseded by this Act, provided that the ordinances or regulations are and continue to be consistent with this Act, amendments thereto and rules thereunder. [1987, c. 493, §8 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY
1983, c. 345, §§13,14 (NEW). 1987, c. 493, §8 (AMD). 2003, c. 689, §B6 (REV).

§687. ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

Administrative procedure and judicial review shall be in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375. [1983, c. 345, §§13, 14 (NEW).]

SECTION HISTORY
1983, c. 345, §§13,14 (NEW).

§688. INJUNCTION PROCEEDINGS; IMPOUNDING

1. **Injunctions.** Whenever, in the judgment of the department, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of this Act, or any rule or order issued thereunder, and at the request of the department, the Attorney General may make application to the Superior Court for an order enjoining those acts or practices, or for an order directing compliance, and, upon a showing by the department that the person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order or other order may be granted.

[1983, c. 345, §§13, 14 (NEW) .]

2. **Impounding.** In accordance with all applicable statutes and regulations, the department may, in the event of an emergency, impound or order the impounding of sources of radiation in the possession of any person who is not equipped to observe or fails to observe the provisions of this Act or any rules issued under this Act.

[1983, c. 345, §§13, 14 (NEW) .]

SECTION HISTORY
1983, c. 345, §§13,14 (NEW).

§689. PROHIBITED USES

Except for consumer products, it is unlawful for any person to use, manufacture, produce, distribute, sell, transport, transfer, install, repair, receive, acquire, own or possess any source of radiation, unless licensed by or registered with the department in conformance with rules, if any, promulgated in accordance with this Act. Notwithstanding this paragraph, licensing or registration of specific consumer products may be required by the department by rule in specified circumstances. [1983, c. 345, §§13, 14 (NEW).]

SECTION HISTORY
1983, c. 345, §§13,14 (NEW).

§690. PENALTIES

1. **Criminal penalties.** A person who intentionally or knowingly:

A. Violates a provision of this Act, or a rule or order of the department in effect pursuant to this Act, commits a Class D crime; or [2003, c. 452, Pt. K, §3 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. Violates a term, condition or limitation of a license or registration certificate issued under this Act, or commits a violation for which a license or registration certificate may be revoked under rules issued pursuant to this Act, commits a Class D crime. [2003, c. 452, Pt. K, §3 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. K, §3 (RPR); 2003, c. 452, Pt. X, §2 (AFF) .]

2. **Civil penalties.** Civil penalties shall be assessed and enforced as follows.

A. Any person who violates any licensing or registration provision of this Act or any rule or order issued under this Act, any term, condition or limitation of any license or registration certificate issued under this Act, or any person who commits any violation for which a license or registration certificate may be revoked, suspended or modified under rules issued pursuant to this Act is subject to a civil penalty, to be imposed by the department, not to exceed $10,000 for each violation or $100,000 for any willful and wanton violation. If any violation is a continuing violation, each day of the violation shall constitute a separate violation for the purpose of computing the applicable civil penalty. The department may compromise, mitigate or remit the penalties. [1987, c. 493, §9 (NEW).]

B. When the department has reason to believe that a person has become subject to the imposition of a civil penalty under the provisions of this section, the department may notify the Attorney General or hold a public hearing. If a hearing is scheduled, the commissioner shall give at least 30 days' written notice to the alleged violator of the date, time and place of that hearing. The notice shall specify the act done or omitted to be done which is claimed to be in violation of law; identify the particular provisions of the section, rule, order or license involved in the violation; and advising of each penalty which the department proposes to impose and its amount. The notice shall be sent by registered or certified mail by the department to the last known address of the person.

Any hearing conducted under the authority of this subsection shall be in accordance with the provisions of the Maine Administrative Procedure Act, Title 5, chapter 375.

At the hearing, the alleged violator may appear in person or by attorney and answer the allegations of violation and file a statement of the facts, including the methods, practices and procedures, if any, adopted or used by him to comply with this chapter and present such evidence as may be pertinent and relevant to the alleged violation. [1987, c. 493, §9 (NEW).]

C. On the request of the department, the Attorney General may institute a civil action to collect a penalty imposed pursuant to this subsection. Only the Attorney General may compromise, mitigate or remit such civil penalties as are referred to him for collection. [1987, c. 493, §9 (NEW).]

D. All money collected from civil penalties shall be paid to the Treasurer of State for deposit in the General Fund. Money collected from civil penalties shall not be used for normal operating expenses of the department, except as appropriations made from the General Fund in the normal budgetary process. [1987, c. 493, §9 (NEW).]

[1987, c. 493, §9 (RPR) .]

SECTION HISTORY
1983, c. 345, §§13,14 (NEW). 1987, c. 493, §9 (AMD). 2003, c. 452, §K3 (AMD). 2003, c. 452, §X2 (AFF).

Chapter 161: NEW ENGLAND HEALTH SERVICES AND FACILITIES COMPACT

Subchapter 1: COMPACT

§691. PURPOSE -- ARTICLE I

(REPEALED)

SECTION HISTORY
1981, c. 703, §A9 (RP).

§692. NEW ENGLAND BOARD OF HEALTH SERVICES AND FACILITIES -- ARTICLE II

(REPEALED)

SECTION HISTORY
1981, c. 703, §A9 (RP).

§693. WHEN OPERATIVE -- ARTICLE III

(REPEALED)

SECTION HISTORY
1981, c. 703, §A9 (RP).

§694. OFFICERS AND DUTIES OF BOARD -- ARTICLE IV

(REPEALED)

SECTION HISTORY
1981, c. 703, §A9 (RP).

§695. POWERS -- ARTICLE V

(REPEALED)

SECTION HISTORY
1981, c. 703, §A9 (RP).

§696. CONTRIBUTION OF STATES -- ARTICLE VI

(REPEALED)

SECTION HISTORY
1981, c. 703, §A9 (RP).

§697. GIFTS AND GRANTS -- ARTICLE VII

(REPEALED)

SECTION HISTORY
1981, c. 703, §A9 (RP).

§698. SEVERABILITY -- ARTICLE VIII

(REPEALED)

SECTION HISTORY
1981, c. 703, §A9 (RP).

§699. WITHDRAWAL -- ARTICLE IX

(REPEALED)

SECTION HISTORY
1981, c. 703, §A9 (RP).

Subchapter 2: PROVISIONS RELATING TO THE COMPACT

§731. EXECUTION BY GOVERNOR

(REPEALED)

SECTION HISTORY
1981, c. 703, §A9 (RP).

§732. ENTRY INTO FORCE; ACTION WITH OTHER STATES

(REPEALED)

SECTION HISTORY
1981, c. 703, §A9 (RP).

§733. MEMBERSHIP

(REPEALED)

SECTION HISTORY
1981, c. 703, §A9 (RP).

§734. APPROPRIATIONS

(REPEALED)

SECTION HISTORY
1981, c. 703, §A9 (RP).

Chapter 163: NEW ENGLAND COMPACT ON RADIOLOGICAL HEALTH PROTECTION

Subchapter 1: COMPACT

§751. PURPOSES -- ARTICLE I

The purposes of this compact are to: [1967, c. 226, (NEW).]

1. **Promote protection.** Promote the radiological health protection of the public and individuals within the party states;

[1967, c. 226, (NEW) .]

2. **Mutual aid.** Provide mutual aid and assistance in radiological health matters including, but not limited to, radiation incidents;

[1967, c. 226, (NEW) .]

3. **Personnel and equipment.** Encourage and facilitate the efficient use of personnel and equipment by furthering the orderly acquisition and sharing of resources useful for programs of radiation protection.

[1967, c. 226, (NEW) .]

SECTION HISTORY
1967, c. 226, (NEW).

§752. ENACTMENT -- ARTICLE II

This compact shall become effective when enacted into law by any 2 or more of the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont. Thereafter it shall become effective with respect to any other aforementioned state upon its enacting this compact into law. Any state not mentioned in this Article which is contiguous to any party state may become a party to this compact by enacting the same. [1967, c. 226, (NEW).]

SECTION HISTORY
1967, c. 226, (NEW).

§753. DUTIES OF STATES -- ARTICLE III

1. **Plan.** It shall be the duty of each party state to formulate and put into effect an intrastate radiation incident plan which is compatible with the interstate radiation incident plan formulated pursuant to this compact.

[1967, c. 226, (NEW) .]

2. **Aid.** Whenever the compact administrator of a party state requests aid from the compact administrator of any other party state pursuant to this compact, it shall be the duty of the requested state to render all possible aid to the requesting state which is consonant with the maintenance of protection of its own people. The compact administrator of a party state may delegate any or all of his authority to request aid or respond to requests for aid pursuant to this compact to one or more subordinates, in order that requests for aid and responses thereto shall not be impeded by reason of the absence of unavailability of the compact administrator. Any compact administrator making such a delegation shall inform all the other compact administrators thereof, and shall inform them of the identity of the subordinate or subordinates to whom the delegation has been made.

[1967, c. 226, (NEW) .]

3. **Personnel and equipment.** Each party state shall maintain adequate radiation protection personnel and equipment to meet normal demands for radiation protection within its borders.

[1967, c. 226, (NEW) .]

SECTION HISTORY
1967, c. 226, (NEW).

§754. LIABILITY -- ARTICLE IV

Whenever the officers or employees of any party state are rendering outside aid pursuant to the request of another party state under this compact, the officers or employees of such state shall, under the direction of the authorities of the state to which they are rendering aid, have the same powers, duties, rights, privileges and immunities as comparable officers and employees of the state to which they are rendering aid. [1967, c. 226, (NEW).]

No party state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on their part while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith. [1967, c. 226, (NEW).]

All liability that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a 3rd state, on account of or in connection with a request for aid, shall be assumed and borne by the requesting state. [1967, c. 226, (NEW).]

Any party state rendering outside aid to cope with a radiation incident shall be reimbursed by the party state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation and maintenance of officers, employees and equipment incurred in connection with such request, provided that nothing herein contained shall prevent any assisting party state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such services to the receiving party state without charge or cost. [1967, c. 226, (NEW).]

Each party state shall provide for the payment of compensation and death benefits to injured officers and employees and the representatives of deceased officers and employees in case officers or employees sustain injuries or are killed while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within the state for or in which the officer or employee was regularly employed. [1967, c. 226, (NEW).]

SECTION HISTORY
1967, c. 226, (NEW).

§755. FACILITIES, EQUIPMENT AND PERSONNEL -- ARTICLE V

Whenever a department, agency or officer of a party state responsible for and having control of facilities or equipment designed for or useful in radiation control, radiation research, or any other phase of a radiological health program or programs, determines that such a facility or item of equipment is not being used to its full capacity by such party state, or that temporarily it is not needed for current use by such state, a department, agency or officer may, upon request of an appropriate department, agency or officer of another party state, make such facility or item of equipment available for use by such requesting department, agency or officer. Unless otherwise required by law, the availability and use resulting therefrom may be with or without charge, at the discretion of the lending department, agency or officer. [1967, c. 226, (NEW).]

Any personal property made available pursuant to this section may be removed to the requesting state, but no such property shall be made available, except for a specified period and pursuant to written agreement. Except when necessary to meet an emergency, no supplies or materials intended to be consumed prior to return shall be made available pursuant to this section. [1967, c. 226, (NEW).]

In recognition of the mutual benefits, in addition to those resulting from Article IV, accruing to the party states from the existence and flexible use of professional or technical personnel having special skills or training related to radiation protection, such personnel may be made available to a party state by appropriate departments, agencies and officers of other party states, provided that the borrower reimburses such party state regularly employing the personnel in question for any cost of making such personnel available, including a prorated share of the salary or other compensation of the personnel involved. [1967, c. 226, (NEW).]

Nothing in this Article shall be construed to limit or to modify in any way Article IV of this compact. [1967, c. 226, (NEW).]

SECTION HISTORY
1967, c. 226, (NEW).

§756. COMPACT ADMINISTRATORS -- ARTICLE VI

Each party state shall have a compact administrator who shall be the head of the state agency having principal responsibility for radiation protection, and who: [1967, c. 226, (NEW).]

1. **Coordinate activities.** Shall coordinate activities pursuant to this compact in and on behalf of his state.

[1967, c. 226, (NEW) .]

2. **Incident plan.** Serving jointly with the compact administrators of the other party states, shall develop and keep current an interstate radiation incident plan, consider such other matters as may be appropriate in connection with programs of cooperation in the field of radiation protection and allied areas of common interest, and formulate procedures for claims and reimbursement under Article IV.

[1967, c. 226, (NEW) .]

SECTION HISTORY
1967, c. 226, (NEW).

§757. OTHER RESPONSIBILITIES AND ACTIVITIES -- ARTICLE VII

Nothing in this compact shall be construed to: [1967, c. 226, (NEW).]

1. **Protection program.** Authorize or permit any party state to curtail or diminish its radiation protection program, equipment, services or facilities.

[1967, c. 226, (NEW) .]

2. **Health protection.** Limit or restrict the powers of any state ratifying the same to provide for the radiological health protection of the public and individuals, or to prohibit the enactment or enforcement of state laws, rules or regulations intended to provide for such radiological health protection.

[1967, c. 226, (NEW) .]

3. **Existing arrangements.** Affect any existing or future cooperative relationship or arrangement between Federal, State or local governments and a party state or states.

[1967, c. 226, (NEW) .]

SECTION HISTORY
1967, c. 226, (NEW).

§758. WITHDRAWAL -- ARTICLE VIII

Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal. [1967, c. 226, (NEW).]

SECTION HISTORY
1967, c. 226, (NEW).

§759. CONSTRUCTION AND SEVERABILITY -- ARTICLE IX

It is the legislative intent that the provisions of this compact be reasonably and liberally construed. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be unconstitutional or the applicability thereof, to any state, agency, person or circumstance is held invalid, the constitutionality of the remainder of this compact and the applicability thereof, to any other state, agency, person or circumstance shall not be affected thereby. [1967, c. 226, (NEW).]

SECTION HISTORY
1967, c. 226, (NEW).

Subchapter 2: PROVISIONS RELATING TO THE COMPACT

§760. RADIATION INCIDENT PLAN

The Commissioner of Health and Human Services shall formulate and keep current a radiation incident plan for this State, in accordance with the duty assumed pursuant to Article III, subsection 1 of the compact. [1975, c. 293, §4 (AMD); 2003, c. 689, Pt. B, §7 (REV).]

SECTION HISTORY
1967, c. 226, (NEW). 1975, c. 293, §4 (AMD). 2003, c. 689, §B7 (REV).

§761. COMPACT ADMINISTRATOR FOR MAINE

The compact administrator for this State, as required by Article VI of the compact, shall be the Commissioner of Health and Human Services. [1975, c. 293, §4 (AMD); 2003, c. 689, Pt. B, §7 (REV).]

SECTION HISTORY
1967, c. 226, (NEW). 1975, c. 293, §4 (AMD). 2003, c. 689, §B7 (REV).

Chapter 165: RADON REGISTRATION ACT

§771. SHORT TITLE

This chapter may be known and cited as the "Radon Registration Act." [1989, c. 657, §1 (NEW).]

SECTION HISTORY
1989, c. 657, §1 (NEW).

§772. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1989, c. 657, §1 (NEW).]

1. **Associated radiological concerns.** "Associated radiological concerns" means radioactive elements other than radon, including, but not limited to, radium, thorium, uranium and their respective decay products.

[1989, c. 657, §1 (NEW) .]

2. **Authorized radon testing device.** "Authorized radon testing device" means a device that:

A. Collects radon or its decay products; [1989, c. 657, §1 (NEW).]

B. Requires analysis by an independent measuring facility or is a continuous monitoring device; and [1989, c. 657, §1 (NEW).]

C. Has been determined to meet the proficiency requirements as determined by the department through rule. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [2001, c. 574, §8 (AMD).]

[2001, c. 574, §8 (AMD) .]

3. **Division.** "Division" means the division of environmental health within the Department of Health and Human Services.

[2011, c. 144, §1 (RPR) .]

4. **Listed facility.** "Listed facility" means a radon testing facility that is designated as providing radon analysis services and that has proven its proficiency to the department.

[1999, c. 76, §2 (AMD) .]

5. **Radon.** "Radon" means the radioactive gaseous element and its decay products produced by the disintegration of the element radium in air, water, soil or other media.

[1989, c. 657, §1 (NEW) .]

6. **Radon testing services.** "Radon testing services" means providing, for remuneration, determination of radon levels or analysis of an authorized radon testing device. This term includes those services provided by listed facilities.

[1989, c. 657, §1 (NEW) .]

SECTION HISTORY
1989, c. 657, §1 (NEW). 1999, c. 76, §§1,2 (AMD). 2001, c. 574, §8 (AMD). 2003, c. 689, §B6 (REV). 2011, c. 144, §1 (AMD).

§773. LEAD AGENCY

The division is the lead agency having primary responsibility for programs related to radon and associated radiological concerns. The division shall register firms, including listed facilities, and individuals who test for the presence of radon or associated radiological concerns or who provide consulting, construction or other remedial services for reducing the levels of radon or associated radiological concerns. The division may facilitate functions including, but not limited to, education, funding, liaison, technology transfer and training with the United States Environmental Protection Agency or other federal or state agencies. The division also serves as an information clearinghouse for radon and associated radiological concerns by maintaining records and disseminating information to educate the public about radon, describing technical assistance programs and interpreting test results as appropriate. [1989, c. 657, §1 (NEW).]

SECTION HISTORY
1989, c. 657, §1 (NEW).

§774. RADON TESTING; REGISTRATION REQUIRED

A person may not perform, evaluate or advertise to perform or evaluate tests for the presence of radon in buildings or on building lots unless registered with the division. This registration requirement includes without limitation a person whose place of business is located in the State, or in another state, who offers radon testing services to residents of the State either directly or through the mail. [1989, c. 657, §1 (NEW).]

SECTION HISTORY
1989, c. 657, §1 (NEW).

§775. RADON MITIGATION; REGISTRATION REQUIRED

A person may not offer advice or plans to reduce the level of radon in new or existing structures or contract to modify an existing structure in a manner intended to reduce the level of radon unless registered with the division. [2011, c. 144, §2 (AMD).]

SECTION HISTORY
1989, c. 657, §1 (NEW). 2011, c. 144, §2 (AMD).

§776. EXEMPTIONS

The requirements of sections 774 and 775 do not apply to any of the following: [1989, c. 657, §1 (NEW).]

1. **Personal use.** A person performing testing or mitigation on a building owned or inhabited by that person but not for sale at the time that person performs testing or mitigation on that building;

[2001, c. 574, §9 (AMD) .]

2. **New construction.** A builder utilizing preventive or safeguarding measures in new construction as specified in the Maine Uniform Building and Energy Code, adopted pursuant to Title 10, chapter 1103;

[2011, c. 144, §3 (AMD) .]

3. **Department employees.** Employees of the department in the course of their assigned duties; or

[1989, c. 657, §1 (NEW) .]

4. **Authorized personnel.** A person performing testing with the written approval of the department. Registration under section 774 or 775 does not constitute written approval for the purposes of this subsection.

[1989, c. 657, §1 (NEW) .]

SECTION HISTORY
1989, c. 657, §1 (NEW). 2001, c. 574, §9 (AMD). 2011, c. 144, §3 (AMD).

§777. USE OF LISTED FACILITIES

Any person who is required to register under section 774 or 775 shall use only authorized radon testing devices and shall have these devices analyzed by a listed facility. When disclosing test results, any person registered under section 774 or 775 shall provide in writing the name and address of the listed facility that performed the analysis. [1991, c. 2, §74 (COR).]

SECTION HISTORY
1989, c. 657, §1 (NEW). RR 1991, c. 2, §74 (COR).

§778. REPORTS

A person registered under section 774 or 775 shall, within 45 days of the date the services are provided, notify the department in writing of the street address and zip code of the client and the results of any tests performed. The department may, by rule, specify an alternative notification procedure and notification period and any additional data required in the report. [2009, c. 278, §2 (AMD).]

SECTION HISTORY
1989, c. 657, §1 (NEW). RR 1991, c. 2, §75 (COR). 2009, c. 278, §2 (AMD).

§779. ADVERTISING

A person may not advertise any radon testing device as "State-approved," "approved by the State of Maine" or by use of any phrases with similar meaning or content. This restriction also applies to any reference denoting municipal approval. [1989, c. 657, §1 (NEW).]

SECTION HISTORY
1989, c. 657, §1 (NEW).

§780. FEES

The department shall determine a schedule of fees to defray the costs of the registration programs established in sections 774 and 775. Fees may not exceed $150 for registrants under section 774 or $75 for registrants under section 775. The fees collected must be placed in the Radon Relief Fund established in section 784. The fee schedule must provide for initial registration and biennial registration fees. [1989, c. 657, §1 (NEW).]

SECTION HISTORY
1989, c. 657, §1 (NEW).

§781. RULES

The department shall adopt rules, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, necessary to administer and enforce this chapter. Rules must address, but are not limited to, minimal training requirements for registration, periodic reregistration, performance standards, reports, truth-in-advertising requirements and criteria and procedures for revoking registrations. [1989, c. 657, §1 (NEW).]

SECTION HISTORY
1989, c. 657, §1 (NEW).

§782. PENALTIES

Any person failing to register pursuant to section 774 or 775, commits a civil violation for which a forfeiture not to exceed $500 may be adjudged. Any person in violation of section 777, 778 or 779 commits a civil violation for which a forfeiture not to exceed $250 per violation may be adjudged. Any person who engages in radon testing, advertising or mitigation in violation of this chapter is also in violation of Title 5, chapter 10. [1989, c. 657, §1 (NEW).]

SECTION HISTORY
1989, c. 657, §1 (NEW).

§783. REGISTRATION REVOKED

The department may revoke, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, the registration of any person found in violation of this chapter. [1989, c. 657, §1 (NEW).]

SECTION HISTORY
1989, c. 657, §1 (NEW).

§784. RADON RELIEF FUND

The Radon Relief Fund is established as a nonlapsing fund to support the radon-related research, testing, educational and mitigation activities of the division. Funds received from registrations under sections 774 and 775 and any other miscellaneous sources of income are deposited in the fund. The division shall administer the fund. Funds in the Radon Relief Fund must be deposited with the Treasurer of State to the credit of the fund and may be invested as provided by law. Interest on these investments must be credited to the fund. [1989, c. 657, §1 (NEW).]

SECTION HISTORY
1989, c. 657, §1 (NEW).

Part 3: PUBLIC HEALTH

Chapter 250: CONTROL OF NOTIFIABLE DISEASES AND CONDITIONS

Subchapter 1: DEFINITIONS; RULES; PENALTIES; INSPECTIONS; GENERAL AUTHORITY

§801. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1989, c. 487, §11 (NEW).]

1. **Commissioner.** "Commissioner" means the Commissioner of Health and Human Services.

[1989, c. 487, §11 (NEW); 2003, c. 689, Pt. B, §7 (REV) .]

2. **Communicable disease.** "Communicable disease" means an illness or condition due to a specific infectious agent or its toxic products which arises through transmission of that agent or its products from a reservoir to a susceptible host.

[1989, c. 487, §11 (NEW) .]

3. **Contact notification program.** "Contact notification program" means a program coordinated by the department to encourage any person infected with a communicable disease to identify others who may be at risk as a result of contact with the infected person; or to permit the department to notify those persons who may be at risk to inform them of the risk if the infected person refuses to cooperate.

[1989, c. 487, §11 (NEW) .]

4. **Department.** "Department" means the Department of Health and Human Services.

[1989, c. 487, §11 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

4-A. **Extreme public health emergency.** "Extreme public health emergency" means the occurrence or imminent threat of widespread exposure to a highly infectious or toxic agent that poses an imminent threat of substantial harm to the population of the State.

[2001, c. 694, Pt. B, §1 (NEW); 2005, c. 383, §24 (AFF) .]

4-B. **Environmental disease.** "Environmental disease" means any abnormal condition or disorder aggravated or caused by exposure to an environmental hazard.

[2005, c. 383, §2 (NEW) .]

4-C. **Environmental hazard.** "Environmental hazard" means chemicals, physical agents, biomechanical stressors and biological toxins that are present in the environment and that have an adverse effect on human health.

[2005, c. 383, §2 (NEW) .]

4-D. **Environmentally related health effects.** "Environmentally related health effects" means chronic diseases, birth defects, developmental disabilities and other noninfectious health effects that may be related to exposure to environmental hazards.

[2005, c. 383, §2 (NEW) .]

4-E. **Exposure.** "Exposure" means direct contact or interaction with an environmental hazard or toxic agent affecting or being taken into the body.

[2005, c. 383, §2 (NEW) .]

5. **Infected person.** "Infected person" means a person who is diagnosed as having a communicable disease or who, after appropriate medical evaluation or testing, is determined to harbor an infectious agent.

[1989, c. 487, §11 (NEW) .]

6. **Local health officer.** " Local health officer" means a person who is a municipal official appointed pursuant to section 451 and who is authorized by the department to enforce this chapter.

[2007, c. 598, §9 (AMD) .]

7. **Notifiable disease or condition.** "Notifiable disease or condition" means any communicable disease, occupational disease or environmental disease, the occurrence or suspected occurrence of which is required to be reported to the department pursuant to sections 821 to 825 or section 1493.

[2005, c. 383, §3 (AMD) .]

8. **Occupational disease.** "Occupational disease" shall have the meaning set forth in section 1491.

[1989, c. 487, §11 (NEW) .]

8-A. **Prescribed care.** "Prescribed care" means isolation, quarantine, examination, vaccination, medical care or treatment ordered by the department or a court pursuant to section 820.

[2001, c. 694, Pt. B, §2 (NEW); 2005, c. 383, §24 (AFF) .]

9. **Property.** "Property" means animals, inanimate objects, vessels, public conveyances, buildings and all other real or personal property.

[1989, c. 487, §11 (NEW) .]

10. **Public health threat.** "Public health threat" means any condition or behavior that can reasonably be expected to place others at significant risk of exposure to a toxic agent or environmental hazard or infection with a notifiable disease or condition.

A. A condition poses a public health threat if an infectious or toxic agent or environmental hazard is present in the environment under circumstances that would place persons at significant risk of an adverse effect on a person's health from exposure to or infection with a notifiable disease or condition. [2005, c. 383, §4 (AMD).]

B. Behavior by an infected person poses a public health threat if:

(1) The infected person engages in behavior that has been demonstrated epidemiologically to create a significant risk of transmission of a communicable disease;

(2) The infected person's past behavior indicates a serious and present danger that the infected person will engage in behavior that creates a significant risk of transmission of a communicable disease to another;

(3) The infected person fails or refuses to cooperate with a departmental contact notification program; or

(4) The infected person fails or refuses to comply with any part of either a cease and desist order or a court order issued to the infected person to prevent transmission of a communicable disease to another. [1989, c. 487, §11 (NEW).]

C. Behavior described in paragraph B, subparagraphs (1) and (2) may not be considered a public health threat if the infected person demonstrates that any other person placed at significant risk of becoming infected with a communicable disease was informed of the risk and consented to it. [2005, c. 383, §4 (AMD).]

[2005, c. 383, §4 (AMD) .]

11. **Toxic agent.** "Toxic agent" means a chemical or physical substance that, under certain circumstances of exposure, may cause harmful effects to living organisms.

[2005, c. 383, §5 (NEW) .]

SECTION HISTORY
1989, c. 487, §11 (NEW). 2001, c. 694, §§B1,2 (AMD). 2001, c. 694, §B6 (AFF). 2003, c. 366, §1 (AFF). 2003, c. 689, §§B6,7 (REV). 2005, c. 383, §§2-5 (AMD). 2005, c. 383, §24 (AFF). 2007, c. 598, §9 (AMD).

§802. AUTHORITY OF DEPARTMENT

1. **Authority.** To carry out this chapter, the department may:

A. Designate and classify communicable, environmental and occupational diseases; [2005, c. 383, §6 (AMD).]

B. Establish requirements for reporting and other surveillance methods for measuring the occurrence of communicable, occupational and environmental diseases and the potential for epidemics; [2005, c. 383, §6 (AMD).]

C. Investigate cases, epidemics and occurrences of communicable, environmental and occupational diseases; and [2005, c. 383, §6 (AMD).]

D. Establish procedures for the control, detection, prevention and treatment of communicable, environmental and occupational diseases, including public immunization and contact notification programs. [2005, c. 383, §6 (AMD).]

[2005, c. 383, §6 (AMD) .]

2. **Health emergency.** In the event of an actual or threatened epidemic or public health threat, the department may declare that a health emergency exists and may adopt emergency rules for the protection of the public health relating to:

A. Procedures for the isolation and placement of infected persons for purposes of care and treatment or infection control; [1989, c. 487, §11 (NEW).]

B. Procedures for the disinfection, seizure or destruction of contaminated property; and [1989, c. 487, §11 (NEW).]

C. The establishment of temporary facilities for the care and treatment of infected or exposed persons, which are subject to the supervision and regulations of the department and to the limitations set forth in section 807. [2005, c. 383, §7 (AMD).]

[2005, c. 383, §7 (AMD) .]

2-A. **Declaration of extreme public health emergency by Governor.** The Governor may declare an extreme public health emergency pursuant to this chapter and Title 37-B, chapter 13, subchapter II.

[2001, c. 694, Pt. B, §3 (NEW); 2005, c. 383, §24 (AFF) .]

3. **Rules.** The department shall adopt rules to carry out its duties as specified in this chapter. The application of rules adopted pursuant to Title 5, section 8052 to implement section 820 must be limited to periods of an extreme public health emergency. Rules adopted pursuant to this subsection, unless otherwise indicated, are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 383, §8 (AMD); 2005, c. 383, §24 (AFF) .]

4. **Immunization required.**

[2001, c. 185, §1 (RP) .]

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

A. "Designated health care facility" means a licensed nursing facility, residential care facility, intermediate care facility for persons with intellectual disabilities, multi-level health care facility, hospital or home health agency. [2011, c. 542, Pt. A, §25 (AMD).]

B. "Disease" means one of those conditions enumerated in rules adopted by the department that may be preventable by an immunizing agent. [2001, c. 185, §2 (NEW).]

C. "Employee" means any person who performs a service for wages or other remuneration for a designated health care facility. [2001, c. 185, §2 (NEW).]

D. "Immunizing agent" means a vaccine, antitoxin or other substance used to increase an individual's immunity to a disease. [2001, c. 185, §2 (NEW).]

[2011, c. 542, Pt. A, §25 (AMD) .]

4-B. **Exemptions to immunization.** Employees are exempt from immunization otherwise required by this subchapter or by rules adopted by the department pursuant to this section under the following circumstances.

A. A medical exemption is available to an employee who provides a physician's written statement that immunization against one or more diseases may be medically inadvisable. [2001, c. 185, §2 (NEW).]

B. A religious or philosophical exemption is available to an employee who states in writing a sincere religious or philosophical belief that is contrary to the immunization requirement of this subchapter. [2001, c. 185, §2 (NEW).]

C. An exemption is available to an individual who declines hepatitis B vaccine, as provided for by the relevant law and regulations of the federal Department of Labor, Occupational Health and Safety Administration. [2001, c. 185, §2 (NEW).]

[2001, c. 185, §2 (NEW) .]

5. **Immunization requirements for nursing facility staff.** A nursing facility or licensed assisted living facility shall adopt a facility policy that recommends and offers annual immunizations against influenza to all personnel who provide direct care to residents of the facility.

[1999, c. 378, §2 (NEW) .]

6. **Acceptance of funds.** The department is authorized to accept any public or private funds that may be available to create a supply or stockpile of antiviral medications, influenza vaccines or other items necessary in the event of a severe outbreak of influenza or an outbreak of another infectious disease.

[2007, c. 240, Pt. UU, §1 (NEW) .]

SECTION HISTORY
1989, c. 487, §11 (NEW). 1999, c. 378, §§1,2 (AMD). 2001, c. 185, §§1,2 (AMD). 2001, c. 694, §§B3,4 (AMD). 2001, c. 694, §B6 (AFF). 2003, c. 366, §1 (AFF). 2005, c. 383, §§6-8 (AMD). 2005, c. 383, §24 (AFF). 2007, c. 240, Pt. UU, §1 (AMD). 2011, c. 542, Pt. A, §25 (AMD).

§803. INSPECTION

If the department has reasonable grounds to believe that there exists a public health threat, either on public or private property, a duly authorized agent of the department may enter any place, building, vessel, aircraft or common carrier with the permission of the owner, agent or occupant where the public health threat is reasonably believed to exist and may inspect and examine the same. If entry is refused, that agent shall apply for an inspection warrant from the District Court pursuant to Title 4, section 179, prior to conducting the inspection. [2005, c. 383, §9 (AMD).]

SECTION HISTORY
1989, c. 487, §11 (NEW). 2005, c. 383, §9 (AMD).

§804. PENALTIES

1. **Rules enforced.** All agents of the department, local health officers, sheriffs, state and local law enforcement officers and other officials designated by the department are authorized to enforce the rules of the department made pursuant to section 802 to the extent that enforcement is authorized in those rules.

[2007, c. 598, §10 (AMD) .]

2. **Refusal to obey rules.** Any person who neglects, violates or refuses to obey the rules or who willfully obstructs or hinders the execution of the rules, may be ordered by the department, in writing, to cease and desist. This order shall not be considered an adjudicatory proceeding within the meaning of the Maine Administrative Procedure Act, Title 5, chapter 375. In the case of any person who refuses to obey a cease and desist order issued to enforce the rules adopted pursuant to section 802, the department may bring an action in District Court to obtain an injunction enforcing the cease and desist order or to request a civil fine not to exceed $500, or both. Alternatively, the department may seek relief pursuant to section 810 or 812. The District Court shall have jurisdiction to determine the validity of the cease and desist order whenever an action for injunctive relief or civil penalty is brought before it under this subsection.

[1989, c. 487, §11 (NEW) .]

SECTION HISTORY
1989, c. 487, §11 (NEW). 2007, c. 598, §10 (AMD).

§805. COURT ORDERS

Upon complaint made to any judge of the District Court, the judge may issue any order enforcing a subpoena, warrant or prior order necessary for the proper enforcement of this chapter and of the rules promulgated pursuant to this chapter. [1989, c. 487, §11 (NEW).]

SECTION HISTORY
1989, c. 487, §11 (NEW).

§806. EXCLUSION FROM SCHOOL

1. **Dismissal.** In the event of an actual or threatened outbreak of a communicable disease or other public health threat, the department may order that any person attending or working in a school or day care facility be excluded until the department determines that a public health threat no longer exists.

[2005, c. 383, §10 (AMD) .]

2. **Exclusion.** The department may exclude any infected person from attending or working in a school or day care facility if that infected person poses a public health threat. An individual excluded pursuant to this subsection shall be permitted to return to the school or day care facility after the department, in consultation with the physician responsible for the individual's care, determines that return is permissible and will not pose a threat to the public health. The department shall notify the superintendent or day care facility administrator of that determination.

[1989, c. 487, §11 (NEW) .]

SECTION HISTORY
1989, c. 487, §11 (NEW). 2005, c. 383, §10 (AMD).

Subchapter 2: CONTROL MEASURES

§807. CONTROL OF COMMUNICABLE DISEASES

The department may establish procedures for agents of the department to use in the detection, contacting, education, counseling and treatment of individuals having or reasonably believed to have a communicable disease. The procedures shall be adopted in accordance with the requirements of this chapter and with the rules adopted under section 802. [1989, c. 487, §11 (NEW).]

For purposes of carrying out this chapter, the department may designate facilities and private homes for the confinement and treatment of infected persons posing a public health threat. The department may designate any such facility in any hospital or other public or private institution, other than a jail or correctional facility. Designated institutions must have necessary clinic, hospital or confinement facilities as may be required by the department. The department may enter into arrangements for the conduct of these facilities with public officials or persons, associations or corporations in charge of or maintaining and operating these institutions. [2005, c. 383, §11 (AMD).]

SECTION HISTORY
1989, c. 487, §11 (NEW). 2005, c. 383, §11 (AMD).

§808. INVESTIGATIONS

1. **Investigative team.** The department shall establish an investigative team and procedures for the detection and treatment of individuals known or reasonably believed to pose a public health threat, as defined in section 801. Team members designated by the department shall have access to medical and laboratory records relevant to the investigation of the public health threat, according to the procedure set forth in subsection 2. Team members shall also have access to medical and laboratory records in the possession of the department when relevant to the investigation of the public health threat. Team members designated by the department shall follow the procedures developed by the department for detection and treatment pursuant to this subsection.

[1989, c. 487, §11 (NEW) .]

2. **Subpoenas.** After notice to the subject of the information or records, the department, with the approval of the Attorney General, may issue subpoenas requiring persons to disclose or provide to the department information or records in their possession that are relevant to an investigation of a report of a public health threat. Approval of the Attorney General may be given when there is clear evidence of substantial public health need for the information sought. The department may apply to the District Court to enforce a subpoena. A person who complies with a subpoena is immune from civil or criminal liability that might otherwise result from the act of turning over or providing information or records to the department.

[1989, c. 487, §11 (NEW) .]

SECTION HISTORY
1989, c. 487, §11 (NEW).

§809. EXAMINATION

If, based on epidemiologic evidence or medical evaluation, the department finds probable cause to believe that an individual has a communicable disease and that the individual is unwilling to submit to a physical examination, which may include x-ray studies or other diagnostic studies, as requested by the department, or that the individual refuses to make the results of that examination available to the department, the department may petition the District Court of the district in which the individual resides or is found for an order directing that examination, or the release of the results, under conditions to prevent the conveyance of the disease or infectious agent to other individuals. The petition shall be accompanied by an affidavit or affidavits based upon the investigation of the department supporting the allegations in the petition. [1989, c. 487, §11 (NEW).]

If, following a hearing as provided in section 811, the District Court finds by a preponderance of the evidence that there is probable cause to believe that an individual has a communicable disease, and that the individual has willfully refused the department's request, the District Court shall order the examination of the individual. [1989, c. 487, §11 (NEW).]

SECTION HISTORY
1989, c. 487, §11 (NEW).

§810. EMERGENCY TEMPORARY CUSTODY

Upon the department's submission of an affidavit showing by clear and convincing evidence that the person or property which is the subject of the petition requires immediate custody in order to avoid a clear and immediate public health threat, a judge of the District Court or justice of the Superior Court may grant temporary custody of the subject of the petition to the department and may order specific emergency care, treatment or evaluation. [1989, c. 487, §11 (NEW).]

1. **Orders; ex parte proceedings.** Orders under this section may be issued in an ex parte proceeding upon an affidavit which sets forth specific facts of the reasons that prior notice cannot or should not be given, upon which facts the order is sought. An ex parte order may not include orders for emergency care, treatment or evaluation unless the court finds by clear and convincing evidence that such care, treatment or evaluation is immediately necessary. An ex parte order must be served on the subject of the petition immediately upon apprehension.

[1989, c. 487, §11 (NEW) .]

2. **Hearing within time certain.** Unless waived in writing by the individual, after opportunity to consult with an attorney, a hearing shall be held within 72 hours of apprehension, exclusive of Saturdays, Sundays and legal holidays, to determine whether the individual shall remain in the department's custody.

[1989, c. 487, §11 (NEW) .]

3. **Notice of hearing.** Notice of the hearing must be served upon the individual held under this section at least 24 hours before the hearing and the notice must specify: the time, date and place of the hearing; the grounds and underlying fact upon which the emergency hold is sought; the individual's right to appear at the hearing and to present and cross-examine witnesses; and the individual's right to counsel pursuant to section 811.

[1989, c. 487, §11 (NEW) .]

4. **Duration.** In no event may the emergency hold continue longer than 5 days following the hearing, unless a petition for court ordered commitment is filed under section 812, subsection 1, paragraph F; if a petition is filed, the limitations imposed by the court under this subsection may continue until a hearing on the petition for commitment is held; that hearing must occur within 10 days of the filing of the petition, excluding Saturdays, Sundays and legal holidays.

[1989, c. 487, §11 (NEW) .]

SECTION HISTORY
1989, c. 487, §11 (NEW).

§811. COURT PROCEDURES

1. **Subject of petition.** As used in this section or in section 810, "subject of the petition" means the person or the property upon which a public health measure is sought to be imposed pursuant to section 812.

[1989, c. 487, §11 (NEW) .]

2. **Filing of petition.** Proceedings for imposing a public health measure shall be initiated by the department filing a petition in the District Court for the district in which the subject of the petition is located. The petition shall name as the respondent the person who is the subject of the petition or the person who possesses the property which is the subject of the petition. The petition shall contain a summary statement of the facts which the petitioner believes constitute the grounds for granting relief pursuant to this chapter.

[1989, c. 487, §11 (NEW) .]

3. **Receipt of petition.** Upon the receipt of a petition filed pursuant to this section or section 809, the District Court shall fix a date of hearing. Pending hearing on the petition, the court may make such orders as it deems necessary to protect other individuals from the dangers of infection.

[1989, c. 487, §11 (NEW) .]

4. **Notice of hearing; waiver.** Notice of the petition and the time and place of the hearing as well as the opportunity to be represented by counsel as set forth in subsection 6, paragraph C shall be served personally, not less than 3 days before the hearing, on the subject of the petition. The subject of the petition may waive notice of hearing, after opportunity to consult with an attorney, and upon filing of the waiver in writing, the District Court may hear the petition immediately. The hearing must occur within 10 days of the filing of the petition, excluding Saturdays, Sundays and legal holidays, unless waived in writing by the subject of the petition.

[1989, c. 487, §11 (NEW) .]

5. **Notice to facility.** Whenever a petition requests that an individual be ordered to be tested in or committed to a hospital, notice of the petition and the time and place of the hearing shall be sent to the hospital which is to be requested to provide the proposed care and treatment. No hospital may be required to provide care and treatment to or to admit the individual named in the petition without the consent of the hospital.

[1989, c. 487, §11 (NEW) .]

6. **Hearings.** Hearings under this chapter shall be governed by the Maine Rules of Civil Procedure and the Maine Rules of Evidence.

A. The subject of the petition, the petitioner and all other persons to whom notice is required to be sent shall be afforded an opportunity to appear at the hearing to testify and to present and cross-examine witnesses. [1989, c. 487, §11 (NEW).]

B. The court may, in its discretion, receive the testimony of any other person and may subpoena any witness. [1989, c. 487, §11 (NEW).]

C. The subject of the petition shall be afforded an opportunity to be represented by counsel and, if the subject is indigent and requests counsel, the court shall appoint counsel. [1989, c. 487, §11 (NEW).]

D. An electronic recording shall be made of the proceedings and all hearings under this section. The record and all notes, exhibits and other evidence shall be confidential. [1989, c. 487, §11 (NEW).]

E. The hearing shall be confidential and no report of the proceedings may be released to the public, except by permission of the subject of the petition or the subject's counsel and with approval of the presiding District Court judge, except that the court may order a public hearing on the request of the subject of the petition or the subject's counsel. [1989, c. 487, §11 (NEW).]

[1989, c. 487, §11 (NEW) .]

7. **Equitable relief.** The District Court shall have original jurisdiction to grant equitable relief in proceedings brought pursuant to this chapter.

[1989, c. 487, §11 (NEW) .]

SECTION HISTORY
1989, c. 487, §11 (NEW).

§812. PUBLIC HEALTH MEASURES

1. **Court order.** If, based upon clear and convincing evidence, the court finds that a public health threat exists, the court shall issue the requested order for treatment or such other order as may direct the least restrictive measures necessary to effectively protect the public health. These measures include, but are not limited to:

A. Participation in an education program designated or developed in accordance with rules adopted pursuant to section 802 or 807; [1989, c. 487, §11 (NEW).]

B. Participation in a counseling program designated or developed in accordance with rules adopted pursuant to section 802 or 807; [1989, c. 487, §11 (NEW).]

C. Participation in a treatment program designated or developed in accordance with rules adopted pursuant to section 802 or 807; [1989, c. 487, §11 (NEW).]

D. Appearance before designated health officials for purposes of monitoring measures set out in paragraph A, B or C; [1989, c. 487, §11 (NEW).]

E. Part or full-time supervision or monitoring for a period and under conditions set by the court; [1989, c. 487, §11 (NEW).]

F. Commitment to a facility that will provide appropriate diagnosis, care, treatment or isolation of the individual without undue risk to the public health, for a period not to exceed 30 days and under conditions set by the court; [1989, c. 487, §11 (NEW).]

G. Undergoing a comprehensive medical assessment by the State Forensic Service. The court, in selecting the examination site, shall consider proximity to the court, availability of an examiner and the need to protect the public health. No person may be presented for examination under this subsection without arrangements for examination having first been made by the court, clerk of the court or the petitioner with the State Forensic Service. The opinion of the State Forensic Service must be reported to the court forthwith following the examination.

The court shall order the individual to be further examined by a psychiatrist, neurologist and any additional expert if, based on the report of the State Forensic Service, it appears that:

(1) The individual suffers from a mental disease or defect that causes the individual to act in such a manner as to endanger others with risk of infection with a communicable disease; or

(2) Further observation or examination is required.

If, based on the examinations, the department determines that admission to an appropriate institution for persons with mental illness or a residential program for persons with intellectual disabilities is necessary, it shall petition for involuntary hospitalization pursuant to Title 34-B, chapter 3. If the District Court orders the involuntary hospitalization of the individual pursuant to Title 34-B, chapter 3, the petition brought pursuant to section 811 must be dismissed without prejudice. If it is determined that admission to an appropriate institution for persons with mental illness or a residential program for persons with intellectual disabilities is not necessary, the head of the institution where the examinations have taken place shall notify the commissioner or the commissioner's designee, prior to discharging the respondent.

In no event may the period of examination pursuant to this subsection exceed 60 days without further order by the court, which may extend commitment for further observation or examination for an additional 60 days, provided that the court finds facts sufficient to show that the individual suffers from a mental disease or defect that causes the individual to act in such a manner as to endanger others with risk of infection with a communicable disease; and [2011, c. 542, Pt. A, §26 (AMD).]

H. Compliance with any combination of measures outlined in paragraphs A to G, or other measures considered just by the court. [1989, c. 487, §11 (NEW).]

[2011, c. 542, Pt. A, §26 (AMD) .]

2. **Time limits.** Orders issued pursuant to subsection 1, paragraphs A to E shall not exceed 180 days without further review as provided by section 813, subsection 1. If commitment pursuant to subsection 1, paragraph F, is sought by the department beyond the original 30 days, the department shall file a motion for review pursuant to section 813, subsection 2.

[1989, c. 487, §11 (NEW) .]

3. **Appeals.** Orders issued pursuant to this chapter may be appealed to the Superior Court.

A. The order of the District Court shall remain in effect pending appeal, unless stayed by the Superior Court. [1989, c. 487, §11 (NEW).]

B. The Supreme Judicial Court shall, by rule, provide for expedited appellate review of cases appealed under this chapter. [1989, c. 487, §11 (NEW).]

[1989, c. 487, §11 (NEW) .]

SECTION HISTORY

1989, c. 487, §11 (NEW). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 383, §12 (AMD). 2011, c. 542, Pt. A, §26 (AMD).

§813. REVIEW

1. **Treatment orders.** If the department determines that it is necessary to continue a treatment order issued pursuant to section 812, subsection 1, paragraphs A to E, it shall petition the District Court which ordered the disposition for review of the original order. The court shall hold a hearing in accordance with section 811 and if the court finds that a public health threat would continue in the absence of a public health measure, it shall make additional orders that it deems necessary, provided that no treatment order exceeds 180 days in duration without further review by the court.

[1989, c. 487, §11 (NEW) .]

2. **Commitment orders.** If the department determines that it is necessary to continue a commitment order issued pursuant to section 812, subsection 1, paragraph F, beyond the original 30 days, it shall petition the District Court which ordered the disposition for review of the original order. The court shall hold a hearing in accordance with section 811 and if the court finds that a public health threat would continue in the absence of a public health measure and that commitment is the least restrictive measure necessary to effectively protect the public health, it shall make such additional orders as it deems necessary, provided that no order of commitment exceeds 90 days without further review by the court.

The committed patient may request the appointment of a medical review board. Upon motion of the patient, the committing court shall appoint a medical review board to determine whether the patient's medical status permits termination of the commitment. The medical review board shall consist of 3 physicians appointed by the court who shall have training and experience in the treatment of the communicable disease. Upon the request of the patient, the court shall appoint as one member of the board a physician who has training and experience in the treatment of communicable diseases who is selected by the patient. Upon receipt of the findings of the medical review board and any other evidence, the court, after a hearing pursuant to this subsection, may continue or terminate the commitment.

[1989, c. 487, §11 (NEW) .]

SECTION HISTORY
1989, c. 487, §11 (NEW).

§814. COURT ORDERS; ADDITIONAL REQUIREMENTS

If commitment or a supervised living arrangement is ordered, the court shall require the head of the institutional facility or the person in charge of supervision to submit: [1989, c. 487, §11 (NEW).]

1. **Plan of treatment.** A plan of treatment within 10 days of the commencement of the commitment or supervision; and

[1989, c. 487, §11 (NEW) .]

2. **Written report.** A written report, with a copy to both the department and the individual, at least 20 days, but not more than 25 days, from the start of the commitment or supervision, setting forth the following:

A. The types of support or therapy groups, if any, which the individual is attending and how often the individual attends; [1989, c. 487, §11 (NEW).]

B. The type of care or treatment the individual is receiving and what future care is necessary; [1989, c. 487, §11 (NEW).]

C. Whether the individual has been cured or made noninfectious or otherwise has ceased to pose a threat to public health; [1989, c. 487, §11 (NEW).]

D. Whether continued supervision or commitment is necessary; and [1989, c. 487, §11 (NEW).]

E. Any other information the court considers necessary. [1989, c. 487, §11 (NEW).]

[1989, c. 487, §11 (NEW) .]

SECTION HISTORY
1989, c. 487, §11 (NEW).

§815. PRIVILEGED OR CONFIDENTIAL COMMUNICATIONS

1. **Privileges abrogated.** Subject to the limitations imposed by United States Code, Title 42, Sections 290dd-3 and 290ee-3, the physician-patient and psychotherapist-patient privileges under the Maine Rules of Evidence and those confidential communications described under Title 5, section 19203, Title 24-A, section 4224, Title 32, section 7005 and Title 34-B, section 1207 are abrogated to the extent necessary to permit reporting to the Bureau of Health any incidents of notifiable disease or condition; cooperating with the Bureau of Health or an intervention team appointed by the Bureau of Health in investigating a case of a notifiable disease or condition or suspected epidemic, or taking preventive action in such a case; or giving evidence in a proceeding pursuant to this chapter. Information released to the bureau pursuant to this section must be kept confidential and may not be disclosed by the bureau except as provided in section 824 and Title 5, section 19203, subsection 8.

[2005, c. 383, §13 (AMD) .]

2. **Limitation.** Statements made to a licensed mental health or medical professional in the course of counseling, diagnosis, therapy, treatment or evaluation when the privilege is abrogated under this section may not be used against the client in a criminal proceeding.

[1989, c. 487, §11 (NEW) .]

SECTION HISTORY
1989, c. 487, §11 (NEW). 2005, c. 383, §13 (AMD).

§816. IMMUNITY

1. **For private institutions.** Any private institution, its employees or agents are immune from civil liability to the extent provided in Title 14, chapter 741, as if that institution were a state agency and its employees and agents were state employees, for any acts taken to provide for the confinement or restraint of a person committed pursuant to this chapter or for participating in reporting under this chapter, or for engaging in any prescribed care within the meaning of this chapter in support of the State's response to a declared extreme public health emergency in accordance with the provisions of this chapter and Title 37-B, chapter 13, subchapter 2.

[2003, c. 438, §1 (AMD) .]

1-A. **Health care workforce.** A private institution is immune from civil penalties and liability for any actions arising from allegations of inadequate investigation prior to that institution's hiring or engagement of a licensed health care worker, including but not limited to allegations of negligent hiring, credentialing or privileging, for services provided within the scope of that health care worker's licensure in response to an extreme public health emergency as defined in section 801, subsection 4-A or a disaster as defined in Title

37-B, section 703, subsection 2 as long as the private institution hires or engages the services of the licensed health care worker in accordance with this subsection. When hiring or engaging the services of a health care worker:

A. The private institution shall first make a reasonable attempt to contact the appropriate occupational or professional licensing board within or affiliated with the Department of Professional and Financial Regulation for any available information about that health care worker; and [2005, c. 630, §1 (NEW).]

B. A private institution may rely on:

(1) Information available from the occupational and professional licensing boards within or affiliated with the Department of Professional and Financial Regulation regarding appropriate screening of the worker, such as background investigation, primary source verification or credentialing;

(2) The representation of a volunteer health care worker registry that is operated or certified in accordance with federal or state requirements regarding appropriate screening of the worker that is registered on that registry, such as background investigation, primary source verification or credentialing;

(3) The representation of the employing or privileging entity regarding appropriate screening of the worker that, at the time of hiring or engagement, is employed or privileged by any entity in any state, such as background investigation, primary source verification, credentialing or privileging; or

(4) The representation of a retired or unemployed worker's most recent employer or privileging entity if that employment or privileging occurred within the previous 24 months. [2005, c. 630, §1 (NEW).]

A private institution that complies with this subsection may hire or engage the services of a licensed health care worker and is deemed in compliance with all state licensing standards. The private institution shall initiate the standard preemployment screening process within 48 hours of the official termination of the extreme public health emergency as defined in section 801, subsection 4-A or disaster as defined in Title 37-B, section 703, subsection 2.

[2005, c. 630, §1 (NEW) .]

2. **Reporting and proceedings.** Any person participating in reporting under this chapter or participating in a related communicable disease investigation or proceeding, including, but not limited to, any person serving on or assisting a multidisciplinary intervention team or other investigating or treatment team, is immune from civil liability for the act of reporting or participating in the investigation or proceeding in good faith. Good faith does not include instances when a false report is made and the reporting person knows or should know the report is false.

[1989, c. 487, §11 (NEW) .]

3. **For public institutions or employees.** Immunity for public institutions and employees shall be governed by Title 14, chapter 741.

[1989, c. 487, §11 (NEW) .]

SECTION HISTORY
1989, c. 487, §11 (NEW). 2003, c. 438, §1 (AMD). 2005, c. 630, §1 (AMD).

§817. DISCHARGE

An individual committed to a hospital, facility or private home pursuant to section 812 or section 813 or subject to a prescribed care order of the department or a court pursuant to section 820 may be discharged when the physician responsible for that individual's treatment and the department determine that the individual may be discharged without danger to other individuals. The department shall immediately report the discharge, with a full statement of the reasons for the discharge, to the court that ordered the commitment. [2007, c. 359, §1 (AMD).]

If an individual committed to a hospital, facility or private home pursuant to section 812 or section 813 or subject to a prescribed care order of the department or a court pursuant to section 820 violates the commitment prior to discharge in accordance with this section, the hospital or physician responsible for treatment shall immediately report this to the department. An arrest warrant must be issued upon application by the department to the District Court or Superior Court. [2007, c. 359, §1 (AMD).]

SECTION HISTORY
1989, c. 487, §11 (NEW). 2005, c. 383, §14 (AMD). 2007, c. 359, §1 (AMD).

§818. LIABILITY FOR EXPENSES

1. **Financial liability; individual.** An individual is financially liable for any care provided pursuant to this subchapter to the individual to the extent that the individual has public or private insurance or otherwise has the ability to pay for that care. An individual shall not be denied the care because of inability to pay for that care.

[1989, c. 487, §11 (NEW) .]

2. **Liability.** The State shall pay, on certification by the commissioner, the expenses for care of an individual receiving care under this chapter who is not a resident of a municipality in this State.

[1989, c. 487, §11 (NEW) .]

3. **Subrogation.** The State shall be subrogated to the rights of recovery which the individual may have against a liable 3rd party for the cost of care provided for the individual under this subchapter to the extent that the State has spent money for that care.

[1989, c. 487, §11 (NEW) .]

SECTION HISTORY
1989, c. 487, §11 (NEW).

§819. EXERCISE OF RIGHTS

Any individual subject to a court order issued pursuant to section 812, subsection 1, paragraph F or G shall have the rights set forth in Title 34-B, section 3803, unless the exercise of any of those rights poses a threat to the health or safety of other individuals. Any restriction imposed upon the exercise of an individual's rights as stated in Title 34-B, section 3803, and the reasons for that restriction, shall be made a part of the clinical record of that individual. [1991, c. 1, §27 (COR).]

SECTION HISTORY
1989, c. 487, §11 (NEW). RR 1991, c. 1, §27 (COR).

Subchapter 2-A: EXTREME PUBLIC HEALTH EMERGENCIES

§820. EXTREME PUBLIC HEALTH EMERGENCY

The provisions of this subchapter apply in the event of the declaration of an extreme public health emergency pursuant to section 802, subsection 2-A and Title 37-B, chapter 13, subchapter II. [2001, c. 694, Pt. A, §1 (NEW); 2005, c. 383, §24 (AFF).]

1. **Powers of the department.** Upon the declaration of an extreme public health emergency, the department has the following powers.

A. Upon request of the department, a health care provider, pharmacist, medical laboratory or veterinarian shall provide to the department health information directly related to a declared extreme public health emergency. [2005, c. 383, §15 (AMD); 2005, c. 383, §24 (AFF).]

B. The department may take a person into custody and order prescribed care of that person as provided in this subsection.

(1) The department may act without a court order if:

(a) The department has reasonable cause to believe that the person has been exposed to or is at significant medical risk of transmitting a communicable disease that poses a serious and imminent risk to public health and safety;

(b) There are no less restrictive alternatives available to protect the public health and safety; and

(c) The delay involved in securing a court order would pose an imminent risk to the person or a significant medical risk of transmission of the disease.

(2) The department may act pursuant to a court order obtained under subsection 2.

(3) A person is exempt from examination, vaccination, medical care or treatment if alternative public health measures are available, even if those measures are more restrictive, and if:

(a) The person demonstrates a sincere religious or conscientious objection to the examination, vaccination, medical care or treatment; or

(b) The person is at known risk of serious adverse medical reaction to the vaccination or medical care or treatment. [2001, c. 694, Pt. A, §1 (NEW); 2005, c. 383, §24 (AFF).]

C. The department may implement rules to address the risk or potential risk of a shortage of health care workers. These rules are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [2005, c. 383, §16 (NEW).]

D. The department may implement rules to address the need for dispensing drugs in an emergency situation. These rules are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [2005, c. 383, §16 (NEW).]

[2005, c. 383, §§15, 16 (AMD); 2005, c. 383, §24 (AFF) .]

2. **Judicial review.** The following provisions apply to judicial review of the authority of the department under this subchapter.

A. A hearing must be held before a judge of the District Court, a justice of the Superior Court or a justice of the Supreme Judicial Court as soon as reasonably possible but not later than 48 hours after the person is subject to prescribed care to determine whether the person must remain subject to prescribed care. A hearing under this paragraph may be waived in writing after notice of the effect of a waiver and an opportunity to consult with an attorney. [2001, c. 694, Pt. A, §1 (NEW); 2005, c. 383, §24 (AFF).]

B. Notice of the hearing must be served upon the person subject to prescribed care within a reasonable time before the hearing. The notice must specify: the time, date and place of the hearing; the grounds and underlying facts upon which the prescribed care is sought; the right to appear at the hearing, either in person, by electronic means or by representation, and to present and cross-examine witnesses; and the right to counsel. [2001, c. 694, Pt. A, §1 (NEW); 2005, c. 383, §24 (AFF).]

C. For a court to order prescribed care, the department must prove by clear and convincing evidence that:

(1) The person has been exposed to or is at significant medical risk of transmitting a communicable disease that poses a serious imminent risk to public health or safety; and

(2) There are no less restrictive alternatives available to protect the public health and safety. [2001, c. 694, Pt. A, §1 (NEW); 2005, c. 383, §24 (AFF).]

D. Within 24 hours of completion of the hearing, the court shall enter a finding approving prescribed care and shall issue an order of prescribed care for a period not to exceed 30 days or shall dismiss the petition and order the person released from prescribed care immediately. [2001, c. 694, Pt. A, §1 (NEW); 2005, c. 383, §24 (AFF).]

E. If the department determines that it is necessary to continue an order obtained under this subsection, the department shall petition the court that issued the order. The court shall hold a hearing in accordance with paragraphs B, C and D and shall make such orders as the court determines necessary, except that an order may not exceed 30 days in duration without further review by the court. [2001, c. 694, Pt. A, §1 (NEW); 2005, c. 383, §24 (AFF).]

F. The court may order applications under this section to be joined. [2001, c. 694, Pt. A, §1 (NEW); 2005, c. 383, §24 (AFF).]

[2001, c. 694, Pt. A, §1 (NEW); 2005, c. 383, §24 (AFF) .]

3. **Appeal.** A person aggrieved by a court order issued under subsection 2 may appeal from that order to the Supreme Judicial Court. The order remains in effect pending appeal. Any findings of fact may not be set aside unless clearly erroneous. Pursuant to order of court, appeals under this section may be joined. The Maine Rules of Civil Procedure apply to the conduct of the appeals, except as otherwise specified in this subsection.

[2001, c. 694, Pt. A, §1 (NEW); 2005, c. 383, §24 (AFF) .]

4. **Medical-legal advisory panel.**

[2005, c. 383, §24 (AFF); 2005, c. 383, §17 (RP) .]

5. **Interpretation.** The provisions of sections 817, 818, 819 and 824 must be interpreted to apply to this subchapter to the extent not inconsistent with this subchapter.

[2001, c. 694, Pt. A, §1 (NEW); 2005, c. 383, §24 (AFF) .]

SECTION HISTORY
2001, c. 694, §A1 (NEW). 2001, c. 694, §B6 (AFF). 2003, c. 366, §1 (AFF). 2005, c. 383, §§15-17 (AMD). 2005, c. 383, §24 (AFF).

Subchapter 3: REPORTING REQUIREMENTS

§821. AUTHORITY OF DEPARTMENT

The department shall adopt rules pursuant to section 802 and establish procedures to carry out the rules to provide a uniform system of reporting, recording and collecting information and maintaining confidentiality concerning communicable diseases, environmental or occupational diseases or exposure to

toxic agents. The department may designate any communicable disease, environmental disease, occupational disease or exposure to a toxic agent as a notifiable disease or condition. Any notifiable disease or condition must be reported to the department in accordance with this subchapter and the rules established by the department. [2005, c. 383, §18 (AMD).]

SECTION HISTORY
1989, c. 487, §11 (NEW). 2005, c. 383, §18 (AMD).

§822. REPORTING

Whenever any physician knows or has reason to believe that any person whom the physician examines or cares for has a disease or condition designated as notifiable, that physician shall notify the department and make such a report as may be required by the rules of the department. Reports must be in the form and content prescribed by the department and the department shall provide forms for making required reports. [2009, c. 299, Pt. A, §3 (AMD).]

SECTION HISTORY
1989, c. 487, §11 (NEW). 2005, c. 383, §18 (AMD). 2009, c. 299, Pt. A, §3 (AMD).

§823. TIME REQUIREMENTS

The reporting of a notifiable disease or condition must be made by telephone to the department immediately upon determination that a person has that disease and must be followed by a written report mailed to the department within 48 hours. [2005, c. 383, §18 (AMD).]

SECTION HISTORY
1989, c. 487, §11 (NEW). 2005, c. 383, §18 (AMD).

§824. CONFIDENTIALITY

Any person who receives information pursuant to this chapter shall treat as confidential the names of individuals having or suspected of having a notifiable disease or condition, as well as any other information that may identify those individuals. This information may be released to the department for adult or child protection purposes in accordance with chapters 958-A and 1071, or to other public health officials, agents or agencies or to officials of a school where a child is enrolled, for public health purposes, but that release of information must be made in accordance with Title 5, chapter 501, where applicable. In the event of an actual or threatened epidemic or outbreak or public health threat or emergency, as declared by the Director of the Bureau of Health, the information may also be released to private health care providers and health and human services agencies for the purpose of carrying out public health functions as authorized by this chapter. Information not reasonably required for the purposes of this section may not be released. All information submitted pursuant to this chapter that does not name or otherwise identify individuals having or suspected of having a notifiable disease or condition may be made available to the public at the sole discretion of the department. [2005, c. 383, §19 (AMD).]

Any person receiving a disclosure of identifying information pursuant to this chapter may not further disclose this information without the consent of the infected person. [1989, c. 487, §11 (NEW).]

SECTION HISTORY
1989, c. 487, §11 (NEW). 2005, c. 383, §19 (AMD).

§825. PENALTIES

Any person who knowingly and willfully fails to comply with reporting requirements for notifiable diseases or conditions commits a civil violation for which a fine of not more than $250 may be adjudged. A person who knowingly or recklessly makes a false report under section 822 or who knowingly violates section 824 is civilly liable for actual damages suffered by a person reported upon and for punitive damages and commits a civil violation for which a fine of not more than $500 may be adjudged. [2005, c. 383, §20 (AMD).]

SECTION HISTORY
1989, c. 487, §11 (NEW). 2005, c. 383, §20 (AMD).

Subchapter 4: MANDATORY BLOOD-BORNE PATHOGEN TEST

§831. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1997, c. 368, §1 (NEW).]

1. **Bona fide occupational exposure.** "Bona fide occupational exposure" means skin, eye, mucous membrane or parenteral contact of a person with the potentially infectious blood or other body fluids of another person that results from the performance of duties by the exposed person in the course of employment.

[1997, c. 368, §1 (NEW) .]

2. **Blood-borne pathogen test.** "Blood-borne pathogen test" means a test that indicates the presence of a specific blood-borne transmissible infectious agent.

[1997, c. 368, §1 (NEW) .]

3. **Employer; employer of the person exposed.** "Employer" or "employer of the person exposed" includes a self-employed person who is exposed to the potentially infectious blood or other body fluids of another person.

[1997, c. 368, §1 (NEW) .]

4. **Informed consent.** "Informed consent" means consent that is:

A. Based on an actual understanding by the person to be tested:

(1) That the test is being performed;

(2) Of the nature of the test;

(3) Of the persons to whom the results of that test may be disclosed;

(4) Of the purpose for which the test results may be used; and

(5) Of any reasonably foreseeable risks and benefits resulting from the test; and [1997, c. 368, §1 (NEW).]

B. Wholly voluntary and free from express or implied coercion. [1997, c. 368, §1 (NEW).]

[1997, c. 368, §1 (NEW) .]

5. **Person.** "Person" means any natural person, firm, corporation, partnership or other organization, association or group.

[1997, c. 368, §1 (NEW) .]

SECTION HISTORY
1997, c. 368, §1 (NEW).

§832. JUDICIAL CONSENT TO BLOOD-BORNE PATHOGEN TEST

1. **Petition.** Any person who experiences a bona fide occupational exposure may petition the District Court with jurisdiction over the facility or other place where the exposure occurred to require the person whose blood or body fluid is the source of the exposure to submit to a blood-borne pathogen test and to require that the results of the test be provided to the petitioner as long as the following conditions have been met:

A. The exposure to blood or body fluids creates a significant risk of infection with a blood-borne pathogen, as defined by the Bureau of Health through the adoption of rules; [1997, c. 368, §1 (NEW).]

B. The authorized representative of the employer of the person exposed has informed the person whose blood or body fluid is the source of the occupational exposure and has sought to obtain written informed consent from the person whose blood or body fluid is the source of the exposure; and [1997, c. 368, §1 (NEW).]

C. Written informed consent was not given by the person whose blood or body fluid is the source of the exposure and that person has refused to be tested. [1997, c. 368, §1 (NEW).]

[1997, c. 368, §1 (NEW) .]

2. **Prehearing duties of the court.** Upon receipt by the District Court of the petition, the court shall:

A. Schedule an expedited hearing; [2003, c. 88, §1 (AMD).]

B. Cause a written notice of the petition and hearing to be given, in accordance with the Maine Rules of Civil Procedure, to the patient who is the subject of the proceeding; [1997, c. 368, §1 (NEW).]

C. Appoint counsel, if requested, for any indigent client not already represented; and [1997, c. 368, §1 (NEW).]

D. Furnish counsel with copies of the petition. [1997, c. 368, §1 (NEW).]

[2003, c. 88, §1 (AMD) .]

3. **Hearing.** The hearing is governed as follows.

A. The hearing must be conducted in accordance with the Maine Rules of Evidence and in an informal manner consistent with orderly procedure. [1997, c. 368, §1 (NEW).]

B. The hearing is confidential and must be electronically or stenographically recorded. [1997, c. 368, §1 (NEW).]

C. The report of the hearing proceedings must be sealed. A report of the hearing proceedings may not be released to the public, except by permission of the person whose blood or body fluid is the source of the exposure or that person's counsel and with the approval of the court. [1997, c. 368, §1 (NEW).]

D. The court may order a public hearing at the request of the person whose blood or body fluid is the source of the exposure or that person's counsel. [1997, c. 368, §1 (NEW).]

[1997, c. 368, §1 (NEW) .]

4. **Determination.** The court shall require the person whose blood or body fluid is the source of the exposure to obtain a blood-borne pathogen test and shall require that the results of the test be provided to the petitioner only if the petitioner proves by a preponderance of the evidence that:

A. The exposure to blood or body fluids of the person created a significant risk of infection with a blood-borne pathogen as defined by the Bureau of Health through the adoption of rules; [1997, c. 368, §1 (NEW).]

B. An authorized representative of the employer of the person exposed has informed the patient of the occupational exposure and has sought to obtain written informed consent from the person whose blood or body fluid is the source of the exposure; and [1997, c. 368, §1 (NEW).]

C. Written informed consent was not given by the person whose blood or body fluid is the source of the exposure and that person has refused to be tested. [1997, c. 368, §1 (NEW).]

[1997, c. 368, §1 (NEW) .]

5. **Consent.** The court may not order a person whose blood or body fluid is the source of the exposure to obtain a blood-borne pathogen test unless the employee exposed to the blood or body fluids of that person has consented to and obtained a blood-borne pathogen test immediately following that documented exposure.

[1997, c. 368, §1 (NEW) .]

6. **Costs.** The employer of the person exposed is responsible for the petitioner's reasonable costs related to obtaining the results of a blood-borne pathogen test pursuant to this section, including the payment of the petitioner's attorney's fees.

[1997, c. 368, §1 (NEW) .]

7. **Appeals.** A person required to undergo a blood-borne pathogen test may appeal the order to Superior Court. The appeal is limited to questions of law. Any findings of fact of the District Court may not be set aside unless clearly erroneous.

[1997, c. 368, §1 (NEW) .]

8. **Subsequent testing.** Subsequent testing arising out of the same incident of occupational exposure must be conducted in accordance with this section.

[1997, c. 368, §1 (NEW) .]

SECTION HISTORY
1997, c. 368, §1 (NEW). 2003, c. 88, §1 (AMD).

§833. CONFIDENTIALITY

No other disclosure of HIV test results may be made without written authorization from both the person tested and the person exposed. [1997, c. 368, §1 (NEW).]

SECTION HISTORY
1997, c. 368, §1 (NEW).

§834. COUNSELING FOR HIV

(REPEALED)

SECTION HISTORY
1997, c. 368, §1 (NEW). 2007, c. 93, §5 (RP).

§835. RULEMAKING

Rules adopted by the Bureau of Health pursuant to this subchapter are routine technical rules under Title 5, chapter 375, subchapter II-A. [1997, c. 368, §1 (NEW).]

SECTION HISTORY
1997, c. 368, §1 (NEW).

Chapter 250-A: HUMAN LEUKOCYTE ANTIGEN SCREENING FUND

§851. BONE MARROW SCREENING FUND

1. **Creation of fund.** The Bone Marrow Screening Fund, referred to in this section as the "fund," is established as a nonlapsing fund to support bone marrow screening by individuals and organizations determined to be eligible according to rules adopted by the department under subsection 2. Money in the fund must be expended as allocated by the Legislature for the purposes of the fund and may be invested as provided by law. Interest on these investments must be credited to the fund.

[2007, c. 240, Pt. TT, §1 (AMD) .]

2. **Administration.** The department shall administer the fund and shall adopt rules as necessary to administer the fund and to determine the criteria for eligible recipients. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 240, Pt. TT, §1 (AMD) .]

3. **Income tax checkoff funding.** Revenue collected from the income tax checkoff pursuant to Title 36, section 5285-A must be credited to the fund.

[1999, c. 731, Pt. SS, §1 (NEW) .]

4. **Other funds.** The fund may receive money from any source, including grants, gifts, bequests and donations.

[1999, c. 731, Pt. SS, §1 (NEW) .]

SECTION HISTORY
1999, c. 731, §SS1 (NEW). 2007, c. 240, Pt. TT, §1 (AMD).

Chapter 251: COMMUNICABLE DISEASES

Subchapter 1: GENERAL PROVISIONS

Article 1: INSPECTION; RULES GENERALLY; EPIDEMICS

§901. SYSTEM OF INSPECTION

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§902. RULES AND REGULATIONS

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§903. REFUSAL TO OBEY RULES

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§904. NOTIFIABLE OR REPORTABLE DISEASES

(REPEALED)

SECTION HISTORY
1975, c. 68, §1 (RPR). 1977, c. 304, §1 (RP).

§905. NOTICE BY PHYSICIAN TO DIRECTOR OF HEALTH

(REPEALED)

SECTION HISTORY
1975, c. 68, §2 (RPR). 1977, c. 304, §1 (RP).

§906. EPIDEMICS

(REPEALED)

SECTION HISTORY
1977, c. 126, (RPR). 1977, c. 304, §1 (RP).

Article 2: CARE OF INFECTED PERSONS

§951. INFECTED PERSONS NOT TO BE REMOVED

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§952. INFECTED PERSONS MAY NOT MINGLE WITH PUBLIC

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§953. CONVALESCENTS AND NURSES MAY NOT LEAVE PREMISES WITHOUT CERTIFICATE

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§954. INFECTED PERSONS EXCLUDED FROM CONVEYANCE WITHOUT NOTICE TO OWNER

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§955. SECLUSION OF INFECTED PERSON

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§956. -- UPON COMPLAINT AND WARRANT

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§957. QUARANTINED PERSONS; ASSISTANCE TO

(REPEALED)

SECTION HISTORY
1973, c. 788, §82 (AMD). 1977, c. 304, §1 (RP).

§958. PERSONS ARRIVING FROM INFECTED PLACES; RESTRICTIONS

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§959. PRECAUTIONS IN BORDER TOWNS

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§960. ANTITOXINS, VACCINES AND DRUGS; AVAILABLE FREE

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§961. INFECTED CHILDREN RESTRICTED

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§962. EXPOSED CHILDREN EXCLUDED FROM PUBLIC SCHOOLS

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§963. DISMISSAL OF SCHOOL IF EXPOSED TO INFECTION

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

Article 3: CARE OF INFECTED PREMISES AND ARTICLES

§1001. DISINFECTING OF LEASED PREMISES

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§1002. DISINFECTION OF PERSONAL ITEMS BY NURSES OR OTHER ATTENDANTS

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§1003. USE OF PERSONAL ITEMS PROHIBITED UNTIL DISINFECTED

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§1004. DESTRUCTION OF EXPOSED BEDDING AND CLOTHING

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§1005. IMPOUNDING OF INFECTED ARTICLES

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§1006. -- SAFEKEEPING

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§1007. POWERS OF OFFICERS

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§1008. -- EXPENSES

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§1009. COMPENSATION FOR MEN OR PROPERTY IMPRESSED

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§1010. USED CONVEYANCE TO BE DISINFECTED

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

Subchapter 1-A: GENERAL PROVISIONS

Article 1: DEFINITIONS; RULES; PENALTIES; INSPECTIONS; GENERAL AUTHORITY

§1011. DEFINITIONS

(REPEALED)

SECTION HISTORY
1977, c. 304, §2 (NEW). 1987, c. 811, §§13-17 (AMD). 1989, c. 487, §12 (RP).

§1012. AUTHORITY OF DEPARTMENT

(REPEALED)

SECTION HISTORY
1977, c. 304, §2 (NEW). 1977, c. 694, §334 (AMD). 1985, c. 771, §3 (AMD). 1989, c. 487, §12 (RP).

§1013. INSPECTION

(REPEALED)

SECTION HISTORY
1977, c. 304, §2 (NEW). 1989, c. 487, §12 (RP).

§1014. PENALTIES

(REPEALED)

SECTION HISTORY
1977, c. 304, §2 (NEW). 1977, c. 694, §335 (AMD). 1989, c. 487, §12 (RP).

§1015. COURT ORDERS

(REPEALED)

SECTION HISTORY
1977, c. 304, §2 (NEW). 1989, c. 487, §12 (RP).

§1016. EXCLUSION FROM SCHOOL

(REPEALED)

SECTION HISTORY
1977, c. 304, §2 (NEW). 1989, c. 487, §12 (RP).

Article 2: DANGEROUS COMMUNICABLE DISEASES

§1019. CONTROL OF DANGEROUS COMMUNICABLE DISEASES

(REPEALED)

SECTION HISTORY
1977, c. 304, §2 (NEW). 1989, c. 487, §12 (RP).

§1020. EXAMINATION OR ISOLATION

(REPEALED)

SECTION HISTORY
1977, c. 304, §2 (NEW). 1989, c. 487, §12 (RP).

§1021. TREATMENT OR CONFINEMENT

(REPEALED)

SECTION HISTORY
1977, c. 304, §2 (NEW). 1981, c. 470, §A62 (AMD). 1989, c. 487, §12 (RP).

§1022. COURT PROCEDURES

(REPEALED)

SECTION HISTORY
1977, c. 304, §2 (NEW). 1987, c. 811, §§18,19 (AMD). 1989, c. 487, §12 (RP).

§1023. IMMUNITY FOR HOSPITAL

(REPEALED)

SECTION HISTORY
1977, c. 304, §2 (NEW). 1989, c. 487, §12 (RP).

§1024. DISCHARGE; COMMITTED PERSON LEAVING PRIOR TO DISCHARGE

(REPEALED)

SECTION HISTORY
1977, c. 304, §2 (NEW). 1989, c. 487, §12 (RP).

§1025. MEDICAL REVIEW BOARD

(REPEALED)

SECTION HISTORY
1977, c. 304, §2 (NEW). 1989, c. 487, §12 (RP).

§1026. LIABILITY FOR EXPENSES

(REPEALED)

SECTION HISTORY
1977, c. 304, §2 (NEW). 1989, c. 487, §12 (RP).

Article 3: UNIFORM REPORTING OF DISEASES

§1029. AUTHORITY OF THE DEPARTMENT

(REPEALED)

SECTION HISTORY
1977, c. 304, §2 (NEW). 1989, c. 487, §12 (RP).

§1030. REPORTING

(REPEALED)

SECTION HISTORY
1977, c. 304, §2 (NEW). 1981, c. 95, (AMD). 1989, c. 487, §12 (RP).

§1031. TIME REQUIREMENTS

(REPEALED)

SECTION HISTORY
1977, c. 304, §2 (NEW). 1989, c. 487, §12 (RP).

§1032. CONFIDENTIALITY

(REPEALED)

SECTION HISTORY
1977, c. 304, §2 (NEW). 1983, c. 661, §9 (AMD). 1985, c. 771, §4 (AMD). 1987, c. 270, (AMD). 1989, c. 487, §12 (RP).

§1033. IMMUNITY

(REPEALED)

SECTION HISTORY
1977, c. 304, §2 (NEW). 1989, c. 487, §12 (RP).

§1034. PENALTIES

(REPEALED)

SECTION HISTORY
1977, c. 304, §2 (NEW). 1989, c. 487, §12 (RP).

Subchapter 2: TUBERCULOSIS

§1041. TUBERCULOSIS DECLARED INFECTIOUS; DUTY OF PHYSICIANS AND OTHERS

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§1042. CONTROL OF TUBERCULOSIS

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§1043. TUBERCULOUS PERSONS REGISTERED

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§1044. NOTICE OF VACANCY

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§1045. INFECTED ARTICLES DISINFECTED

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§1046. WHEN ORDERS OF LOCAL HEALTH OFFICER ARE NOT OBEYED

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§1047. TUBERCULOUS PERSONS TO EXERCISE CARE; DUTY OF LOCAL HEALTH OFFICER

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§1048. DUTY OF PHYSICIAN

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§1049. PRECAUTIONARY MEASURES; NEEDY PATIENTS

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§1050. RECOVERIES REPORTED

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§1051. FALSE STATEMENT BY PHYSICIAN

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§1052. INVESTIGATION OF SUSPECTED CASES OF TUBERCULOSIS OR GLANDERS IN DOMESTIC ANIMALS

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§1053. RETURN OF PERSON TO SANITORIUM

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§1054. APPEALS

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

§1055. PENALTY

(REPEALED)

SECTION HISTORY
1977, c. 304, §1 (RP).

Subchapter 2-A: IMMUNIZATION

§1061. DEFINITIONS

1. **Clinic.** "Clinic," as used in this subchapter, shall mean any place, establishment or institution which operates for the purpose of dispensing immunizing agents to persons who are not confined in that place.

[1977, c. 304, §2 (NEW) .]

2. **Immunizing agent.** "Immunizing agent" means a vaccine, antitoxin or other substance used to increase an individual's immunity to a disease.

[1977, c. 304, §2 (NEW) .]

SECTION HISTORY
1977, c. 304, §2 (NEW).

§1062. DISTRIBUTION OF IMMUNIZING AGENTS

The department shall have authority to purchase or receive by gift and dispense immunizing agents and other pharmaceuticals for use in the prevention and control of diseases and disabilities. The department shall provide and distribute immunizing agents throughout the State when necessary to protect the public health. [1977, c. 304, §2 (NEW).]

SECTION HISTORY
1977, c. 304, §2 (NEW).

§1063. CLINICS

1. **Immunization; immunity from liability.** The department may offer immunization to the public for protection in case of an epidemic or threatened epidemic as ordered by the commissioner.

Notwithstanding any inconsistent provision of any other law, no person who works as a volunteer in a public immunization program set up by the department pursuant to this subsection, without the expectation or receipt of monetary compensation for any aspect of such a program, shall be liable:

A. For damages or injuries alleged to have been sustained by a person immunized under the program; nor [1977, c. 304, §2 (NEW).]

B. For damages for the death of a person immunized under the program, unless it is established that the injuries or the death were caused willfully, wantonly, recklessly or by gross negligence by the volunteer. [1977, c. 304, §2 (NEW).]

[1977, c. 304, §2 (NEW) .]

2. **Free immunization clinics.** The department may conduct free immunization clinics for the public subject to whatever guidelines and regulations the department deems necessary. The department shall notify the public of the free immunization clinics, publicize the time and place of the clinic and require that a record be kept of those immunized.

[1977, c. 304, §2 (NEW) .]

3. **Municipal immunization programs.** The department may cooperate with the local health officer of a municipality offering immunization to or conducting free clinics for persons within its jurisdiction. Municipal immunization programs shall be subject to whatever guidelines and regulations the department deems necessary.

[1977, c. 304, §2 (NEW) .]

SECTION HISTORY
1977, c. 304, §2 (NEW).

§1064. IMMUNIZATION INFORMATION SYSTEM

The department shall establish an immunization information system and require all immunization providers who participate in the department's immunization distribution system to submit to the department a record of each immunization administered. [1997, c. 670, §1 (NEW).]

The department shall adopt rules to implement this section. The rules must include, but are not limited to, provisions for: permitting a person or the parent or guardian of that person to choose not to be included in the system; the format for reporting information; the confidentiality of information in the system; penalties for unauthorized disclosure of information; immunity for good-faith disclosure of information; data transmission; and the confidentiality of information of persons who have chosen not to be included in the system, except that the department may have access to this information to control an outbreak of a disease preventable by immunization. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [1997, c. 670, §1 (NEW).]

The department may establish an immunization system. The department must pursue federal funding to support the cost of the information system. Any state match required to secure federal funding must be made available from existing budget resources. [1997, c. 670, §1 (NEW).]

SECTION HISTORY
1997, c. 670, §1 (NEW).

§1065. INFLUENZA IMMUNIZING AGENT DISTRIBUTION REPORT

(REPEALED)

SECTION HISTORY
2005, c. 628, §1 (NEW). 2011, c. 320, Pt. A, §1 (RP).

§1066. UNIVERSAL CHILDHOOD IMMUNIZATION PROGRAM

1. **Program established.** The Universal Childhood Immunization Program is established to provide all children from birth until 19 years of age in the State with access to a uniform set of vaccines as determined and periodically updated by the Maine Vaccine Board. The program is administered by the department for the purposes of expanding access to immunizations against all diseases as recommended by the federal

Department of Health and Human Services, Centers for Disease Control and Prevention Advisory Committee on Immunization Practices, optimizing public and private resources and lowering the cost of providing immunizations to children. The program is overseen by the Maine Vaccine Board.

[2009, c. 595, §2 (NEW) .]

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

A. "Advisory committee" means the Advisory Committee on Immunization Practices of the United States Department of Health and Human Services, Centers for Disease Control and Prevention or its successor organization. [2009, c. 595, §2 (NEW).]

B. "Assessed entity" means a health insurance carrier or a 3rd-party administrator registered under Title 24-A. [2009, c. 652, Pt. E, §1 (AMD); 2009, c. 652, Pt. E, §3 (AFF).]

C. "Board" means the Maine Vaccine Board established in subsection 3. [2009, c. 595, §2 (NEW).]

D. "Child" means a person who has not attained 19 years of age and who resides in the State. [2009, c. 595, §2 (NEW).]

E. "Covered life months" means the number of months during a calendar year that a person is covered under a health insurance plan provided or administered by an assessed entity. [2009, c. 652, Pt. E, §2 (AMD); 2009, c. 652, Pt. E, §3 (AFF).]

F. "Fund" means the Childhood Immunization Fund established in subsection 7. [2009, c. 595, §2 (NEW).]

G. "Health insurance carrier" means:

(1) An insurance company licensed in accordance with Title 24-A to provide health insurance;

(2) A health maintenance organization licensed pursuant to Title 24-A, chapter 56;

(3) A preferred provider arrangement administrator registered pursuant to Title 24-A, chapter 32;

(4) A fraternal benefit society as defined in Title 24-A, section 4101;

(5) A nonprofit hospital or medical service organization or health plan licensed pursuant to Title 24;

(6) A multiple-employer welfare arrangement approved by the superintendent under Title 24-A, section 6603; or

(7) A self-insured employer subject to state regulation as described in Title 24-A, section 2848-A. [2009, c. 595, §2 (NEW).]

H. "New vaccine" means a vaccine recommended by the advisory committee for which an initial federal contract price is established by the United States Department of Health and Human Services, Centers for Disease Control and Prevention between October 1st and July 1st. [2009, c. 595, §2 (NEW).]

I. "Program" means the Universal Childhood Immunization Program established in subsection 1. [2009, c. 595, §2 (NEW).]

J. "Provider" means a person licensed by this State to provide health care services to individuals or a partnership or corporation made up of those persons. [2009, c. 595, §2 (NEW).]

K. "Service agent" means a person or entity qualified by good business reputation, training, education and experience to administer the fund and perform responsibilities assigned by the board. A service agent must hold all licenses, registrations and permits required to engage in activities or undertake responsibilities assigned by the board. [2009, c. 595, §2 (NEW).]

L. "Superintendent" means the Superintendent of Insurance. [2009, c. 595, §2 (NEW).]

M. "Total costs of the fund" means the costs of vaccines provided under the program to children projected to be covered by assessed entities during the succeeding program year and the annual operating expenses of the board, including costs the board may incur for staff, a service agent, legal representation, administrative support services and other expenses approved by the board. [2009, c. 595, §2 (NEW).]

[2009, c. 652, Pt. E, §§1, 2 (AMD); 2009, c. 652, Pt. E, §3 (AFF) .]

3. **Maine Vaccine Board.** The Maine Vaccine Board is established pursuant to this subsection to oversee the program.

A. The board consists of 10 members.

(1) The commissioner shall serve as an ex officio, nonvoting member.

(2) The Treasurer of State shall serve as an ex officio, nonvoting member.

(3) The Governor shall appoint 8 members, as follows:

(a) Three representatives of health insurance carriers, appointed from a list of nominees submitted by a statewide association of health insurance carriers;

(b) Three representatives of providers in the State, appointed from lists of nominees submitted by statewide associations of providers, including associations of primary care providers, allopathic and osteopathic physicians, nurse practitioners and persons with expertise in public health;

(c) A representative of employers that self-insure for health coverage, appointed from lists of nominees submitted by statewide associations of employers; and

(d) A representative of the pharmaceutical manufacturing industry, appointed from a list of nominees submitted by a statewide association of pharmaceutical manufacturers. [2009, c. 595, §2 (NEW).]

B. With the exception of the representative of the pharmaceutical manufacturing industry, who serves a one-year term, the term of an appointed member to the board is 3 years. All members, with the exception of the representative of the pharmaceutical manufacturing industry, may serve successive terms. A member whose term has expired may serve until the appointment of the member's successor. [2009, c. 595, §2 (NEW).]

C. The board shall elect a chair from among its members to serve a 2-year term or for the duration of that person's term. The chair may serve successive terms. Five voting members constitute a quorum. Decisions of the board require the affirmative vote of 5 members. [2009, c. 595, §2 (NEW).]

D. The board shall meet 4 times per year and when a meeting is called by the chair and shall oversee the fund and program and adopt policies and procedures to administer the program and the fund. [2009, c. 595, §2 (NEW).]

E. By January 1, 2011 and annually thereafter, the board shall determine the list of vaccines to be made available by the program during the succeeding program year beginning July 1st. In making its determination, the board shall consider:

(1) Vaccines recommended by the advisory committee that are available under contract with the United States Department of Health and Human Services, Centers for Disease Control and Prevention;

(2) Recommendations of the department, based on the department's review of the advisory committee recommendations; and

(3) Clinical and cost-benefit analyses.

The board shall review new vaccines and update the list of vaccines to be made available through the program on a timely basis in accordance with the considerations described in this paragraph. [2009, c. 595, §2 (NEW).]

F. The board shall contract for staff, administrative support services and, if necessary, legal representation; review financial, cost and other information about the program annually or more often as determined by the chair; and pay the costs of the service agent under subsection 9, legal representation and contracted services from the fund. [2009, c. 595, §2 (NEW).]

[2009, c. 595, §2 (NEW) .]

4. **Program requirements.** The program shall make available to providers vaccines as determined by the board pursuant to subsection 3, paragraph E.

[2009, c. 595, §2 (NEW) .]

5. **Assessments.** By January 1, 2011 and annually thereafter, the board shall determine an assessment for each assessed entity in accordance with this subsection. The board shall provide a mechanism to protect against duplicate counting of children. The board may conduct an audit of the number of covered life months for children as reported by an assessed entity. An assessment determination made pursuant to this subsection is an adjudicatory proceeding within the meaning of Title 5, chapter 375, subchapter 4.

A. In determining the amount of the assessment, the board shall:

(1) Determine the total costs of the fund for the succeeding program year;

(2) Add a reserve of up to 10% of the total costs of the fund under subparagraph (1) for unanticipated costs associated with providing vaccines to children covered by the assessed entity;

(3) Subtract the amount of any unexpended assessments collected in the preceding year and any unexpended interest accrued to the fund during the preceding year; and

(4) Calculate the assessment on a monthly basis per child to be paid by an assessed entity by dividing the amount determined in accordance with subparagraphs (1), (2) and (3) by the number of children projected to be covered by the assessed entity during the succeeding program year divided by 12. [2009, c. 595, §2 (NEW).]

B. The board shall provide the assessed entity with notice of the assessment amount for the succeeding program year no later than January 1, 2011 and annually thereafter. [2009, c. 595, §2 (NEW).]

C. Beginning July 1, 2011, the assessment must be paid on a quarterly basis as follows:

(1) An assessed entity shall pay a quarterly assessment equal to the monthly assessment rate per child as described under paragraph A, subparagraph (4) multiplied by the number of child member months covered by the assessed entity in the preceding calendar quarter; and

(2) The assessment must be paid within 45 days following the close of the calendar quarter. [2009, c. 595, §2 (NEW).]

D. After the close of a program year, the board shall reconcile the total assessments paid by assessed entities, including interim assessments determined under paragraph E, with the actual costs of vaccines provided under the program to children covered by assessed entities during that program year and the annual operating expenses of the program during that program year. Any unexpended assessments must be used to reduce the assessment in the succeeding program year as required under paragraph A, subparagraph (3). [2009, c. 595, §2 (NEW).]

E. The board may determine an interim assessment for new vaccines that the board has made available through the program pursuant to subsection 3, paragraph E. The board shall calculate the interim assessment in accordance with paragraph A, and the interim assessment is payable the calendar quarter

that begins no less than 30 days following the establishment of the federal contract price. The board may not impose more than one interim assessment per year, except in the case of a public health emergency declared in accordance with state or federal law. [2009, c. 595, §2 (NEW).]

F. If the combination of funding available from the United States Department of Health and Human Services, Centers for Disease Control and Prevention, Vaccines for Children Program and the immunization grant program under the federal Public Health Service Act, Section 1928 of the Social Security Act, 42 United States Code, Section 1396s is insufficient to provide coverage for vaccines for the children who qualify for vaccines under the Vaccines for Children Program, money from the fund may not be used to cover the cost of vaccines for children who would otherwise be provided vaccines under the Vaccines for Children Program. [2009, c. 595, §2 (NEW).]

G. If the assessments under this subsection are insufficient to cover the cost of vaccines to be provided to children covered by assessed entities, the State is not required to cover the cost of vaccines for those children. [2009, c. 595, §2 (NEW).]

[2009, c. 595, §2 (NEW) .]

6. **Failure to pay assessment.** If an assessment under subsection 5 is not paid on the due date established by the board, the provisions of this subsection apply.

A. The board shall submit a report to the superintendent listing each assessed entity that has failed to pay an assessment under subsection 5. [2009, c. 595, §2 (NEW).]

B. If an assessed entity has not paid an assessment under subsection 5 within 45 days following the close of the calendar quarter, interest accrues at 12% per annum on or after the due date. Interest paid under this paragraph must be deposited into the fund. Upon application, the board may waive such interest payments for good cause shown. [2009, c. 595, §2 (NEW).]

The superintendent may take any action authorized under Title 24-A to enforce collection of any unpaid assessment or fine and may impose any penalty authorized under Title 24-A for noncompliance with this section if the assessed entity has engaged in a pattern of conduct that demonstrates a lack of good faith in complying with the requirements of this subsection.

[2009, c. 595, §2 (NEW) .]

7. **Fund.** The Childhood Immunization Fund is established for the sole purpose of funding the program, including any costs of vaccines provided under the program to children and any costs the board may incur for staff, a service agent, administrative support services, legal representation and contracted services. The fund is administered by the board or the service agent, which shall act as a fiduciary and manage and invest the fund in conformance with prudent investor standards and maintain complete records of all assets, investments, deposits, disbursements and other transactions of the fund. All money and securities in the fund must be held in trust by the Treasurer of State for the purpose of making payments under this section and are not money or property for the general use of the State. The Treasurer of State is the custodian of the fund and may make disbursements only upon written direction from the board or the service agent. All assessments collected pursuant to this section, all interest on the balance in the fund and all income from any other source must be deposited into the fund. The fund does not lapse. No portion of the fund may be used to subsidize other programs or budgets.

[2009, c. 595, §2 (NEW) .]

8. **Reporting.** By January 15th of each year the board shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters regarding the operation of the program, the progress of the program in expanding access to immunizations for children and the assets, investments and expenditures of the fund.

[2009, c. 595, §2 (NEW) .]

9. **Service agent.** The board, by written contract, may delegate administration of the fund to a service agent. The service agent:

A. May contract with attorneys acceptable to the board for legal representation for the board; [2009, c. 595, §2 (NEW).]

B. May levy assessments, institute collection procedures, including legal action if necessary, and deposit money in the fund with the Treasurer of State if those funds are not needed to meet immediate cash flow demands; and [2009, c. 595, §2 (NEW).]

C. Shall make recommendations to the board regarding policies, rules and standards necessary for the proper administration of the fund. [2009, c. 595, §2 (NEW).]

[2009, c. 595, §2 (NEW) .]

10. **Freedom from liability.** There is no liability on the part of, and a cause of action may not arise against, a member of the board for any acts or omissions in the performance of the member's duties under this section. This immunity does not extend to willful neglect or malfeasance that would otherwise be actionable.

[2009, c. 595, §2 (NEW) .]

11. **Rules.** The department and the board shall jointly adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

[2009, c. 595, §2 (NEW) .]

SECTION HISTORY
2009, c. 595, §2 (NEW). 2009, c. 652, Pt. E, §§1, 2 (AMD). 2009, c. 652, Pt. E, §3 (AFF).

Subchapter 3: SEXUALLY TRANSMITTED DISEASES

Article 1: GENERAL PROVISIONS

§1091. FEDERAL AID AND COOPERATION

(REPEALED)

SECTION HISTORY
1989, c. 487, §13 (RP).

§1092. EXAMINATION AND TREATMENT

(REPEALED)

SECTION HISTORY
1989, c. 487, §13 (RP).

§1093. INFORMATION BULLETINS

(REPEALED)

SECTION HISTORY
1989, c. 487, §13 (RP).

§1094. REPORTS BY PHYSICIANS AND INSTITUTIONS

(REPEALED)

SECTION HISTORY
1971, c. 330, §2 (AMD). 1977, c. 304, §§3,4 (AMD). 1989, c. 487, §14 (RP).

§1095. EXAMINATION REQUESTED

(REPEALED)

SECTION HISTORY
1977, c. 304, §5 (RPR). 1989, c. 487, §15 (RP).

§1096. CURE SUPERVISED

(REPEALED)

SECTION HISTORY
1977, c. 304, §6 (RP).

§1097. PENALTY

(REPEALED)

SECTION HISTORY
1977, c. 304, §6 (RP).

Article 2: PROPHYLACTIC RUBBER ARTICLES

§1131. LICENSE FOR SALE

(REPEALED)

SECTION HISTORY
1975, c. 75, §1 (RP).

§1132. KINDS OF LICENSES

(REPEALED)

SECTION HISTORY
1975, c. 75, §1 (RP).

§1133. WHOLESALE LICENSE

(REPEALED)

SECTION HISTORY
1975, c. 75, §1 (RP).

§1134. RETAIL LICENSE

(REPEALED)

SECTION HISTORY
1975, c. 75, §1 (RP).

§1135. APPLICATION FOR LICENSE

(REPEALED)

SECTION HISTORY
1975, c. 75, §1 (RP).

§1136. FEES

(REPEALED)

SECTION HISTORY
1975, c. 75, §1 (RP).

§1137. TERM OF LICENSE

(REPEALED)

SECTION HISTORY
1975, c. 75, §1 (RP).

§1138. INFORMATION FURNISHED

(REPEALED)

SECTION HISTORY
1975, c. 75, §1 (RP).

§1139. LICENSE NOT TRANSFERABLE

(REPEALED)

SECTION HISTORY
1975, c. 75, §1 (RP).

§1140. LICENSE FOR SEPARATE LOCATIONS

(REPEALED)

SECTION HISTORY
1975, c. 75, §1 (RP).

§1141. DISPLAY OF LICENSE

(REPEALED)

SECTION HISTORY
1975, c. 75, §1 (RP).

§1142. PENALTY

(REPEALED)

SECTION HISTORY
1975, c. 75, §1 (RP).

§1143. DISPOSITION OF FINES

(REPEALED)

SECTION HISTORY
1975, c. 75, §1 (RP).

Article 3: PREMARITAL MEDICAL EXAMINATIONS

§1181. TEST REQUIRED

(REPEALED)

SECTION HISTORY
1971, c. 330, §3 (AMD). 1971, c. 622, §§70,71 (AMD). 1985, c. 8, §1 (RP).

§1182. WAIVER IN EMERGENCY

(REPEALED)

SECTION HISTORY
1967, c. 8, (AMD). 1971, c. 330, §4 (AMD). 1985, c. 8, §2 (RP).

§1183. PHYSICIAN'S STATEMENT AND LABORATORY TEST

(REPEALED)

SECTION HISTORY
1985, c. 8, §3 (RP).

§1184. FREE BLOOD TEST IF UNABLE TO PAY

(REPEALED)

SECTION HISTORY
1971, c. 330, §5 (RP).

§1185. EXCEPTION TO REQUIREMENT OF PHYSICIAN'S CERTIFICATE

(REPEALED)

SECTION HISTORY
1985, c. 8, §3 (RP).

§1186. FEE

(REPEALED)

SECTION HISTORY
1971, c. 622, §72 (AMD). 1985, c. 8, §4 (RP).

§1187. FORM SHEETS; CERTIFICATES

(REPEALED)

SECTION HISTORY
1971, c. 622, §73 (AMD). 1985, c. 8, §5 (RP).

§1188. APPEALS

(REPEALED)

SECTION HISTORY
1985, c. 8, §6 (RP).

§1189. MISREPRESENTATION; PENALTY

(REPEALED)

SECTION HISTORY
1985, c. 8, §6 (RP).

Article 4: PRENATAL EXAMINATION

§1231. BLOOD SAMPLE FOR LABORATORY TEST

Every physician attending a woman in the State by reason of her being pregnant during gestation shall in the case of every woman so attended take or cause to be taken, with her consent, a sample of blood of such woman, and submit such sample for a standard serological test for syphilis and Rh factors to a laboratory of the department or to a laboratory approved for these tests by the department. Such laboratory tests as are required by sections 1231 to 1234 must be made on request without charge by the department. [2009, c. 2, §48 (COR).]

SECTION HISTORY
RR 2009, c. 2, §48 (COR).

§1232. STANDARD TESTS APPROVED BY DEPARTMENT

The department is authorized to approve one or more tests for syphilis and rh factor which shall be known as standard tests, and may approve and appoint other laboratories in addition to the state laboratory to make such tests. Whenever such laboratory performs a test for syphilis which reveals the possibility of syphilitic infection, it shall report this finding and the name, address, age and sex of the person from whom the specimen was taken to the department. [1971, c. 330, §6 (AMD).]

SECTION HISTORY
1971, c. 330, §6 (AMD).

§1233. BLOOD SPECIMENS ACCOMPANIED BY INFORMATION BLANK; REPORT

Blood specimens sent to a laboratory in compliance with section 1231 shall be accompanied by an information blank which shall contain the initials of the person whose blood is submitted or a number or other suitable means of identification, and the word "Prenatal" to indicate the purpose of the examination.

If the person in question is found to be infected with syphilis, the physician in charge shall make a report to the Bureau of Health on a regular blank, supplied by the bureau for the reporting of venereal diseases, adding thereto the word "Prenatal" in addition to such other information as may be indicated on said blanks.

Such reports shall be kept in a special file at the bureau and shall not be considered a public record. Such reports may be produced in any court procedure where they may be material and relevant on an order of the justice presiding.

§1234. CIVIL ACTION NOT MAINTAINABLE

No civil action shall be maintainable for failure to comply with sections 1231 to 1233.

Article 5: EXPEDITED PARTNER THERAPY

§1241. DEFINITIONS

As used in this article, unless the context otherwise indicates, the following terms have the following meanings. [2009, c. 533, §1 (NEW).]

1. **Department.** "Department" means the Department of Health and Human Services, Maine Center for Disease Control and Prevention.

[2009, c. 533, §1 (NEW) .]

2. **Expedited partner therapy.** "Expedited partner therapy" means prescribing, dispensing, furnishing or otherwise providing prescription antibiotic drugs to the sexual partner or partners of a person clinically diagnosed as infected with a sexually transmitted disease without physical examination of the partner or partners.

[2009, c. 533, §1 (NEW) .]

3. **Health care professional.** "Health care professional" means an allopathic physician licensed pursuant to Title 32, chapter 48, an osteopathic physician licensed pursuant to Title 32, chapter 36, a physician assistant who has been delegated the provision of sexually transmitted disease therapy or expedited partner therapy by that physician assistant's supervising physician, an advanced practice registered nurse who has a written collaborative agreement with a collaborating physician that authorizes the provision of sexually transmitted disease therapy or expedited partner therapy or an advanced practice registered nurse who possesses appropriate clinical privileges in accordance with Title 32, chapter 31.

[2009, c. 533, §1 (NEW) .]

4. **Sexually transmitted disease.** "Sexually transmitted disease" means a bacterial, viral, fungal or parasitic disease determined by rule of the department to be sexually transmitted, to be a threat to the public health and welfare and to be a disease for which a legitimate public interest will be served by providing for its regulation and treatment.

[2009, c. 533, §1 (NEW) .]

SECTION HISTORY
2009, c. 533, §1 (NEW).

§1242. EXPEDITED PARTNER THERAPY

Notwithstanding any other provision of law, a health care professional who makes a clinical diagnosis of a sexually transmitted disease may provide expedited partner therapy for the treatment of the sexually transmitted disease if in the judgment of the health care professional the sexual partner is unlikely or unable to present for comprehensive health care, including evaluation, testing and treatment for sexually transmitted diseases. Expedited partner therapy is limited to a sexual partner who may have been exposed to a sexually transmitted disease within the previous 60 days and who is able to be contacted by the patient. [2009, c. 533, §1 (NEW).]

1. **Counseling.** A health care professional who provides expedited partner therapy shall provide counseling for the patient, including advice that all women and symptomatic persons, and in particular women with symptoms suggestive of pelvic inflammatory disease, are encouraged to seek medical attention. The health care professional shall also provide written materials provided by the department to be given by the patient to the sexual partner that include at a minimum the following:

A. A warning that a woman who is pregnant or might be pregnant should not take certain antibiotics and should immediately contact a health care professional for an examination; [2009, c. 533, §1 (NEW).]

B. Information about the antibiotic and dosage provided or prescribed; clear and explicit allergy and side effect warnings, including a warning that a sexual partner who has a history of allergy to the antibiotic or the pharmaceutical class of antibiotic should not take the antibiotic and should be immediately examined by a health care professional; [2009, c. 533, §1 (NEW).]

C. Information about the treatment and prevention of sexually transmitted diseases; [2009, c. 533, §1 (NEW).]

D. The requirement of abstinence until a period of time after treatment to prevent infecting others; [2009, c. 533, §1 (NEW).]

E. Notification of the importance of the sexual partner's receiving examination and testing for the human immunodeficiency virus and other sexually transmitted diseases and information regarding available resources; [2009, c. 533, §1 (NEW).]

F. Notification of the risk to the sexual partner, others and the public health if the sexually transmitted disease is not completely and successfully treated; [2009, c. 533, §1 (NEW).]

G. The responsibility of the sexual partner to inform that person's sexual partners of the risk of sexually transmitted disease and the importance of prompt examination and treatment; [2009, c. 533, §1 (NEW).]

H. Advice to all women and symptomatic persons, and in particular women with symptoms suggestive of pelvic inflammatory disease, to seek medical attention; and [2009, c. 533, §1 (NEW).]

I. Information other than the information under paragraphs A to H as determined necessary by the department. [2009, c. 533, §1 (NEW).]

[2009, c. 533, §1 (NEW) .]

2. Department to develop and disseminate materials. Taking into account the recommendations of the federal Department of Health and Human Services, Centers for Disease Control and Prevention and other nationally recognized medical authorities, the department shall provide information and technical assistance as appropriate to health care professionals who provide expedited partner therapy. The department shall develop and disseminate in electronic and other formats the following written materials:

A. Informational materials for sexual partners, as described in subsection 1; [2009, c. 533, §1 (NEW).]

B. Informational materials for persons who are repeatedly diagnosed with sexually transmitted diseases; and [2009, c. 533, §1 (NEW).]

C. Guidance for health care professionals on the safe and effective provision of expedited partner therapy. [2009, c. 533, §1 (NEW).]

The department may offer educational programs about expedited partner therapy for health care professionals and pharmacists licensed under the Maine Pharmacy Act.

[2009, c. 533, §1 (NEW) .]

3. Immunity for health care professional. A health care professional who provides expedited partner therapy in good faith without fee or compensation under this section and provides counseling and written materials as required in subsection 1 is not subject to civil or professional liability in connection with the

provision of the therapy, counseling and materials, except in the case of willful and wanton misconduct. A health care professional is not subject to civil or professional liability for choosing not to provide expedited partner therapy.

[2009, c. 533, §1 (NEW) .]

4. **Immunity for pharmacist or pharmacy.** A pharmacist or pharmacy is not subject to civil or professional liability for choosing not to fill a prescription that would cause that pharmacist or pharmacy to violate any provision of the Maine Pharmacy Act.

[2009, c. 533, §1 (NEW) .]

5. **Rules.** The department shall adopt rules, which are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A, to implement this section. The department shall consider designating certain diseases as sexually transmitted diseases, including, but not limited to, chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, nongonococcal urethritis, pelvic inflammatory disease, acute salpingitis, syphilis, Acquired Immune Deficiency Syndrome and human immunodeficiency virus, and shall consider the recommendations and classifications of the federal Department of Health and Human Services, Centers for Disease Control and Prevention and other nationally recognized medical authorities.

[2009, c. 533, §1 (NEW) .]

SECTION HISTORY
2009, c. 533, §1 (NEW).

Subchapter 4: QUARANTINE OF INFECTED VESSELS

§1271. EXAMINATION OF PASSENGERS AND CREW

(REPEALED)

SECTION HISTORY
1977, c. 304, §7 (RP).

§1272. ANCHORAGE AT PROPER DISTANCE

(REPEALED)

SECTION HISTORY
1977, c. 304, §7 (RP).

§1273. REGULATIONS

(REPEALED)

SECTION HISTORY
1977, c. 304, §7 (RP).

§1274. DUTY OF PILOTS TO GIVE NOTICE

(REPEALED)

SECTION HISTORY
1977, c. 304, §7 (RP).

§1275. PENALTY FOR VIOLATION OR EVASION AFTER NOTICE

(REPEALED)

SECTION HISTORY
1977, c. 304, §7 (RP).

§1276. RED FLAGS ON VESSELS

(REPEALED)

SECTION HISTORY
1977, c. 304, §7 (RP).

§1277. EXPENSES

(REPEALED)

SECTION HISTORY
1977, c. 304, §7 (RP).

Subchapter 5: RABIES OR HYDROPHOBIA

§1311. KILLING OR IMPOUNDING OF DOGS

The department may, in the case of an emergency or threatened epidemic of rabies or hydrophobia when in its opinion the health and safety of the people in a community are endangered, issue orders to the mayor of any city or the municipal officers of any town or plantation to have killed any dogs found loose in violation of quarantine regulations and impounded for a period of 72 hours without being claimed by their owner.

The mayor of any city or the municipal officers of any town or plantation shall forthwith direct that such dogs be killed by a police officer or constable.

§1312. IMMUNIZATION OF DOGS

(REPEALED)

SECTION HISTORY
1967, c. 121, (NEW). 1969, c. 244, §2 (RP).

§1313. PROCEDURES FOR THE TRANSPORTATION, QUARANTINE, EUTHANASIA AND TESTING OF ANIMALS SUSPECTED OF HAVING RABIES

1. **Establishment of procedures.** The commissioner, in consultation with the Commissioner of Agriculture, Conservation and Forestry and the Commissioner of Inland Fisheries and Wildlife, shall adopt rules, in accordance with the Maine Administrative Procedure Act, establishing procedures for responding to a report of an animal suspected of having rabies. The procedures must include provisions for the transportation, quarantine, euthanasia and testing of an animal suspected of having rabies and, when that animal has bitten a person, provisions for the notification of the animal control officer in the locality where the bite occurred. The procedures may differ based on the perceived public health threat determined in part by consideration of the following factors:

A. Whether the animal is a domesticated animal for which a known effective vaccine exists and, if so, whether the animal's vaccination status can be verified; [2007, c. 133, §1 (AMD).]

B. Whether the animal has bitten a person or exhibited other aggressive behavior; and [2007, c. 133, §1 (AMD).]

C. Whether the animal is a wolf hybrid that has bitten or may have otherwise exposed a person or a domesticated animal to rabies. [2007, c. 133, §1 (NEW).]

[2007, c. 133, §1 (AMD); 2011, c. 657, Pt. W, §6 (REV) .]

2. **Role of animal control officer; game warden.** An animal control officer appointed in accordance with Title 7, section 3947 receiving a report of an animal suspected of having rabies shall ensure that the procedures established pursuant to this section and sections 1313-A and 1313-B are carried out. If the animal is an undomesticated animal, other than a wolf hybrid, a game warden shall assist the animal control officer.

[2007, c. 133, §1 (AMD) .]

3. **Costs associated with transportation, quarantine, testing and euthanasia.** The Department of Inland Fisheries and Wildlife shall provide for or pay all necessary costs for transportation and euthanasia of an undomesticated animal suspected of having rabies. The owner of a domesticated animal or a wolf hybrid suspected of having rabies shall pay all costs for transportation, quarantine, euthanasia and testing of the animal. If a domesticated animal or a wolf hybrid is a stray or the owner is unknown, the municipality in which the animal was apprehended is responsible for transportation, quarantine, euthanasia and testing costs. Cost of testing animals judged by the department to have created a public health risk of rabies must be borne by the department through its General Fund appropriations.

[2007, c. 133, §1 (AMD) .]

SECTION HISTORY
1993, c. 468, §23 (NEW). 1999, c. 350, §3 (AMD). 1999, c. 731, §Q1 (AMD). 2007, c. 133, §1 (AMD). 2011, c. 657, Pt. W, §6 (REV).

§1313-A. PROVISIONS FOR IMMEDIATE DESTRUCTION OF CERTAIN ANIMALS

If an undomesticated animal suspected of having rabies bites or may have otherwise exposed to rabies a person or a domestic animal, an animal control officer or a game warden shall immediately either remove the undomesticated animal or cause the undomesticated animal to be removed and euthanized for testing. If a wolf hybrid suspected of having rabies bites or may have otherwise exposed to rabies a person or a domestic animal, an animal control officer or a law enforcement officer shall immediately cause the animal to be euthanized for testing. When in the judgment of the animal control officer, game warden or law enforcement officer the animal poses an immediate threat to a person or domestic animal, the animal control officer, game warden or law enforcement officer may immediately kill or order killed that animal without destroying the head. The Department of Inland Fisheries and Wildlife shall arrange for the transportation of the head to the State Health and Environmental Testing Laboratory, except that the animal control officer shall make the arrangements if the animal is a wolf hybrid. [2007, c. 598, §11 (AMD).]

The Department of Inland Fisheries and Wildlife shall pay transportation and testing costs for undomesticated animals. The owner of a domesticated ferret, domesticated wolf or domesticated wolf hybrid shall pay transportation and testing costs for that animal. [1993, c. 468, §23 (NEW).]

SECTION HISTORY
1993, c. 468, §23 (NEW). 1997, c. 704, §11 (AMD). 2007, c. 133, §2 (AMD). 2007, c. 598, §11 (AMD).

§1313-B. CIVIL VIOLATION, COURT AUTHORIZATION FOR REMOVAL AND OTHER REMEDIES

1. **Violation.** A person who violates a rule established under this chapter commits a civil violation for which a forfeiture of not less than $100 nor more than $500 may be adjudged for each offense. In addition, the court may include an order of restitution as part of the sentencing for costs including removing, controlling and confining the animal.

[1997, c. 704, §12 (NEW) .]

2. **Court authorization for removal.** When home quarantine procedures, as described on the official notice of quarantine, have been violated, or in the case of a wolf hybrid, when the owner fails to bring the animal to a veterinarian for euthanasia and testing or to turn the animal over to authorities as required by rules established pursuant to this chapter, an animal control officer, person acting in that capacity or law enforcement officer shall apply to the District Court or Superior Court for authorization to take possession of the animal for placement, at the owner's expense, in a veterinary hospital, boarding kennel or other suitable location for the remainder of the quarantine period or, in the case of a wolf hybrid, removal for euthanasia. At the end of the quarantine period for domestic animals, or if the animal shows signs of rabies, the person in possession of the animal shall report to the court, and the court shall either dissolve the possession order or order the animal euthanized and tested for rabies.

[2007, c. 133, §3 (AMD) .]

3. **Other remedies.** In addition to filing a civil action to enforce this section:

A. The municipality may record a lien against the property of the owner or keeper of an animal if the person fails or refuses to comply with an order to confine or quarantine the animal; [1997, c. 704, §12 (NEW).]

B. The municipal officers or their designated agent, such as the animal control officer, shall serve written notice on the owner or keeper of the animal that specifies the action necessary to comply with the order and the time limit for compliance; [1997, c. 704, §12 (NEW).]

C. If the owner or keeper of the animal fails to comply within the time stated, the animal control officer must apply to District Court or Superior Court for an order to seize the animal and make arrangements for quarantine or euthanasia at the owner's or keeper's expense; and [1997, c. 704, §12 (NEW).]

D. If the owner or keeper of the animal fails to pay the costs of confinement or quarantine within 30 days after written demand from the municipal officers, the municipal assessors may file a record of lien against the property of the owner or keeper of the animal. [1997, c. 704, §12 (NEW).]

[1997, c. 704, §12 (NEW) .]

SECTION HISTORY
1997, c. 704, §12 (NEW). 2007, c. 133, §3 (AMD).

Chapter 252: LEAD POISONING CONTROL ACT

§1314. SHORT TITLE

This Act may be cited as the Lead Poisoning Control Act. [1973, c. 367, (NEW).]

SECTION HISTORY
1973, c. 367, (NEW).

§1314-A. GOAL

The goal of the State in the area of lead poisoning is to eradicate childhood lead poisoning by the year 2010 through the elimination of potential sources of environmental lead. By January 1, 1997, the department shall submit a report to the joint standing committee of the Legislature having jurisdiction over human resource matters regarding progress made toward this goal. The report must include any recommendations the department may have to revise the goal, along with any necessary legislation. [1991, c. 810, §1 (NEW).]

SECTION HISTORY
1991, c. 810, §1 (NEW).

§1315. DEFINITIONS

As used in this Act, unless the context requires otherwise, the following words shall have the following meanings. [1973, c. 367, (NEW).]

1. **Department.**

[1991, c. 810, §2 (RP) .]

1-A. **Child; children.** "Child" or "children" means a person or persons up to 6 years of age.

[1991, c. 810, §3 (NEW) .]

1-B. **Children's home.**

[1995, c. 453, §1 (RP) .]

1-C. **Child-occupied facility.** "Child-occupied facility" means a building or portion of a building visited regularly for the purpose of child care by the same child, 6 years of age or under, on at least 2 days within any week if each day's visit lasts at least 3 hours, the combined weekly visit lasts at least 6 hours and the combined annual visit lasts at least 60 hours.

[1999, c. 276, §1 (NEW) .]

2. **Dwelling.** "Dwelling" means a structure, all or part of which is designed or used for human habitation, including a dwelling unit.

[1991, c. 810, §4 (AMD) .]

3. **Dwelling unit.** "Dwelling unit" means any room, group of rooms or other areas of a structure designed or used for human habitation.

[1973, c. 367, (NEW) .]

3-A. **Environmental lead hazard.** "Environmental lead hazard" means any condition that may cause exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated water or lead-based paint that is in poor condition.

[1999, c. 276, §2 (AMD) .]

3-B. **Environmental lead inspection.** "Environmental lead inspection" means a lead inspection as defined in rules of the Department of Environmental Protection in chapter 424, "Lead Management Regulations."

[1999, c. 276, §3 (AMD) .]

3-C. **Environmental lead investigation.** "Environmental lead investigation" means a detailed and extensive investigation to determine the potential cause of a confirmed case of lead poisoning in a child.

[1999, c. 276, §3 (AMD) .]

3-D. **Interim controls.** "Interim controls" means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards and the establishment and operation of management and resident education programs.

[1997, c. 375, §1 (AMD) .]

4. **Exposed surface.**

[1991, c. 810, §6 (RP) .]

4-A. **Health care provider.**

[2011, c. 183, §1 (RP) .]

4-B. **Lead abatement.** "Lead abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards. "Lead abatement" includes, but is not limited to:

A. The removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures and the removal or covering of lead-contaminated soil; and [1997, c. 375, §2 (NEW).]

B. All preparation, cleanup and post-abatement clearance testing activities associated with such measures. [1997, c. 375, §2 (NEW).]

"Lead abatement" does not include renovation and remodeling as defined in Title 38, section 1291, subsection 26.

For the purpose of this subsection, "permanently" means for at least 20 years.

[1997, c. 375, §2 (AMD) .]

4-C. **Lead abatement contractor.**

[1997, c. 375, §3 (RP) .]

4-D. **Lead abatement design consultant.**

[1997, c. 375, §3 (RP) .]

4-E. **Lead abatement project supervisor.**

[1997, c. 375, §3 (RP) .]

4-F. **Lead abatement worker.**

[1997, c. 375, §3 (RP) .]

4-G. **Lead-based paint activities.** "Lead-based paint activities" means inspection, risk assessment, lead abatement design, lead abatement and services related to lead-based paint such as interim controls, lead screening, lead determination and deleading.

[1997, c. 375, §4 (NEW) .]

5. **Lead-based substance.** "Lead-based substance" means any substance that contains lead at a level that constitutes or potentially constitutes an environmental lead hazard.

[1991, c. 810, §8 (RPR) .]

5-A. **Lead-free.** "Lead-free" means that a residential child-care facility or preschool facility, dwelling or premises contains no lead that is injurious or that could be injurious in the future.

[1995, c. 453, §4 (AMD) .]

5-B. **Lead inspector.** "Lead inspector" means a person licensed by the Department of Environmental Protection pursuant to Title 38, chapter 12-B to perform environmental lead inspections.

[1997, c. 375, §5 (AMD) .]

5-C. **Lead poisoning.** "Lead poisoning" means a confirmed elevated level of blood lead that is injurious, as defined in rules adopted by the department using reference levels no higher than the 97.5th percentile of blood lead levels in children established by a national health and nutrition examination survey adopted by the federal Department of Health and Human Services, Centers for Disease Control and Prevention.

[2015, c. 267, Pt. LLLL, §1 (AMD) .]

5-D. **Lead-safe.** "Lead-safe" means that a residential child-care facility or preschool facility, dwelling or premises does not contain lead at a level or in a condition that constitutes an environmental lead hazard.

[1995, c. 453, §5 (AMD) .]

5-E. **Occupant.** "Occupant" means a person who resides in or uses regularly a dwelling, residential child-care facility or preschool facility.

[1995, c. 453, §5 (AMD) .]

5-F. **Owner.** "Owner" means any person who individually, jointly or in common with others:

A. [1995, c. 453, §5 (RP).]

B. [1995, c. 453, §5 (RP).]

C. Is the chief executive officer of the municipality, school administrative unit or state agency that controls the use of publicly owned property; [1995, c. 453, §5 (AMD).]

D. Is a mortgagee who has taken actual possession in accordance with applicable law. A mortgagee who has not taken actual possession is not the owner; or [1995, c. 453, §5 (AMD).]

E. Is characterized by the following:

(1) Has legal title to any dwelling or premises;

(2) Has charge, care or control of any premises as owner or agent of the owner and has authority to expend money for compliance with the state sanitary code or as an executor, an administrator, a trustee or a guardian of the estate or the holder of legal title;

(3) Is a real estate property manager or other entity that has the authority to fund capital or major property rehabilitation on the owner's behalf;

(4) Is an estate or trust of which the premises is a part or the grantor or beneficiary of an estate or trust; or

(5) Is the association of unit owners of a condominium or cooperative, which is considered as owner solely with respect to common areas and exterior surfaces and fixtures of that condominium or cooperative. [1995, c. 453, §5 (NEW).]

[1995, c. 453, §5 (AMD) .]

6. **Person.** "Person" means any individual, firm, corporation, association or partnership and the State and any political subdivision of the State.

[1991, c. 810, §10 (AMD) .]

6-A. **Premises.** "Premises" means a plotted lot or part of a plotted lot, an unplotted lot or a parcel of land, including developed and undeveloped land and any structure that exists on the land, if the lot, parcel or structure is used by children.

[1991, c. 810, §11 (NEW) .]

6-B. **Preschool facility.**

[1999, c. 276, §4 (RP) .]

6-C. **Small preschool facility.**

[1999, c. 276, §5 (RP) .]

6-D. **Single-family residence.** "Single-family residence" means a dwelling consisting of only one dwelling unit.

[1999, c. 276, §6 (NEW) .]

7. **Sale or sell.**

[1991, c. 810, §12 (RP) .]

7-A. **State investigator.** "State investigator" means a lead inspector who is employed or authorized by the department to conduct environmental lead investigations.

[1991, c. 810, §13 (NEW) .]

8. **Toys.**

[1991, c. 810, §14 (RP) .]

9. **Lead poisoning.**

[1991, c. 810, §15 (RP) .]

10. **Commissioner.**

[1991, c. 810, §16 (RP) .]

11. **Child care facility.**

[1991, c. 810, §17 (RP) .]

SECTION HISTORY
1973, c. 367, (NEW). 1975, c. 239, §1 (AMD). 1975, c. 293, §4 (AMD). 1991, c. 810, §§2-17 (AMD). 1995, c. 453, §§1-6 (AMD). 1997, c. 375, §§1-5 (AMD). 1997, c. 494, §3 (AMD). 1997, c. 494, §15 (AFF). 1999, c. 276, §§1-6 (AMD). 2011, c. 183, §1 (AMD). 2015, c. 267, Pt. LLLL, §1 (AMD).

§1315-A. AUTHORITY OF THE DEPARTMENT

The commissioner may take any action that is in accordance with the purposes of this chapter and is within the powers granted in this Title to protect the public from lead poisoning. That action may include, but is not limited to, the following: [1995, c. 453, §7 (AMD).]

1. **Reduction and abatement program.** The establishment of programs to reduce lead-based substances and abate environmental lead hazards; and

[1991, c. 810, §18 (NEW) .]

2. **Interagency agreements.** The development of interagency agreements with any pertinent federal, state or local agency, including, but not limited to, public housing authorities, energy efficiency programs and home maintenance and improvement programs.

[1991, c. 810, §18 (NEW) .]

SECTION HISTORY
1991, c. 810, §18 (NEW). 1995, c. 453, §7 (AMD).

§1316. RESTRICTIONS ON USE OF LEAD-BASED SUBSTANCES

A person may not use or apply lead-based substances: [1991, c. 810, §19 (AMD).]

1. **Interiors.** In or upon any exposed surface of a dwelling, residential child-care facility or preschool facility;

[1995, c. 453, §8 (AMD) .]

2. **Fixtures.** In or upon any fixtures or other objects used, installed or located in or upon any exposed surface of a dwelling, residential child-care facility or preschool facility or intended to be so used, installed or located; and

[1995, c. 453, §8 (AMD) .]

3. **Toys and furniture.** In and upon toys or household furniture.

[1973, c. 367, (NEW) .]

SECTION HISTORY
1973, c. 367, (NEW). 1975, c. 239, §2 (AMD). 1991, c. 810, §19 (AMD). 1995, c. 453, §8 (AMD).

§1316-A. RESTRICTIONS ON LEAD-CONTAINING CHILDREN'S PRODUCTS

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

A. "Child" means a person under 12 years of age. [2007, c. 604, §1 (NEW); 2007, c. 604, §3 (AFF).]

B. "Child care article" means a product designed or intended by the manufacturer to facilitate the sleep, relaxation or feeding of children or to help children with sucking or teething. [2007, c. 604, §1 (NEW); 2007, c. 604, §3 (AFF).]

C. "Children's jewelry" means jewelry that is made for, marketed for use by or marketed to a child and that is:

(1) Represented by its packaging, display, distribution or advertising as appropriate for use by children;

(2) Sold in conjunction with, attached to or packaged together with other products that are packaged, displayed or advertised as appropriate for use by children;

(3) Sized for children and not intended for use by adults;

(4) Sold in a vending machine; or

(5) Sold in a retail store, catalog or website, or in a defined area of that store, catalog or website, in which a person exclusively offers for sale products that are packaged, displayed or advertised as appropriate for use by children. [2007, c. 604, §1 (NEW); 2007, c. 604, §3 (AFF).]

D. "Children's lunch box" means a fabricated container marketed or intended for use to carry food or drink for consumption by a child. [2007, c. 604, §1 (NEW); 2007, c. 604, §3 (AFF).]

E. "Children's product" means a product that is marketed for use by a child or the use of which by a child is foreseeable, including but not limited to a toy, child care article, children's lunch box or children's jewelry. [2007, c. 604, §1 (NEW); 2007, c. 604, §3 (AFF).]

F. "Lead-containing children's product" means a children's product that:

(1) Contains lead in the aggregate, excluding lead in a paint or surface coating, at more than .009% of the total weight or is made with a product component containing lead at more than .009% of the total weight of the product component, except that if the product or product component lead level is preempted by federal law then the federal standard for lead level governs; or

(2) Is coated with a paint or surface coating with a lead content that exceeds the Consumer Product Safety Commission safety rule as established in 16 Code of Federal Regulations, Part 1303, as amended. [2007, c. 604, §1 (NEW); 2007, c. 604, §3 (AFF).]

G. "Toy" means a product designed and made for the amusement of a child or for the child's use in play. [2007, c. 604, §1 (NEW); 2007, c. 604, §3 (AFF).]

[2007, c. 604, §1 (NEW); 2007, c. 604, §3 (AFF) .]

2. **Restriction.** Beginning July 1, 2009, a person may not manufacture, or knowingly sell, distribute or offer for sale or distribution, a lead-containing children's product except as provided in subsection 3.

[2007, c. 604, §1 (NEW); 2007, c. 604, §3 (AFF) .]

3. **Exception.** The restrictions imposed in subsection 2 do not apply to consumer electronic products in which the lead-containing component is inaccessible to children, including but not limited to electronic toys, personal computers, audio and video equipment, calculators, wireless telephones, game consoles, hand-held

electronic and electrical devices that incorporate a video screen used to access interactive software, and their related devices and products that comply with the provisions of directive 2002/95/EC of the European Union as adopted by the European Parliament and the Council of the European Union.

[2007, c. 604, §1 (NEW); 2007, c. 604, §3 (AFF) .]

4. **Enforcement.** This section may be enforced in a civil action brought by the Attorney General under the Maine Unfair Trade Practices Act, except that the following provisions apply as penalties for violations of this section.

A. For the first violation by a manufacturer a warning must be given instead of an enforcement by the Attorney General if the employer has the equivalent of 25 or fewer full-time, year-round employees. [2007, c. 604, §1 (NEW); 2007, c. 604, §3 (AFF).]

B. For all other violations the following provisions apply as penalties for violations of this section.

(1) For the first violation of this section, the penalty is not more than $100 per children's product manufactured, sold, distributed or offered for sale or distribution, with the total penalty not to exceed $5,000.

(2) For a 2nd violation of this section, the penalty is not more than $500 per children's product manufactured, sold, distributed or offered for sale or distribution, with the total penalty not to exceed $25,000.

(3) For a 3rd or subsequent violation of this section, the penalty is not more than $1,000 per children's product manufactured, sold, distributed or offered for sale or distribution, with the total penalty not to exceed $50,000.

(4) A penalty under this section may be waived by the court if it is determined that the person in good faith and with due diligence attempted to comply with the requirements of this section and promptly corrected after discovery any noncompliance with this section. [2007, c. 604, §1 (NEW); 2007, c. 604, §3 (AFF).]

[2007, c. 604, §1 (NEW); 2007, c. 604, §3 (AFF) .]

5. **Lead Poisoning Prevention Fund.** Penalties collected under this section must be paid to the Lead Poisoning Prevention Fund established pursuant to section 1322-E.

[2007, c. 604, §1 (NEW); 2007, c. 604, §3 (AFF) .]

SECTION HISTORY
2007, c. 604, §1 (NEW). 2007, c. 604, §3 (AFF).

§1317. SALE OF LEAD BASE ARTICLES RESTRICTED

(REPEALED)

SECTION HISTORY
1973, c. 367, (NEW). 1975, c. 239, §3 (AMD). 1991, c. 810, §20 (RP).

§1317-A. EARLY DIAGNOSIS PROGRAM

(REPEALED)

SECTION HISTORY
1975, c. 239, §4 (NEW). 1981, c. 470, §A63 (AMD). 1991, c. 810, §21 (RPR). 1999, c. 276, §7 (AMD). 2001, c. 683, §10 (AFF). 2001, c. 683, §1 (RP).

§1317-B. EDUCATIONAL AND PUBLICITY PROGRAM

The commissioner shall institute an educational and publicity program in order to inform the general public, health care providers and other appropriate groups of the dangers, frequency and sources of lead poisoning; the methods of preventing lead poisoning; and methods to abate lead-based substances and other environmental lead hazards from dwellings and premises. [1991, c. 810, §22 (AMD).]

SECTION HISTORY
1975, c. 239, §4 (NEW). 1989, c. 331, (AMD). 1991, c. 810, §22 (AMD).

§1317-C. SCREENING BY HEALTH CARE PROVIDERS

1. **Screening.** All health care providers shall advise parents of the availability and advisability of screening their children for lead poisoning. A health care program that receives funds from the State and has a child health component shall provide screening of children for lead poisoning in accordance with rules adopted by the department.

[2001, c. 683, §2 (AMD); 2001, c. 683, §10 (AFF) .]

2. **Data.** At least annually, the department shall analyze and summarize lead-screening information provided by health care providers, facilities and programs and provide the information to other state and local agencies involved in lead-poisoning issues. The information must also be provided to interested parties on request in a format that is easily understood by the general public.

[2007, c. 628, Pt. A, §1 (AMD) .]

3. **Confidentiality.** Unless otherwise authorized by section 42, subsection 5, the department may not release any information described in subsection 2 regarding the screening of children for lead poisoning or the source of any lead exposure if that information identifies children, families or other persons, directly or indirectly. The department may disclose information that relates to the address of a residential unit in which an environmental lead hazard or case of lead poisoning has been identified if the disclosure contains only the information necessary to advance the public health and does not directly identify an individual.

[2007, c. 628, Pt. A, §2 (NEW) .]

SECTION HISTORY
1991, c. 810, §23 (NEW). 2001, c. 683, §2 (AMD). 2001, c. 683, §10 (AFF). 2007, c. 628, Pt. A, §§1, 2 (AMD).

§1317-D. LEAD POISONING RISK ASSESSMENT AND BLOOD LEAD LEVEL TESTING PROGRAM

The commissioner shall establish a lead poisoning risk assessment and blood lead level testing program, referred to in this section as the "program," for assessment of lead poisoning risks to children and the testing of blood lead levels in children in accordance with this section and within the limits of available funding. [2001, c. 683, §3 (NEW); 2001, c. 683, §10 (AFF).]

1. **Lead poisoning risk assessment tool.** The program must include a simplified lead poisoning risk assessment tool, developed by the department, based on questions from the United States Department of Health and Human Services, Centers for Disease Control and Prevention.

[2001, c. 683, §3 (NEW); 2001, c. 683, §10 (AFF) .]

2. **Information.** The program must include the distribution of information on lead poisoning risk assessment to providers for children.

[2001, c. 683, §3 (NEW); 2001, c. 683, §10 (AFF) .]

3. **Testing of children covered by MaineCare program.** As required by Section 1905(r)(5) of the Social Security Act and the federal Omnibus Budget Reconciliation Act of 1989, the program must require the testing of blood lead levels of all children covered by the MaineCare program at one year of age and 2 years of age. The drawing of blood for the testing may be done in the health care provider's office or may be referred to another laboratory.

[2001, c. 683, §3 (NEW); 2001, c. 683, §10 (AFF) .]

4. **Testing of children not covered by MaineCare program.** The program must require the testing of blood lead levels of all children not covered by the MaineCare program at one year of age and 2 years of age unless, in the professional judgment of the provider of primary health care, in conjunction with the use of the lead poisoning risk assessment tool, the child's level of risk does not warrant a blood lead level test. The drawing of blood for the testing may be done in the health care provider's office or may be referred to another laboratory.

[2001, c. 683, §3 (NEW); 2001, c. 683, §10 (AFF) .]

5. **Inspections.** The program must conduct comprehensive environmental lead inspections and technical assistance and give advice regarding the appropriate reduction of environmental lead hazards to families with children who have elevated levels of lead in their blood.

[2001, c. 683, §3 (NEW); 2001, c. 683, §10 (AFF) .]

6. **Funding.** As resources permit and in accordance with rules adopted by the department, pursuant to section 1323, the program must include payment by the department for blood lead level testing and related services and diagnostic evaluations when a child's parent is unable to pay and does not have health coverage for testing and services.

[2001, c. 683, §3 (NEW); 2001, c. 683, §10 (AFF) .]

7. **Exception.** This section does not apply to a child whose parent or guardian objects to that child's participation in the program on the grounds that the assessment or testing is contrary to the parent's or guardian's sincerely held religious or philosophical beliefs.

[2001, c. 683, §3 (NEW); 2001, c. 683, §10 (AFF) .]

SECTION HISTORY
2001, c. 683, §3 (NEW). 2001, c. 683, §10 (AFF).

§1318. WARNING ON LEAD BASE SUBSTANCE

(REPEALED)

SECTION HISTORY
1973, c. 367, (NEW). 1991, c. 810, §24 (RP).

§1319. REPORT BY PHYSICIANS OF SUSPECTED LEAD POISONING

(REPEALED)

SECTION HISTORY

1973, c. 367, (NEW). 1975, c. 239, §5 (AMD). 1991, c. 810, §25 (AMD). 1999, c. 276, §8 (RP).

§1319-A. LABORATORY TESTING

(REPEALED)

SECTION HISTORY
1991, c. 810, §26 (NEW). 2001, c. 683, §4 (AMD). 2001, c. 683, §10 (AFF). 2011, c. 183, §2 (RP).

§1319-B. INSPECTION OF RESIDENTIAL CHILD-CARE FACILITIES AND PRESCHOOL FACILITIES

(REPEALED)
(REPEALED)

SECTION HISTORY
1991, c. 810, §26 (NEW). 1995, c. 453, §9 (RPR). 1999, c. 276, §9 (RP).

§1319-C. SCREENING FOR POTENTIAL LEAD HAZARDS

1. **Annual screening required.** The department shall require a child care facility and the premises of a family child care provider as defined in chapter 1673 and a nursery school as defined in chapter 1675 to have an annual screening for potential lead hazards. If potential lead hazards are identified, a full lead inspection must be conducted.

[2005, c. 530, §2 (AMD) .]

1-A. **Lead-safe status.** A facility found to have lead hazards shall abate or remediate the hazards to at least a lead-safe status.

[2003, c. 421, §4 (NEW) .]

2. **Exemptions.** A facility may be exempt from subsection 1 if:

A. The facility was constructed in 1978 or later; [1999, c. 276, §10 (NEW).]

B. The facility has been certified as lead-safe within the previous 12 months; [1999, c. 276, §10 (NEW).]

C. The facility has been certified as lead-free; or [1999, c. 276, §10 (NEW).]

D. The facility does not serve any children under 6 years of age. [1999, c. 276, §10 (NEW).]

[2003, c. 421, §5 (AMD) .]

3. **Approval dependent on compliance.** As of July 1, 1998, a family child care provider, child care facility or nursery school may not be licensed, registered, certified or otherwise approved or receive any state funds unless it is in compliance with this section.

[2005, c. 530, §3 (AMD) .]

SECTION HISTORY
1999, c. 276, §10 (NEW). 2003, c. 421, §§3-5 (AMD). 2005, c. 530, §§2,3 (AMD).

§1319-D. LABORATORY TESTING

1. **Laboratories.** Except as provided in subsection 2, a blood sample taken from a child by a health care provider or laboratory to test for blood lead level must be sent to the Health and Environmental Testing Laboratory for analysis.

[2011, c. 183, §3 (NEW) .]

2. **Facilities approved by the department.** The department may approve the following facilities to test for blood lead level as long as the facility can perform in-office blood lead analyses for purposes of improving blood lead screening and the facility has demonstrated the ability to electronically submit all blood lead testing results and associated information to the department:

A. A Head Start facility; and [2011, c. 183, §3 (NEW).]

B. A health care provider, health care facility or clinic that dispenses benefits of the Women, Infants and Children Special Supplemental Food Program of the federal Child Nutrition Act of 1966. [2011, c. 183, §3 (NEW).]

[2011, c. 183, §3 (NEW) .]

3. **Rules.** The department shall adopt rules regarding blood lead testing conducted by:

A. The Health and Environmental Testing Laboratory; [2011, c. 183, §3 (NEW).]

B. Health care providers, health care facilities and clinics that dispense benefits of the Women, Infants and Children Special Supplemental Food Program of the federal Child Nutrition Act of 1966; and [2011, c. 183, §3 (NEW).]

C. Head Start facilities. [2011, c. 183, §3 (NEW).]

[2011, c. 183, §3 (NEW) .]

4. **Fees; dedicated account; uses.** Whenever possible when a blood lead test is performed by the Health and Environmental Testing Laboratory, the laboratory shall bill 3rd-party payors for services provided under this section and shall deposit all fees received into the Health and Environmental Testing Laboratory dedicated account. The Health and Environmental Testing Laboratory shall use the funds to:

A. Administer a child blood and environmental lead testing program that includes processing, analyzing and reporting child blood lead samples and materials that may contain lead; and [2011, c. 183, §3 (NEW).]

B. Gather data and report laboratory results. [2011, c. 183, §3 (NEW).]

[2011, c. 183, §3 (NEW) .]

SECTION HISTORY
2011, c. 183, §3 (NEW).

§1320. INSPECTION OF DWELLING UNITS AND CHILD-OCCUPIED FACILITIES BY DEPARTMENT

Any authorized representative of the department, upon presenting the appropriate credentials to the owner or occupant, or a representative of either, may inspect any dwelling unit or child-occupied facility at reasonable times for the purpose of ascertaining the presence of lead-based substances, and may remove samples or objects necessary for laboratory analysis. Inspections may be made only when there are reasonable

grounds to suspect that there are lead-based substances in or upon the exposed surfaces of any dwelling unit or child-occupied facility, or upon the request of either the owner or the occupant with whom children reside, or when a case of lead poisoning has been reported. [1999, c. 276, §11 (AMD).]

SECTION HISTORY
1973, c. 367, (NEW). 1975, c. 239, §6 (RPR). 1991, c. 810, §27 (AMD). 1999, c. 276, §11 (AMD).

§1320-A. INSPECTION OF DWELLINGS BY DEPARTMENT

Except in the case of an owner-occupied, single-family residence, the department shall within 30 days inspect all dwelling units in a dwelling when: [1999, c. 276, §12 (AMD).]

1. **Lead poisoning found.** A case of lead poisoning has been found in any dwelling unit within the dwelling; or

[1981, c. 470, Pt. A, §64 (AMD) .]

2. **Lead-based substances.** Lead-based substances have been found in any dwelling unit within the dwelling.

[1999, c. 276, §12 (AMD) .]

The department may, at its discretion, inspect an owner-occupied single-family residence whenever a lead-poisoned child has been identified as residing in or receiving care in that residence. [1999, c. 276, §12 (NEW).]

SECTION HISTORY
1975, c. 239, §7 (NEW). 1981, c. 470, §A64 (AMD). 1999, c. 276, §12 (AMD).

§1321. NOTICE AND REMOVAL

If the department determines that an environmental lead hazard exists in or on any dwelling, premises, residential child-occupied facility, child care facility, premises of a family child care provider or nursery school: [2005, c. 530, §4 (AMD).]

1. **Notice posted.** The department shall post in or upon the dwelling, premises, residential child-occupied facility, child care facility, premises of the family child care provider or nursery school, in a conspicuous place or places, notice of the existence of environmental lead hazard. Notice may not be removed until the department states that the environmental lead hazard no longer exists;

[2005, c. 530, §4 (AMD) .]

2. **Notice to persons.** The department shall give notice of the existence of the environmental lead hazard to all occupants;

[1991, c. 810, §28 (AMD) .]

3. **Notice to owner; removal.** The department shall give notice of the existence of the environmental lead hazard to the owner and order that the lead-based substances be removed, replaced or securely and permanently covered within 30 days of receipt of the notice. If the lead-based substances can not be removed, replaced or securely and permanently covered within 30 days, the department may grant an extension of reasonable time. All lead-based paint activities must be performed in accordance with rules adopted by the

Department of Environmental Protection pursuant to Title 38, chapter 12-B. In the case of an owner-occupied, single-family residence, the department may provide technical assistance and guidance in lieu of enforcement activity at the department's discretion; and

[1999, c. 790, Pt. A, §23 (AMD) .]

4. **Sale of dwelling, residential facility, child-occupied facility or nursery school.** If, before the end of the 30-day period or extension, the owner sells the dwelling, premises, child care facility, premises of the family child care provider, residential child-occupied facility or nursery school, the owner shall notify the prospective buyer of the environmental lead hazard and the new owner must assume the responsibility of carrying out the requirements of this section within the specified time period.

[2005, c. 530, §4 (AMD) .]

5. **Abatement procedures.**

[1997, c. 375, §6 (RP) .]

6. **Lead-based paint activities prohibition.**

[1999, c. 276, §14 (RP) .]

SECTION HISTORY
1973, c. 367, (NEW). 1975, c. 239, §8 (RPR). 1981, c. 470, §A65 (AMD). 1991, c. 810, §28 (AMD). 1995, c. 453, §§10-12 (AMD). 1997, c. 375, §§6,7 (AMD). 1999, c. 276, §§13,14 (AMD). 1999, c. 790, §A23 (AMD). 2003, c. 421, §§6-8 (AMD). 2005, c. 530, §4 (AMD).

§1322. CHILD OCCUPANTS

A person may not knowingly rent a dwelling that has been posted and ordered cleared of harmful lead-based substances in accordance with section 1321. In circumstances where the presence of lead-based paint or building materials is unsuspected and becomes known when the dwelling is already rented to a family with children, the family of the children may not be evicted for that reason and the owner and occupant of the dwelling must be given written notice by the department advising of the existence of lead-based substances in the dwelling and ordering that within 30 days the lead-based substances be removed, replaced or securely and permanently covered. [1999, c. 276, §15 (AMD).]

Until the owner brings any residential dwelling or premises into compliance with this Act while a tenant is occupying a dwelling unit, the owner shall move the tenant to a substitute dwelling unit upon reasonable notice. The department may, on a case-by-case basis, waive this requirement if the department determines that the implementation of interim controls sufficiently protects the residents of the unit until full abatement is achieved. The owner shall pay reasonable moving expenses and any use and occupancy charges for a substitute dwelling unit that exceed the rent for the vacated dwelling unit for which the tenant remains responsible. "Substitute dwelling unit" means a dwelling unit of like or similar accommodation and in like or similar location that is lead-safe. If the tenant fails to accept the substitute dwelling unit selected by the owner while the owner is required to bring the vacated dwelling unit into compliance with this Act or the tenant fails to remain current in rent pursuant to the lease or tenancy at will under Title 14, section 6002, including the statutory period of right to cure, the owner is not obligated beyond 10 days after completion of remediation to reimburse the tenant for any expense or inconvenience other than moving expenses and any use and occupancy charges for the substitute dwelling unit selected by the owner that exceed the rent for the vacated dwelling unit. [2003, c. 421, §9 (AMD).]

SECTION HISTORY

1973, c. 367, (NEW). 1975, c. 239, §9 (RPR). 1975, c. 293, §4 (AMD). 1991, c. 810, §29 (AMD). 1995, c. 453, §13 (AMD). 1999, c. 276, §15 (AMD). 2003, c. 421, §9 (AMD).

§1322-A. LICENSURE OF LEAD INSPECTORS AND LEAD ABATEMENT PERSONNEL

(REPEALED)

SECTION HISTORY
1991, c. 810, §30 (NEW). 1995, c. 453, §14 (AMD). 1997, c. 375, §8 (RP).

§1322-B. TRAINING PROGRAM CERTIFICATION

(REPEALED)

SECTION HISTORY
1991, c. 810, §30 (NEW). 1997, c. 375, §9 (RP).

§1322-C. LABORATORY CERTIFICATION

By July 1, 1993, the department shall adopt rules regarding the analysis of lead in environmental media, including, but not limited to, air, dust, soil, paint, pewter, pottery and water and shall establish a program to certify laboratories that perform lead analysis to ensure that those laboratories comply with the rules adopted under this section. [1991, c. 810, §30 (NEW).]

SECTION HISTORY
1991, c. 810, §30 (NEW).

§1322-D. REPORTS AND RECORDS

(REPEALED)

SECTION HISTORY
1991, c. 810, §30 (NEW). 1999, c. 276, §16 (RP).

§1322-E. LEAD POISONING PREVENTION FUND

1. **Fund established.** The Lead Poisoning Prevention Fund, referred to in this section as "the fund," is established within the department as a nonlapsing fund for the purposes specified in this section.

[2005, c. 403, §1 (NEW) .]

2. **Sources of fund.** The fund is funded from all fees collected under section 1322-F and from other funds accepted by the commissioner or allocated or appropriated by the Legislature.

[2005, c. 403, §1 (NEW) .]

3. **Prevention purposes.** Allocations from the fund must be made for the following purposes:

A. Contracts for funding community and worker educational outreach programs to enable the public to identify lead hazards and take precautionary actions to prevent exposure to lead; [2005, c. 403, §1 (NEW).]

B. An ongoing major media campaign to fulfill the purposes of the educational and publicity program required by section 1317-B; [2005, c. 403, §1 (NEW).]

C. Measures to prevent children's exposure to lead, including targeted educational mailings to families with children that occupy dwellings built prior to 1978 with culturally appropriate information on the health hazards of lead, the identification of lead sources, actions to take to prevent lead exposure and the importance of screening children for lead poisoning; [2005, c. 403, §1 (NEW).]

D. Measures to prevent occupational exposures to lead for private and public employees, including improvements in the effectiveness of the occupational disease reporting system required in chapter 259-A in identifying and educating health care providers, employers and lead-exposed adults about occupational lead poisoning prevention strategies; [2005, c. 403, §1 (NEW).]

E. Funding an assessment of current uses of lead and the availability, effectiveness and affordability of lead-free alternatives; [2007, c. 628, Pt. A, §3 (AMD).]

F. Funding for educational programs and information for owners of rental property used for residential purposes; and [2007, c. 628, Pt. A, §4 (AMD).]

G. Implementation of the lead-safe housing registry by the Department of Environmental Protection pursuant to Title 38, chapter 12-B and achieving the goal of elimination of childhood lead poisoning risks in the State. [2007, c. 628, Pt. A, §5 (NEW).]

[2007, c. 628, Pt. A, §§3-5 (AMD) .]

4. **Administration.** The Bureau of Health shall administer the fund allocations with the review and advice of an advisory board established by the department pursuant to section 1323. Preference must be given to programs that reach high-risk or underserved populations. The bureau may contract for professional services to carry out the purposes of this section.

[2005, c. 403, §1 (NEW) .]

SECTION HISTORY
2005, c. 403, §1 (NEW). 2007, c. 628, Pt. A, §§3-5 (AMD).

§1322-F. LEAD POISONING PREVENTION FEE

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL CONTINGENCY: See T. 22, §1322-F, sub-§4)

1. **Fee imposed.** Beginning July 1, 2006, a fee is imposed on manufacturers or wholesalers of paint sold in the State to support the Lead Poisoning Prevention Fund under section 1322-E. The fee must be imposed at the manufacturer or wholesaler level, in the amount of 25¢ per gallon of paint estimated to have been sold in the State during the prior year, as determined by rule adopted by the department.

[2005, c. 403, §1 (NEW) .]

2. **Rules.** By July 1, 2006, the department shall adopt rules to implement this section, including rules to determine which manufacturers or wholesalers of paint sold in the State are responsible for the fees imposed under subsection 1 and rules establishing the estimated number of gallons of paint sold in the State in the prior year for each manufacturer and rules determining the manner of payment. The rules must provide for waivers of payment for manufacturers and wholesalers of paint that is sold in low quantities in the State. The costs for development of these rules and for administration of the Lead Poisoning Prevention Fund must be reimbursed from the fees collected. The rules must specify that the first payment of fees is due by April 1, 2007. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 403, §1 (NEW) .]

3. **Enforcement.** The Attorney General shall enforce payment of fees under this section through an action in Superior Court in Kennebec County and may collect costs and attorney's fees.

[2005, c. 403, §1 (NEW) .]

4. **Contingent repeal.** This section is repealed when the Commissioner of Health and Human Services certifies that a period of 24 months has elapsed since the Department of Health and Human Services identified a child with an elevated blood lead level through screening by health care providers under section 1317-C. The Commissioner of Health and Human Services shall provide notice to the Secretary of the Senate, the Clerk of the House of Representatives and the Office of the Revisor of Statutes when this condition has been met. For purposes of this subsection, "elevated blood lead level" means a confirmed level of blood lead of 10 micrograms per deciliter or a level of blood lead defined by the federal Department of Health and Human Services, Centers for Disease Control and Prevention, whichever is lower.

[2007, c. 628, Pt. A, §6 (AMD) .]

SECTION HISTORY
2005, c. 403, §1 (NEW). 2007, c. 628, Pt. A, §6 (AMD).

§1323. RULES

The department shall adopt rules to carry out the purposes of this chapter and to ensure that state law relating to lead poisoning satisfies minimum requirements of federal law in all respects. The rules may address, but are not limited to, the following: [1995, c. 453, §15 (AMD).]

1. **Lead-based substances.** Prohibiting the sale or use of lead-based substances;

[1991, c. 810, §31 (NEW) .]

2. **Screening.** Screening children for lead poisoning;

[1991, c. 810, §31 (NEW) .]

3. **Inspections; tests; abatement.**

[1997, c. 375, §10 (RP) .]

3-A. **Department inspections.** Performing inspections of residential child-care facilities, preschool facilities and other dwellings for the purpose of determining the existence of environmental lead hazards;

[1997, c. 375, §11 (NEW) .]

4. **Training programs.**

[1997, c. 375, §12 (RP) .]

5. **Licenses.**

[1997, c. 375, §12 (RP) .]

6. **Laboratory certification.** Certifying laboratories to conduct analysis of lead-based substances;

[1991, c. 810, §31 (NEW) .]

7. **Notice.** Notifying owners and occupants of environmental lead hazards and posting lead hazard warnings;

[1991, c. 810, §31 (NEW) .]

8. **Records.** Keeping records of lead poisoning investigations;

[1991, c. 810, §31 (NEW) .]

9. **Fees.** Establishing fees for services performed under this chapter;

[2001, c. 683, §5 (AMD); 2001, c. 683, §10 (AFF) .]

10. **Advisory boards.** Establishing boards or commissions to advise the department regarding lead poisoning; and

[2001, c. 683, §5 (AMD); 2001, c. 683, §10 (AFF) .]

11. **Risk assessment and testing.** Developing the lead poisoning risk assessment tool and the requirements for its administration and testing for blood lead levels, pursuant to section 1317-D.

[2001, c. 683, §6 (NEW); 2001, c. 683, §10 (AFF) .]

SECTION HISTORY
1973, c. 367, (NEW). 1975, c. 239, §10 (AMD). 1975, c. 293, §4 (AMD). 1977, c. 694, §336 (RPR). 1991, c. 810, §31 (AMD). 1995, c. 453, §§15,16 (AMD). 1997, c. 375, §§10-12 (AMD). 2001, c. 683, §§5,6 (AMD). 2001, c. 683, §10 (AFF).

§1324. NO IMPAIRMENT TO CIVIL DAMAGES; LOCAL ORDINANCES

Nothing in this chapter shall be interpreted or applied in any manner to defeat or impair the right of any person, entity, municipality or other political subdivision to maintain an action or suit for damages sustained or equitable relief or for violation of an ordinance by reason of or in connection with any violation of this chapter. [1973, c. 367, (NEW).]

This chapter shall not prevent any municipality or other political subdivision from enacting any enforcing ordinances which establish a system of lead poisoning control that provide the same or higher standards than those provided in this chapter. [1973, c. 367, (NEW).]

SECTION HISTORY
1973, c. 367, (NEW).

§1324-A. LIABILITY OF OWNERS; DAMAGES

(REPEALED)

SECTION HISTORY
1975, c. 239, §11 (NEW). 1991, c. 810, §32 (AMD). 1995, c. 453, §17 (RPR). 1995, c. 572, §1 (AMD). 1997, c. 375, §13 (AMD). MRSA T. 22, §1324-A, sub-§4 (RP).

§1325. VIOLATION

A person who violates any section of this chapter or rules adopted pursuant to this chapter commits a Class E crime. In addition, other than for a violation covered under section 1316-A, the department may, in accordance with Title 5, chapter 375, subchapter 4, impose an administrative penalty not to exceed $500 for a violation of this chapter or rules adopted pursuant to this chapter. Each day a violation continues constitutes a separate offense. Violations existing within individual dwelling units are considered separate violations. An action commenced by the department to enforce any administrative penalty imposed under this section may be brought in the name of the State in the Superior Court in the county where the violation occurred or in Kennebec County and must be prosecuted by the Attorney General. The court shall award to the State all costs in bringing the enforcement action as well as reasonable interest on penalties not paid. This section does not limit the authority of the Department of Environmental Protection to seek penalties for violations under the authority of Title 38, section 349. All penalties and awards collected under this section must be deposited in the Lead Poisoning Prevention Fund established under section 1322-E. [2015, c. 267, Pt. LLLL, §2 (AMD).]

SECTION HISTORY
1973, c. 367, (NEW). 1975, c. 239, §12 (AMD). 1991, c. 810, §33 (AMD). 1999, c. 276, §17 (AMD). 2015, c. 267, Pt. LLLL, §2 (AMD).

§1326. INJUNCTION REQUIRING REMOVAL

If the lead-based substance remains an environmental lead hazard at the expiration of 30 days or at the expiration of an extension given by the commissioner pursuant to section 1321, that is a violation of this chapter and the State, in addition to any other remedies it has, may seek a mandatory injunction ordering the environmental lead hazard removed by a suitable 3rd party at the expense of the owner of the dwelling, premises, residential child-occupied facility, child care facility, premises of the family child care provider or nursery school. [2015, c. 267, Pt. LLLL, §3 (AMD).]

SECTION HISTORY
1975, c. 239, §13 (NEW). 1991, c. 810, §34 (AMD). 1995, c. 453, §18 (AMD). 2003, c. 421, §10 (AMD). 2005, c. 530, §5 (AMD). 2015, c. 267, Pt. LLLL, §3 (AMD).

§1327. ESSENTIAL MAINTENANCE PRACTICES

Notwithstanding any other provision of law, an owner of a building constructed prior to 1978 that is rented for residential purposes or used as a preschool facility may perform essential maintenance practices as defined under rules of the Department of Environmental Protection, chapter 424, "Lead Management Regulations." [1999, c. 276, §18 (AMD).]

1. Precautions.

[1999, c. 276, §18 (RP) .]

2. Checks.

[1999, c. 276, §18 (RP) .]

3. Removes or stabilizes paint.

[1999, c. 276, §18 (RP) .]

4. Repairs.

[1999, c. 276, §18 (RP) .]

5. **Provides information.**

[1999, c. 276, §18 (RP) .]

SECTION HISTORY
1995, c. 453, §19 (NEW). 1999, c. 276, §18 (AMD).

§1328. RESIDENTIAL REAL PROPERTY DISCLOSURE STATEMENT FORMS *(REPEALED)*

SECTION HISTORY
2005, c. 339, §2 (NEW). 2011, c. 96, §4 (RP).

§1329. LEAD POISONING WARNING STATEMENT

1. **Display of poster; availability of brochure.** A retailer, store or commercial establishment that offers paint or other supplies intended for the removal of paint shall display a poster in a prominent and easily visible location and make available to its customers brochures containing statements that the dry sanding or scraping of paint in dwellings built before 1978 is dangerous and that the improper removal of old paint is a significant source of lead dust and the primary cause of lead poisoning. The poster and brochure must also inform consumers about where they may obtain more information on lead poisoning and paint removal.

[2007, c. 628, Pt. A, §7 (NEW) .]

2. **Posters and brochures.** The department shall produce posters and brochures to meet the requirements of subsection 1 and shall provide paper copies of the posters and brochures to retailers, stores and commercial establishments and post copies for downloading on the department's website. A retailer, store or commercial establishment may display posters and provide brochures that differ from those provided by the department if the posters and brochures provide the information required under subsection 1.

[2007, c. 628, Pt. A, §7 (NEW) .]

SECTION HISTORY
2007, c. 628, Pt. A, §7 (NEW).

Chapter 252-A: HYPODERMIC APPARATUS EXCHANGE PROGRAMS

§1341. HYPODERMIC APPARATUS EXCHANGE PROGRAMS

1. **Certification of programs.** The Maine Center for Disease Control and Prevention may certify hypodermic apparatus exchange programs that meet the requirements established by rule under subsection 2, paragraphs A to D.

A. The Maine Center for Disease Control and Prevention may not limit the number of hypodermic apparatuses provided by the programs to participants. [2007, c. 346, Pt. A, §1 (NEW).]

B. The Maine Center for Disease Control and Prevention may not limit the number of hypodermic apparatuses that participants served by the programs may legally possess, transport or exchange. [2007, c. 346, Pt. A, §1 (NEW).]

[2015, c. 507, §1 (AMD) .]

2. **Rules.** The Maine Center for Disease Control and Prevention shall adopt rules pursuant to the Maine Administrative Procedure Act establishing requirements for hypodermic apparatus exchange programs and for program certification requirements. The rules must include but are not limited to:

A. Procedures for the safe disposal of hypodermic apparatuses; [1997, c. 340, §3 (NEW).]

B. Tracking the number of hypodermic apparatuses distributed and collected; [2007, c. 346, Pt. A, §1 (AMD).]

C. Drug abuse prevention and treatment education; [2015, c. 507, §1 (AMD).]

D. Distribution of educational material regarding the dangers associated with the use of used hypodermic apparatuses; [2015, c. 507, §1 (AMD).]

E. Application procedures for a certified hypodermic apparatus exchange program to apply for funds to operate the program including the purchase and disposal of hypodermic needles; [2015, c. 507, §1 (NEW).]

F. Criteria for the award of funds to certified hypodermic apparatus exchange programs; [2015, c. 507, §1 (NEW).]

G. Oversight of certified hypodermic apparatus exchange programs; [2015, c. 507, §1 (NEW).]

H. Renewal every 5 years of department certification of hypodermic apparatus exchange programs; [2015, c. 507, §1 (NEW).]

I. Complaint investigation procedures; and [2015, c. 507, §1 (NEW).]

J. Criteria for decertification of hypodermic apparatus exchange programs. [2015, c. 507, §1 (NEW).]

Rules adopted or amended pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2015, c. 507, §1 (AMD) .]

3. **Reports.** The Maine Center for Disease Control and Prevention shall report to the joint standing committees of the Legislature having jurisdiction over judiciary matters and health and human services matters by January 15, 1999 and annually thereafter on hypodermic apparatus exchange programs certified under this section. The report must include but is not limited to: the number, location and operators of hypodermic apparatus exchange programs; data on hypodermic apparatuses distributed and collected; and the number of persons served by the programs.

[2007, c. 346, Pt. A, §1 (AMD) .]

4. **Funding.** This subsection governs the use of state funds for hypodermic apparatus exchange programs certified pursuant to this section. This subsection is not intended to limit the ability of certified programs to secure other sources of funding or to discourage fund-raising for the purpose of operating such programs. The Maine Center for Disease Control and Prevention shall allocate any funds appropriated for hypodermic apparatus exchange programs among new and existing certified programs based on rates of intravenous drug use and negative health outcomes related to drug use in the geographic area surrounding a program; if applicable, the amount of services historically provided by the certified program; and other relevant factors. The award of funds must occur not later than 60 days after the effective date of this subsection and annually thereafter based on the availability of funding.

[2015, c. 507, §2 (NEW) .]

SECTION HISTORY
1997, c. 340, §3 (NEW). 2007, c. 346, Pt. A, §1 (AMD). 2015, c. 507, §§1, 2 (AMD).

Chapter 252-B: POISON CONTROL CENTER

§1346. OFFICIAL POISON CONTROL CENTER

1. **Designation.** The Maine Poison Center, located at the Maine Medical Center, is the official state poison control center.

[1999, c. 731, Pt. YYY, §1 (NEW) .]

2. **Services.** The Maine Poison Center shall provide clinical toxicology services through critical expertise and assistance in the diagnosis and management of poisonings.

[1999, c. 731, Pt. YYY, §1 (NEW) .]

3. **Certification.** The Maine Poison Center is encouraged to achieve certification from a national association of poison control centers by May 1, 2003. The Maine Poison Center shall achieve certification from a national association of poison control centers not later than December 1, 2004.

[1999, c. 731, Pt. YYY, §1 (NEW) .]

4. **Alternative funding sources.** The Maine Poison Center shall seek funding from other sources to fully support the level of services it offers.

[1999, c. 731, Pt. YYY, §1 (NEW) .]

SECTION HISTORY
1999, c. 731, §YYY1 (NEW).

Chapter 253: ALCOHOLISM AND DRUG ADDICTION

§1351. TREATMENT AUTHORIZED

(REPEALED)

SECTION HISTORY
1973, c. 566, §4 (RP). 1973, c. 582, §4 (RP).

§1352. ADVISORY COMMITTEE

(REPEALED)

SECTION HISTORY
1973, c. 566, §4 (RP). 1973, c. 582, §4 (RP).

§1353. HOSPITALIZATION

(REPEALED)

SECTION HISTORY
1993, c. 738, §C2 (RP).

§1354. AGREEMENT FOR PERSONAL RESTRAINT

(REPEALED)

SECTION HISTORY
1973, c. 582, §5 (AMD). 1993, c. 738, §C2 (RP).

§1355. PROGRESS INVESTIGATION

(REPEALED)

SECTION HISTORY
1993, c. 738, §C2 (RP).

Chapter 254: UNIFORM ALCOHOLISM AND INTOXICATION TREATMENT ACT

§1361. DECLARATION OF POLICY

(REPEALED)

SECTION HISTORY
1973, c. 582, §1 (NEW). 1981, c. 703, §A10 (RP).

§1362. DEFINITIONS

(REPEALED)

SECTION HISTORY
1973, c. 582, §1 (NEW). 1979, c. 541, §A145 (AMD). 1981, c. 703, §A10 (RP).

§1363. DIVISION OF ALCOHOLISM

(REPEALED)

SECTION HISTORY
1973, c. 582, §1 (NEW). 1973, c. 788, §83 (AMD). 1981, c. 703, §A10 (RP).

§1364. POWERS OF DIVISION

(REPEALED)

SECTION HISTORY
1973, c. 582, §1 (NEW). 1981, c. 703, §A10 (RP).

§1365. DUTIES OF DIVISION

(REPEALED)

SECTION HISTORY
1973, c. 582, §1 (NEW). 1981, c. 703, §A10 (RP).

§1366. INTERDEPARTMENTAL COORDINATING COMMITTEE

(REPEALED)

SECTION HISTORY
1973, c. 582, §1 (NEW). 1975, c. 293, §4 (AMD). 1981, c. 703, §A10 (RP).

§1367. CITIZENS ADVISORY COUNCIL ON ALCOHOLISM

(REPEALED)

SECTION HISTORY
1973, c. 582, §1 (NEW). 1981, c. 703, §A10 (RP).

§1368. COMPREHENSIVE PROGRAM FOR TREATMENT; REGIONAL FACILITIES

(REPEALED)

SECTION HISTORY
1973, c. 582, §1 (NEW). 1981, c. 703, §A10 (RP).

§1369. STANDARDS FOR PUBLIC AND PRIVATE TREATMENT FACILITIES; ENFORCEMENT PROCEDURES; PENALTIES

(REPEALED)

SECTION HISTORY
1973, c. 582, §1 (NEW). 1979, c. 663, §132 (AMD). 1981, c. 703, §A10 (RP).

§1370. ACCEPTANCE FOR TREATMENT; RULES

(REPEALED)

SECTION HISTORY
1973, c. 582, §1 (NEW). 1981, c. 703, §A10 (RP).

§1371. VOLUNTARY TREATMENT OF ALCOHOLICS

(REPEALED)

SECTION HISTORY
1973, c. 582, §1 (NEW). 1981, c. 703, §A10 (RP).

§1372. TREATMENT AND SERVICES FOR INTOXICATED PERSONS AND PERSONS INCAPACITATED BY ALCOHOL

(REPEALED)

SECTION HISTORY
1973, c. 582, §1 (NEW). 1981, c. 703, §A10 (RP).

§1373. EMERGENCY COMMITMENT

(REPEALED)

SECTION HISTORY
1973, c. 582, §1 (NEW). 1981, c. 703, §A10 (RP).

§1374. INVOLUNTARY COMMITMENT OF ALCOHOLICS

(REPEALED)

SECTION HISTORY
1973, c. 582, §1 (NEW). 1981, c. 703, §A10 (RP).

§1375. RECORDS OF ALCOHOLICS AND INTOXICATED PERSONS

(REPEALED)

SECTION HISTORY
1973, c. 582, §1 (NEW). 1981, c. 703, §A10 (RP).

§1376. VISITATION AND COMMUNICATION OF PATIENTS

(REPEALED)

SECTION HISTORY
1973, c. 582, §1 (NEW). 1981, c. 703, §A10 (RP).

§1377. EMERGENCY SERVICE PATROL; ESTABLISHMENT; RULES

(REPEALED)

SECTION HISTORY
1973, c. 582, §1 (NEW). 1981, c. 703, §A10 (RP).

§1378. PAYMENT FOR TREATMENT; FINANCIAL ABILITY OF PATIENTS

(REPEALED)

SECTION HISTORY
1973, c. 582, §1 (NEW). 1981, c. 703, §A10 (RP).

§1379. CRIMINAL LAWS LIMITATIONS

(REPEALED)

SECTION HISTORY
1973, c. 582, §1 (NEW). 1981, c. 703, §A10 (RP).

§1380. SEVERABILITY

(REPEALED)

SECTION HISTORY
1973, c. 582, §1 (NEW). 1981, c. 703, §A10 (RP).

§1381. APPLICATION OF ADMINISTRATIVE CODE

(REPEALED)

SECTION HISTORY
1973, c. 582, §1 (NEW). 1977, c. 694, §337 (AMD). 1981, c. 703, §A10 (RP).

§1382. SHORT TITLE

(REPEALED)

SECTION HISTORY
1973, c. 582, §1 (NEW). 1981, c. 703, §A10 (RP).

§1383. APPLICATION AND CONSTRUCTION

(REPEALED)

SECTION HISTORY
1973, c. 582, §1 (NEW). 1981, c. 703, §A10 (RP).

Chapter 254-A: STATE EMPLOYEE ASSISTANCE PROGRAM

§1391. LEGISLATIVE INTENT

(REPEALED)

SECTION HISTORY
1985, c. 373, §1 (NEW). 1989, c. 857, §57 (RP).

§1392. PURPOSES

(REPEALED)

SECTION HISTORY
1985, c. 373, §1 (NEW). 1989, c. 857, §57 (RP).

§1393. STAFF

(REPEALED)

SECTION HISTORY
1985, c. 373, §1 (NEW). 1985, c. 785, §B85 (AMD). 1989, c. 857, §57 (RP).

§1394. EMPLOYEE PARTICIPATION AND LEAVE

(REPEALED)

SECTION HISTORY
1985, c. 373, §1 (NEW). 1989, c. 857, §57 (RP).

§1395. FUNDS

(REPEALED)

SECTION HISTORY
1985, c. 373, §1 (NEW). 1989, c. 857, §57 (RP).

§1396. CONFIDENTIALITY OF CLIENT RECORDS

(REPEALED)

SECTION HISTORY
1985, c. 373, §1 (NEW). 1989, c. 857, §57 (RP).

Chapter 255: CANCER

§1401. PREVENTION AND TREATMENT

The department is authorized to make investigations concerning cancer, the prevention and treatment thereof, and the mortality therefrom, and to take such action as it may deem will assist in bringing about a reduction in the mortality due thereto.

§1402. DUTY OF PHYSICIANS AND HOSPITALS

All hospitals and other health care facilities providing screening, diagnostic or therapeutic services with respect to cancer shall report to the Department of Health and Human Services all persons diagnosed as having a malignant tumor or certain benign tumors as determined by rule no later than 6 months from the date of diagnosis. The report must include information on the person's usual occupation and industry of employment and other elements determined by rule to be appropriate. The Commissioner of Health and Human Services shall adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2003, c. 421, §11 (AMD); 2003, c. 689, Pt. B, §§6, 7 (REV).]

A physician, surgeon or other health care practitioner who diagnoses or provides treatment for cancer patients, upon notification by the Department of Health and Human Services, shall report to the department any further information requested by the department concerning any person now or formerly under the health care practitioner's care, diagnosed as having or having had a malignant tumor. A physician, surgeon or other health care practitioner who diagnoses or provides treatment for cancer patients is required to report any newly diagnosed cancer case to the department when that patient will not be referred to a reporting facility for diagnosis or treatment. [1995, c. 292, §1 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

A facility or individual complying with the reporting requirements of this section is not liable for any civil damages as a result of such acts. [1995, c. 292, §1 (AMD).]

The requirements of this section do not apply to health care practitioners who provide treatment by spiritual means alone. [1995, c. 292, §1 (NEW).]

SECTION HISTORY
1971, c. 603, (NEW). 1985, c. 407, §1 (AMD). 1995, c. 292, §1 (AMD). 2003, c. 421, §11 (AMD). 2003, c. 689, §§B6,7 (REV).

§1403. REGISTRY

(REPEALED)

SECTION HISTORY
1971, c. 603, (NEW). 1975, c. 61, (RP). 1975, c. 293, §4 (AMD).

§1404. CANCER-INCIDENCE REGISTRY

The Department of Health and Human Services shall establish, maintain and operate a statewide cancer-incidence registry. [1981, c. 507, §1 (NEW); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY
1981, c. 507, §1 (NEW). 2003, c. 689, §B6 (REV).

§1405. CANCER PREVENTION AND CONTROL ADVISORY COMMITTEE

(REPEALED)

SECTION HISTORY

1987, c. 542, §§E2,E3 (NEW). 1989, c. 503, §B82 (AMD). 1991, c. 622, §S25 (RP).

§1405-A. CANCER PREVENTION AND CONTROL ADVISORY COMMITTEE *(REPEALED)*

SECTION HISTORY
1991, c. 780, §LL2 (NEW). 2001, c. 574, §10 (RP).

§1406. MAINE CANCER REGISTRY DATA REVIEW COMMITTEE

The Maine Cancer Registry Data Review Committee, referred to in this section as the "committee," is established. The committee is appointed and convened by the Bureau of Health to review and advise the administrators of the statewide cancer-incidence registry established in section 1404 on the release of identifiable data as requested by researchers for the purposes of cancer prevention, control and research. The committee is composed of not fewer than 3 members, representing training and experience in the fields of medical or public health research or disease prevention and control. The committee must be guided by rules adopted by the Bureau of Health providing for the protection of the confidentiality of all cancer case data reported to the registry. [2001, c. 574, §11 (NEW).]

SECTION HISTORY
2001, c. 574, §11 (NEW).

§1407. COMPREHENSIVE CANCER PREVENTION, RESEARCH AND TREATMENT

1. **Program established.** The Bureau of Health shall establish a cancer prevention and control program to provide leadership for and coordination of cancer prevention, research and treatment activities. The program may include, but is not limited to:

A. Monitoring cancer prevalence at the state and community levels through the cancer-incidence registry under section 1404 and other means; [2003, c. 215, §1 (NEW).]

B. Education and training of health professionals on the current methods of diagnosing and treating cancer; [2003, c. 215, §1 (NEW).]

C. Patient and family education on how to manage the disease and the treatment of the disease; [2007, c. 341, §1 (AMD).]

D. Consultation with and support of community-based cancer prevention, research and treatment programs ; and [2007, c. 341, §1 (AMD).]

E. Implementation of a comprehensive cancer screening, detection and prevention program. [2007, c. 341, §1 (NEW).]

[2007, c. 341, §1 (AMD) .]

2. **Consultation.** In implementing the program established in subsection 1, the Bureau of Health shall consult with the Medicaid program administered by the department and with the Department of Education. In addition, the bureau shall seek advice from other organizations and private entities concerned with cancer prevention, research and treatment.

[2003, c. 215, §1 (NEW) .]

3. **Funding.** The Bureau of Health may accept federal funds and grants for implementing the program established in subsection 1 and may contract for work with outside vendors or individuals.

[2003, c. 215, §1 (NEW) .]

4. **Comprehensive Cancer Screening, Detection and Prevention Fund; funding.** The Comprehensive Cancer Screening, Detection and Prevention Fund is established within the department to fund or assist in funding the comprehensive cancer screening, detection and prevention program should it be established pursuant to subsection 1, paragraph E. Any balance in the fund does not lapse but is carried forward to be expended for the same purposes in succeeding fiscal years. The fund must be deposited with and maintained and administered by the department. The fund may receive funds from any non-General Fund source, including grants or contributions of money from the public or private sector, to carry out the purposes of subsection 1, paragraph E.

[2007, c. 341, §1 (NEW) .]

5. **Rulemaking.** The Bureau of Health shall adopt rules to carry out the purposes of this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 341, §1 (NEW) .]

SECTION HISTORY
2003, c. 215, §1 (NEW). 2007, c. 341, §1 (AMD).

§1408. BREAST CANCER SERVICES SPECIAL PROGRAM FUND

The Breast Cancer Services Special Program Fund, referred to in this section as "the fund," is established in the Maine Center for Disease Control and Prevention, referred to in this section as "the center." Balances in the fund may not lapse but must be carried forward and used for the purposes of this section. [2007, c. 547, §1 (NEW).]

1. **Sources and uses of fund.** Revenues from breast cancer support services registration plate fees credited to the fund under Title 29-A, section 456-E, subsections 2 and 4 must be used for breast cancer support services. Upon receipt the center shall equally distribute the funds to a breast and cervical health program within the center, a statewide nonprofit organization established for the purpose of providing services to underserved people with breast health and breast cancer needs and an independent state-based foundation for the purpose of providing funding for cancer research, education and patient support programs.

[2007, c. 547, §1 (NEW) .]

SECTION HISTORY
2007, c. 547, §1 (NEW).

Chapter 256: TRAUMA REPORTING

§1421. DEFINITIONS

(REPEALED)

SECTION HISTORY
1991, c. 703, §1 (NEW). 1993, c. 738, §C3 (RP).

§1422. DUTY OF PHYSICIANS AND HOSPITALS

(REPEALED)

SECTION HISTORY
1991, c. 703, §1 (NEW). 1993, c. 738, §C3 (RP).

§1423. TRAUMA-INCIDENCE REGISTRY

(REPEALED)

SECTION HISTORY
1991, c. 703, §1 (NEW). 1993, c. 738, §C3 (RP).

§1424. CONFIDENTIALITY

(REPEALED)

SECTION HISTORY
1991, c. 703, §1 (NEW). 1993, c. 738, §C3 (RP).

Chapter 257: MOSQUITO EXTERMINATION

§1441. EXTERMINATION OF MOSQUITOES; COOPERATE WITH STATE ENTOMOLOGIST IN STUDY OF MOSQUITO LIFE HISTORY, BREEDING PLACES, ETC.

(REPEALED)

SECTION HISTORY
1977, c. 457, §2 (RP).

§1442. BREEDING PLACES; CONTROL; DELEGATION OF AUTHORITY

(REPEALED)

SECTION HISTORY
1977, c. 457, §2 (RP).

§1443. EXPENDITURE OF LEGISLATIVE APPROPRIATION

(REPEALED)

SECTION HISTORY
1977, c. 457, §2 (RP).

Chapter 257-A: CONTROL OF BROWNTAIL MOTHS

§1444. CONTROL OF BROWNTAIL MOTHS

1. **Declaration of public health nuisance.** The Director of the Bureau of Health may declare that an infestation of browntail moths is a public health nuisance. The declaration may be made on the director's own initiative or on petition to the director by municipal officers in a municipality affected by the infestation.

[1997, c. 215, §1 (NEW) .]

2. **Aerial spraying.** When the infestation causing a public health nuisance may be controlled by the aerial spraying of pesticides, the municipal officers in the affected municipality may conduct aerial spraying subject to rules adopted by the Board of Pesticides Control pursuant to Title 7, section 610 and Title 22, section 1471-M, except that:

A. The municipality is responsible for compliance with the notification and consent regulations; [2015, c. 58, §1 (AMD).]

B. Landowners who are sent written notification by mail, sent to the landowner's last known address as contained in the municipal assessing records and who fail to respond to the notice within 30 days are deemed to have consented to aerial spraying; [1997, c. 215, §1 (NEW).]

C. A landowner's written consent to spray remains valid unless the municipal officers are notified in writing at least 90 days before spraying is to occur that:

(1) The landowner withdraws consent; or

(2) Ownership of the property has been transferred and the notice contains the name and mailing address of the new owner; [1997, c. 215, §1 (NEW).]

D. [2015, c. 58, §1 (RP).]

E. Written notice to the landowners must identify the chemicals to be used in the aerial spraying; and [1997, c. 215, §1 (NEW).]

F. Public notice of the date of the aerial spraying, subject to change because of weather conditions, must be given 24 hours prior to the spraying. [1997, c. 215, §1 (NEW).]

[2015, c. 58, §1 (AMD) .]

3. **Refusal to consent; cost of extermination.** After the declaration of the Director of the Bureau of Health and a written declaration by the municipal officers of their intent to conduct aerial spraying, any landowner who refuses to consent to aerial spraying shall remove any browntail moth infestation from that landowner's property at that landowner's expense in a time and manner satisfactory to the local health officer. Regardless of whether the nonconsenting landowner's property has an infestation of moths, the nonconsenting landowner is also liable for the additional expenses actually incurred by neighboring consenting landowners or the municipality when neighboring consenting landowners or the municipality uses a method of removal other than aerial spraying due to lack of consent. In such cases, consenting landowners shall remove any browntail moth infestation from their own property at their own initial expense in a time and manner satisfactory to the local health officer.

All additional expenses incurred by a municipality must be repaid to the municipality within 30 days after written demand mailed to the nonconsenting landowner by the municipal officers. If the written demand is not met, a service charge may be assessed by the municipal officers against the land of the nonconsenting landowner for the amount of those expenses. The service charge must be collected in the same manner as municipal sewer service charges are collected pursuant to Title 30-A, section 3406.

All additional expenses incurred by neighboring consenting landowners may be collected by the municipality from nonconsenting landowners as a service charge described in this subsection, following certification in writing by the consenting landowners to the municipal officers of the additional costs. The municipal officers shall make suitable provisions to reimburse the consenting landowners from the amounts collected.

[1997, c. 215, §1 (NEW) .]

4. Limits on pesticide applications.

[2005, c. 2, §15 (COR); T. 22, §1444, sub-§4 (RP) .]

5. Limits on pesticide applications.

[2007, c. 50, §1 (NEW); T. 22, §1444, sub-§5 (RP) .]

SECTION HISTORY
1997, c. 215, §1 (NEW). RR 2005, c. 2, §15 (COR). 2005, c. 553, §1 (AMD). 2007, c. 50, §1 (AMD). 2015, c. 58, §1 (AMD).

§1445. RESTRICTIONS ON APPLICATION OF PESTICIDES TO CONTROL BROWNTAIL MOTHS IN COASTAL AREAS

(REPEALED)

SECTION HISTORY
2005, c. 553, §2 (NEW). MRSA T. 5, §1445, sub-§5 (RP).

§1445-A. RESTRICTIONS ON APPLICATION OF PESTICIDES TO CONTROL BROWNTAIL MOTHS IN COASTAL AREAS

(REPEALED)

This section applies to the application of pesticides to control browntail moths in coastal areas. For the purposes of this section, "coastal areas" means land in Cumberland, Lincoln, Sagadahoc and York counties abutting coastal waters as defined in Title 12, section 6001, subsection 6, except that coastal areas extend inland up rivers and streams only as far as the first bridge. [2007, c. 50, §2 (NEW).]

SECTION HISTORY
2007, c. 50, §2 (NEW). MRSA T. 22, §1445-A, sub-§5 (RP).

Chapter 257-B: MOSQUITOES

§1447. LEAD AGENCY FOR MONITORING MOSQUITO-BORNE DISEASES; DECLARING A PUBLIC HEALTH THREAT

The department is the lead agency for monitoring for mosquito-borne diseases in the State and determining the severity of the threat to the public health. The Maine Center for Disease Control and Prevention shall create and maintain an arboviral illness surveillance, prevention and response plan for the purposes of alerting the public and other state, local and federal agencies about the existence of the threat so that appropriate actions may be taken. When available surveillance information indicates a strong likelihood of a human disease outbreak arising from mosquito-borne pathogens, the commissioner may declare a mosquito-borne disease public health threat in accordance with the Maine Center for Disease Control and

Prevention arboviral illness surveillance, prevention and response plan. For purposes of this section, the department shall collaborate with the Department of Agriculture, Conservation and Forestry. [2013, c. 548, §2 (NEW).]

SECTION HISTORY
2013, c. 548, §2 (NEW).

Chapter 258: PESTICIDES CONTROL

§1451. PURPOSE AND POLICY

(REPEALED)

SECTION HISTORY
1965, c. 447, (NEW). 1969, c. 479, §1 (RPR). 1975, c. 397, §1 (RP).

§1452. BOARD OF PESTICIDES CONTROL

(REPEALED)

SECTION HISTORY
1965, c. 447, (NEW). 1973, c. 678, (AMD). 1975, c. 397, §1 (RP). 1975, c. 469, (AMD). 1975, c. 770, §89 (RP).

§1453. DEFINITIONS

SECTION HISTORY
1965, c. 447, (NEW). 1973, c. 189, §§1,2 (AMD). 1975, c. 397, §1 (RP).

§1454. LICENSES

SECTION HISTORY
1965, c. 447, (NEW). 1969, c. 479, §2 (AMD). 1973, c. 189, §§3,4 (AMD). 1975, c. 397, §1 (RP).

§1454-A. AQUATIC APPLICATION; PERMITS

SECTION HISTORY
1971, c. 377, §1 (NEW). 1973, c. 189, §5 (AMD). 1975, c. 397, §1 (RP).

§1455. INSPECTION

SECTION HISTORY
1965, c. 447, (NEW). 1971, c. 377, §2 (AMD). 1973, c. 189, §6 (AMD). 1975, c. 397, §1 (RP).

§1456. REGULATIONS

(REPEALED)

SECTION HISTORY
1965, c. 447, (NEW). 1969, c. 479, §3 (AMD). 1973, c. 189, §7 (RPR). 1975, c. 397, §1 (RP).

§1457. EMERGENCY SITUATIONS

(REPEALED)

SECTION HISTORY
1965, c. 447, (NEW). 1975, c. 397, §1 (RP).

§1458. REPORTS

(REPEALED)

SECTION HISTORY
1965, c. 447, (NEW). 1971, c. 377, §3 (AMD). 1975, c. 397, §1 (RP).

§1459. REGULATIONS

SECTION HISTORY
1965, c. 447, (NEW). 1969, c. 479, §4 (AMD). 1975, c. 397, §1 (RP).

§1459-A. APPEAL

SECTION HISTORY
1969, c. 479, §5 (NEW). 1975, c. 397, §1 (RP).

§1460. INFORMATION

SECTION HISTORY
1965, c. 447, (NEW). 1975, c. 397, §1 (RP). 1975, c. 397, §1 (RP).

§1461. PENALTIES

SECTION HISTORY
1965, c. 447, (NEW). 1971, c. 377, §4 (AMD). 1973, c. 189, §8 (AMD).
1975, c. 397, §1 (RP).

§1462. EXEMPTIONS

SECTION HISTORY
1965, c. 447, (NEW). 1973, c. 189, §9 (AMD). 1975, c. 397, §1 (RP).

§1463. RIGHT OF ENTRY

SECTION HISTORY
1965, c. 447, (NEW). 1973, c. 189, §10 (AMD). 1975, c. 397, §1 (RP).

§1464. COOPERATION

SECTION HISTORY
1965, c. 447, (NEW). 1975, c. 397, §1 (RP).

§1465. ENFORCEMENT

SECTION HISTORY
1965, c. 447, (NEW). 1969, c. 479, §6 (RPR). 1975, c. 397, §1 (RP).

§1466. SUBPOENAS

SECTION HISTORY
1973, c. 189, §11 (NEW). 1975, c. 397, §1 (RP).

Chapter 258-A: BOARD OF PESTICIDES CONTROL

§1471-A. PURPOSE AND POLICY

For the purpose of assuring to the public the benefits to be derived from the safe, scientific and proper use of chemical pesticides while safeguarding the public health, safety and welfare, and for the further purpose of protecting natural resources of the State, it is declared to be the policy of the State of Maine to regulate the sale and application of chemical insecticides, fungicides, herbicides and other chemical pesticides. [2011, c. 510, §2 (AMD).]

SECTION HISTORY
1975, c. 397, §2 (NEW). 1983, c. 542, §§1,3 (AMD). 2011, c. 510, §2 (AMD).

§1471-B. BOARD OF PESTICIDES CONTROL

1. **Board established.** The Board of Pesticides Control is established by Title 5, section 12004-D, subsection 3, within the Department of Agriculture, Conservation and Forestry. Except as provided in this chapter, the board must be composed of 7 members, appointed by the Governor, subject to approval by the joint standing committee of the Legislature having jurisdiction over agricultural matters and confirmation by the Senate. To provide the knowledge and experience necessary for carrying out the duties of the board, the board must consist of the following members: one person with practical experience and knowledge regarding the agricultural use of chemicals; one person who has practical experience and knowledge regarding the use of chemicals in forest management; one person from the medical community; a scientist from the University of Maine System having practical experience and expertise in integrated pest management; one commercial applicator; and 2 persons appointed to represent the public. The 2 members appointed to represent the public must represent different geographic areas of the State. The term must be for 4 years, except that of the initial appointees, 2 shall serve 4-year terms, 2 shall serve 3-year terms, 2 shall serve 2-year terms and one shall serve a one-year term. Any vacancy must be filled by an appointment for the remainder of the unexpired term.

[2011, c. 119, §1 (AMD); 2011, c. 119, §2 (AFF); 2011, c. 657, Pt. W, §5 (REV) .]

2. **Organization of the board.** The board shall elect a chair and any other officers it determines necessary from among the membership. The board shall meet at the call of the chair or at the request of any 3 members. Four members constitute a quorum and, except as otherwise provided in this subsection, any action requires the affirmative vote of the greater of either a majority of those present and voting or at least 2 members. Any action by the board requesting that the Attorney General pursue a court action against an

alleged violator of any law or rule requires an affirmative vote by 3 members or a majority of those present and voting, whichever is greater. The chair and any other officers shall serve in those capacities for a period of one year following their elections.

[1989, c. 841, §4 (AMD) .]

3. **Compensation of the board.** Each public member shall be compensated according to the provisions of Title 5, chapter 379.

[1983, c. 812, §120 (RPR) .]

4. **Director.** The commissioner shall appoint a director, with the approval of the board. The director shall be the principal administrative, operational and executive employee of the board. The director shall attend and participate in all meetings of the board, but may not vote. The director, with the approval of the commissioner and the board, may hire whatever competent professional personnel and other staff he deems necessary. All employees of the board shall be subject to Title 5, Part 2. The director may obtain office space, goods and services as required.

[1979, c. 644, §3 (NEW) .]

5. **Staff.** The board must establish standards for the delegation of its authority to the director and staff. Any person aggrieved by a decision of the director and staff has a right to a review of the decision by the board. The Commissioner of Agriculture, Conservation and Forestry shall provide the board with administrative services of the department, including assistance in the preparation of the board's budget. The commissioner may require the board to reimburse the department for these services.

[1989, c. 841, §5 (AMD); 2011, c. 657, Pt. W, §6 (REV) .]

6. **Registration of pesticides.**

[1981, c. 112, §1 (RP) .]

7. **State contracts.** Notwithstanding any other provisions of law, members of the board are eligible to contract with the State when the contracts are awarded in accordance with normal bidding procedures of the Department of Administrative and Financial Services. Members also are eligible to receive grants when grants are awarded in accordance with normal state procedures. A member may not vote on the award of a contract or grant for which that member has submitted a bid or proposal.

[2007, c. 466, Pt. A, §40 (RPR) .]

8. **Meetings.** The board shall periodically meet in various geographic regions of the State. When considering an enforcement action, the board shall attempt to meet in the geographic region where the alleged violation occurred.

[1989, c. 841, §6 (NEW) .]

SECTION HISTORY
1975, c. 293, §4 (AMD). 1975, c. 397, §2 (NEW). 1977, c. 696, §181 (AMD). 1979, c. 644, §3 (RPR). 1979, c. 731, §19 (AMD). 1981, c. 112, §1 (AMD). 1981, c. 470, §A66 (AMD). 1981, c. 632, §§1,2 (AMD). 1983, c. 309, (AMD). 1983, c. 812, §§119,120 (AMD). 1985, c. 779, §60 (AMD). 1985, c. 785, §A95 (AMD). 1987, c. 702, §2 (AMD). 1989, c. 503, §B83 (AMD). 1989, c. 841, §§4-6 (AMD). 1991, c. 376, §45 (AMD). 2007, c. 466, Pt. A, §40 (AMD). 2007, c. 466, Pt. B, §17 (AMD). 2011, c. 119, §1 (AMD). 2011, c. 119, §2 (AFF). 2011, c. 657, Pt. W, §§5, 6 (REV).

§1471-C. DEFINITIONS

As used in this chapter, the following words have the following meanings. [1983, c. 819, Pt. A, §40 (NEW).]

1. **Agricultural commodity.** "Agricultural commodity" means any plant, or part thereof, or animal or animal product produced by a person, including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters or other comparable persons, primarily for sale, consumption, propagation or other use by humans or animals.

[1975, c. 397, §2 (NEW) .]

2. **Aircraft.** "Aircraft" means any machine or device used or designed for navigation of, or flight in, the air.

[1975, c. 397, §2 (NEW) .]

3. **Board.** "Board" means the State Board of Pesticides Control as established in section 1471-B.

[1975, c. 397, §2 (NEW) .]

4. **Certified applicator.** "Certified applicator" means any person who is certified pursuant to section 1471-D and authorized to use or supervise the use of any pesticides.

[1975, c. 644, §1 (AMD) .]

5. **Commercial applicator.** "Commercial applicator" means any person, whether or not the person is a private applicator with respect to some uses, who uses or supervises the use of any limited or restricted-use pesticides on any property other than as provided by subsection 22, or who uses general-use pesticides in custom application on such property. "Commercial applicator" also includes individuals who apply any pesticides in connection with their duties as officials or employees of federal, state or local governments.

[2015, c. 58, §2 (AMD) .]

5-A. **Custom application.** "Custom application" means an application of a pesticide:

A. Under contract or for which compensation is received; [2007, c. 245, §2 (NEW).]

B. To a property open to use by the public; or [2007, c. 245, §2 (NEW).]

C. In a food establishment licensed under chapter 551 or an eating establishment licensed under chapter 562, except that "custom application" does not include a pesticides application at a licensed food or eating establishment when:

(1) The establishment is ancillary to the production of an agricultural commodity;

(2) The owner or an employee of that establishment is certified as a private applicator under section 1471-D, subsection 2; and

(3) The property is not open to the public. [2007, c. 245, §2 (NEW).]

[2007, c. 245, §2 (AMD) .]

6. **Defoliant.** The term "defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

[1975, c. 397, §2 (NEW) .]

7. **Desiccant.** The term "desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

[1975, c. 397, §2 (NEW) .]

8. **Distribute.** "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver for shipment or receive and, having so received, deliver or offer to deliver pesticides in this State.

[1975, c. 397, §2 (NEW) .]

9. **FIFRA.** "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 135 et seq., PL 92-516.

[1975, c. 397, §2 (NEW) .]

10. **Fungi.** "Fungi" means all nonchlorophyll-bearing thallophytes, that is, all nonchlorophyll-bearing plants, of a lower order than mosses and liverworts, including but not limited to rusts, smuts, mildews and molds, except those on or in living man or other animals or those on or in processed food, beverages or pharmaceuticals.

[1975, c. 397, §2 (NEW) .]

11. **Fungicide.** "Fungicide" means any substance or mixture of substances intended for destroying or repelling any fungi or mitigating or preventing damage by any fungi.

[1975, c. 397, §2 (NEW) .]

11-A. **Government pesticide supervisor.**

[2015, c. 58, §3 (RP) .]

11-B. **General use pesticide.** "General use pesticide" means any pesticide which has been registered by the United States Environmental Protection Agency as evidenced by a registration number on the label and which is not a restricted use or limited use pesticide, as defined in this section. Pesticides restricted by the United States Environmental Protection Agency are so identified on the label. Pesticides restricted or limited by the Board of Pesticides Control are listed by the board.

[1987, c. 723, §2 (NEW) .]

11-C. **General use pesticide dealer.** "General use pesticide dealer" means any person who distributes general use pesticides.

[1987, c. 723, §2 (NEW) .]

12. **Ground equipment.** "Ground equipment" means any machine or device, other than aircraft, for use on land or water, designed for, or adaptable to, use in applying pesticides as sprays, dusts, aerosols, fogs, or in other forms.

[1975, c. 397, §2 (NEW) .]

13. **Herbicides.** "Herbicides" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed.

[1975, c. 397, §2 (NEW) .]

13-A. **Household use pesticide product.** "Household use pesticide product" means any general use pesticide product which contains no more than 3% active ingredients and which is applied undiluted by homeowners to control pests in and around the family dwelling and associated structures. For the purposes of this definition and section 1471-U, subsection 5, petroleum solvents shall not be considered active ingredients.

[1987, c. 723, §3 (NEW) .]

14. **Insect.** "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising 6-legged, usually winged forms, including but not limited to beetles, bugs, bees, flies and other allied classes of arthropods whose members are wingless and usually have more than 6 legs, including but not limited to mites, ticks, centipedes and wood lice.

[1975, c. 397, §2 (NEW) .]

15. **Insecticide.** "Insecticide" means any substance or mixture of substances intended for destroying or repelling any insect, or mitigating or preventing damage by any insects.

[1975, c. 397, §2 (NEW) .]

16. **Limited use pesticide.** "Limited use pesticide" means any pesticide or pesticide use classified for limited use by the board.

[1975, c. 397, §2 (NEW) .]

16-A. **Major forest insect aerial spray application.** "Major forest insect aerial spray application" means a project to apply pesticides against a forest insect pest by aerial application over an area containing at least 1,000 acres in the aggregate.

[1983, c. 819, Pt. A, §41 (NEW) .]

16-B. **Minor forest insect aerial spray application.** "Minor forest insect aerial spray application" means a project to apply pesticides against a forest insect pest by aerial application over an area containing less than 1,000 acres in the aggregate.

[1983, c. 819, Pt. A, §41 (NEW) .]

16-C. **Monitor.**

[2015, c. 58, §4 (RP) .]

17. **Person.** "Person" means any individual, partnership, association, fiduciary, corporation, governmental entity or any organized group of persons whether incorporated or not.

[1975, c. 397, §2 (NEW) .]

18. **Pest.** The term "pest" means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other micro-organism, except viruses, bacteria or other micro-organisms on or in living man or other living animals, which the commissioner declares to be a pest.

[1975, c. 397, §2 (NEW) .]

19. **Pesticide.** The term "pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

[1975, c. 397, §2 (NEW) .]

20. **Pesticide dealer.** "Pesticide dealer" means any person who distributes limited or restricted use pesticides.

[1975, c. 397, §2 (NEW) .]

21. **Plant regulator.** The term "plant regulator" means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants and soil amendments. Also, the term "plant regulator" shall not be required to include any of such of those nutrient mixtures or soil amendments as are commonly known as vitamin hormone horticultural products, intended for improvement, maintenance, survival, health and propagation of plants, and as are not for pest destruction and are nontoxic and nonpoisonous in the undiluted packaged concentration.

[1975, c. 397, §2 (NEW) .]

22. **Private applicator.** "Private applicator" means any person who uses or supervises the use of any pesticide which is classified for restricted or limited use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.

[1975, c. 644, §3 (AMD) .]

22-A. **Private applicator of general use pesticides.** "Private applicator of general use pesticides" means a person who uses or supervises the use of general use pesticides for purposes of producing agricultural commodities on property owned or rented by that person or that person's employer when:

A. The agricultural commodities produced are plants or plant products intended for human consumption as food; and [2011, c. 169, §1 (NEW).]

B. The person applying the pesticides or the employer of the person applying the pesticides derives $1,000 or more in annual income from the sale of those commodities. [2011, c. 169, §1 (NEW).]

[2011, c. 169, §1 (NEW) .]

23. **Restricted use pesticide.** "Restricted use pesticide" means any pesticide or pesticide use classified for use only by or under the direct supervision of a certified applicator by the Administrator of the United States Environmental Protection Agency or by the Commissioner of Agriculture, Conservation and Forestry.

[1979, c. 731, §19 (AMD); 2011, c. 657, Pt. W, §6 (REV) .]

23-A. **Spotter.**

[2015, c. 58, §4 (RP) .]

23-B. **Spray contracting firm.** "Spray contracting firm" means a person, as defined in this section, employed or contracted to conduct a public or private pesticide application. This term does not include the owner or lessee of land to be sprayed, employees of that landowner or lessee, the Bureau of Forestry, the employees of the Bureau of Forestry or individuals who are certified as commercial applicators.

[1985, c. 122, §1 (AMD); 2011, c. 657, Pt. W, §7 (REV); 2013, c. 405, Pt. A, §23 (REV) .]

23-C. **Spray period.**

[2015, c. 58, §4 (RP) .]

24. **Under the direct supervision of a certified applicator.** "Under the direct supervision of a certified applicator," unless otherwise prescribed by its labeling, means the act or process by which a pesticide is applied by a competent person acting under the instructions and control of a certified applicator who is available, if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied. In the case of an application made by a commercial applicator, the certified applicator must be physically present at the time and on the site of the application.

[1987, c. 243, §3 (AMD) .]

25. **Weed.** "Weed" means any plant which grows where not wanted.

[1975, c. 397, §2 (NEW) .]

SECTION HISTORY
1975, c. 397, §2 (NEW). 1975, c. 644, §§1-3 (AMD). 1977, c. 20, §§1, 2 (AMD). 1979, c. 731, §19 (AMD). 1981, c. 374, §§1, 2 (AMD). 1983, c. 819, Pt. A, §§40, 41 (AMD). 1985, c. 122, §1 (AMD). 1987, c. 243, §§1-3 (AMD). 1987, c. 723, §§2, 3 (AMD). 2007, c. 245, §§1, 2 (AMD). 2011, c. 169, §1 (AMD). 2011, c. 657, Pt. W, §§6, 7 (REV). 2013, c. 405, Pt. A, §23 (REV). 2015, c. 58, §§2-4 (AMD).

§1471-D. CERTIFICATION AND LICENSES

1. **Certification required; commercial applicators and spray contracting firms.** Certification is required for commercial applicators and spray contracting firms as follows.

A. No commercial applicator may use or supervise the use of any pesticide within the State without prior certification from the board, provided that a competent person who is not certified may use such a pesticide under the direct supervision of a certified applicator; and [1983, c. 819, Pt. A, §42 (NEW).]

B. No spray contracting firm may use or supervise the use of any pesticide within the State without prior certification from the board. [1985, c. 122, §2 (AMD).]

[1985, c. 122, §2 (AMD) .]

2. **Certification required, private applicators.** No private applicator shall use or supervise the use of any limited or restricted use pesticide without prior certification from the board, provided, that a competent person who is not certified may use such a pesticide under the direct supervision of a certified applicator.

[1975, c. 397, §2 (NEW) .]

2-A. **Certification required; government pesticide supervisor.**

[2015, c. 58, §5 (RP) .]

2-B. **Certification required; spotters and monitors.**

[2015, c. 58, §6 (RP) .]

2-C. **Exemptions or reduced licensing requirements for certain commercial or custom applications.** The board may by rule provide for exemptions from licensing requirements and for reduced licensing requirements for classes of commercial applicators of general-use pesticides applied by hand or nonpowered equipment if the board finds that applications by those classes do not pose a significant risk to health or the environment and the requirement of licensing does not serve a meaningful public purpose.

Notwithstanding Title 7, section 610, subsection 6, rules adopted pursuant to this section to provide exemptions from licensing or reduced licensing requirements are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 245, §3 (NEW) .]

2-D. **Certification required; private applicator of general use pesticides for food production.** A private applicator of general use pesticides may not use or supervise the use of general use pesticides for food production without prior certification from the board, except that a competent person who is not certified may use such a pesticide under the direct supervision of a certified applicator. Additional certification under this section is not required for a person certified as a commercial applicator or a private applicator under subsection 1 or 2, respectively.

[2011, c. 169, §2 (NEW); 2011, c. 169, §6 (AFF) .]

3. **License required, pesticide dealers.** No pesticide dealer shall:

A. Distribute any limited or restricted use pesticide without a distributor's license from the board; or [1975, c. 397, §2 (NEW).]

B. Distribute limited or restricted use pesticides to any person who is not licensed or certified by the board. [1975, c. 397, §2 (NEW).]

[1975, c. 397, §2 (NEW) .]

4. **Application.** Application for licenses or certification shall be accompanied by such a reasonable fee as the board may establish by regulation. The applicant shall provide such information regarding the applicant's qualifications and proposed operations and other relevant matters as required by the board. Commercial applicators and spray contracting firms shall be required by the board to provide proof of financial responsibility in custom application as to such amounts as the board may, by regulation, designate; private applicators may also be required to provide such proof. All applicants to the board for certification or licensing shall be required to comply with such standards of competency as are established by the board concerning adequate knowledge of pesticide distribution or use and the related dangers and necessary precautions; provided that, in the case of applicants for commercial certification and pesticide dealers' licenses, such compliance shall be demonstrated by written examination in addition to such other criteria, including performance testing, as the board may establish.

[1983, c. 819, Pt. A, §44 (AMD) .]

5. **Issuance.** A license or certification may not be issued by the board unless the board determines that the standards for licensing and certification have been met as to those categories for which the applicant has applied and qualified. If a license or certification is not issued as applied for, the board shall provide written

notice to the applicant of the reasons therefor. The license or certificate may be issued upon such terms and conditions as the board considers necessary for the protection of the public health, safety and welfare, and for enforcement and administration of this chapter and the rules adopted pursuant to this chapter.

[2015, c. 58, §7 (AMD) .]

6. **Renewal.** Licenses for commercial applicators, spray contracting firms, pesticide dealers and private applicators are valid for such period as prescribed by the board by rule. Application for renewal must be accompanied by such reasonable fee as the board may by rule require. The board may, by rule, require that such renewal application include reexamination or other procedures designed to assure a continuing level of competence to distribute, use or supervise the use of pesticides safely and properly.

If the board fails to renew a license upon application of the licensee or certificate holder, it shall afford the licensee or certificate holder an opportunity for a hearing in conformity with Title 5, chapter 375, subchapter 4.

[2015, c. 58, §8 (AMD) .]

7. **Suspension.**

A. If the board determines that there may be grounds for revocation of a license or certificate, it may temporarily suspend said license or certificate pending inquiry and opportunity for hearing, provided that such suspension shall not extend for a period longer than 45 days. [1975, c. 397, §2 (NEW).]

B. The board shall notify the licensee or certificate holder of the temporary suspension, indicating the basis therefor and informing the licensee or certificate holder of the right to request a public hearing. [1983, c. 819, Pt. A, §47 (AMD).]

C. If the licensee or certificate holder fails to request a hearing within 20 days of the date of suspension, such right shall be deemed waived. If the licensee or certificate holder requests such a hearing, notice shall be given at least 20 days prior to the hearing to the licensee or certificate holder and to appropriate federal and state agencies. In addition, public notice shall be given by publication in a newspaper of general circulation in the State and such other publications as the board deems appropriate. [1983, c. 819, Pt. A, §48 (AMD).]

D. This subsection is not governed by the provisions of Title 4, chapter 5 or Title 5, chapter 375. [1999, c. 547, Pt. B, §39 (AMD); 1999, c. 547, Pt. B, §80 (AFF).]

[1999, c. 547, Pt. B, §39 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

8. **Revocation.** The District Court may suspend or revoke the certification or license of a licensee or certificate holder upon a finding that the applicant:

A. Is no longer qualified; [1975, c. 397, §2 (NEW).]

B. Has engaged in fraudulent business practices in the application or distribution of pesticides; [1975, c. 397, §2 (NEW).]

C. Used or supervised the use of pesticides applied in a careless, negligent or faulty manner or in a manner which is potentially harmful to the public health, safety or welfare or the environment; [1975, c. 397, §2 (NEW).]

D. Has stored, transported or otherwise distributed pesticides in a careless, faulty or negligent manner or in a manner which is potentially harmful to the environment or to the public health, safety or welfare; [1975, c. 397, §2 (NEW).]

E. Has violated the provisions of this chapter or the rules and regulations issued hereunder; [1975, c. 397, §2 (NEW).]

F. Has made a pesticide recommendation, use or application, or has supervised such use or application, inconsistent with the labelling or other restrictions imposed by the board; [1975, c. 397, §2 (NEW).]

G. Has made false or fraudulent records or reports required by the board under this chapter or under regulations pursuant thereto; [1981, c. 470, Pt. A, §67 (AMD).]

H. Has been subject to a criminal conviction under section 14 (b) of the amended FIFRA or a final order imposing a civil penalty under section 14 (a) of the amended FIFRA; or [1981, c. 470, Pt. A, §67 (AMD).]

I. Has had the license or certificate, which supplied the basis for the Maine license or certification pursuant to subsection 10, revoked or suspended by the appropriate federal or other state government authority. [1977, c. 694, §341 (NEW).]

[1983, c. 819, Pt. A, §49 (AMD); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

9. **State, federal and local government employees.** Individuals who apply pesticides in connection with their duties as officials or employees of federal, state or local governments are subject to the provisions of this chapter concerning licenses and certification, but are exempt from the payment of any fee.

[1975, c. 397, §2 (NEW) .]

10. **Nonresident licenses.** The board may issue a license or certificate without examination to nonresidents who are licensed or certified by another state or the Federal Government substantially in accordance with the provisions of this chapter. Licenses or certificates issued pursuant to this subsection may be suspended or revoked in the same manner and on the same grounds as other licenses or certificates issued pursuant to this chapter. Licenses and certificates issued pursuant to this subsection may be suspended or revoked pursuant to subsection 8, paragraph I.

[1977, c. 694, §342 (AMD) .]

11. **Arborists.** In the case of persons licensed under Title 7, chapter 404, subchapter II, the board may waive the application fee and may consider the arborist license as prima facie evidence of qualification to use pesticides in the categories of use provided by Title 7, chapter 404.

[1999, c. 84, §4 (AMD) .]

SECTION HISTORY
1975, c. 397, §2 (NEW). 1977, c. 20, §3 (AMD). 1977, c. 694, §§338-342 (AMD). 1981, c. 374, §§3-7 (AMD). 1981, c. 470, §A67 (AMD). 1983, c. 819, §§A42-A49 (AMD). 1985, c. 122, §2 (AMD). 1997, c. 454, §8 (AMD). 1999, c. 84, §4 (AMD). 1999, c. 547, §§B39,78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 245, §3 (AMD). 2011, c. 169, §2 (AMD). 2011, c. 169, §6 (AFF). 2015, c. 58, §§5-8 (AMD).

§1471-E. AQUATIC APPLICATION, PERMIT REQUIRED

No person shall apply or cause to be applied a pesticide to the waters of the State without obtaining a waste discharge license from the Department of Environmental Protection pursuant to Title 38, chapter 3, subchapter I, Article 2. [1979, c. 281, §1 (RPR).]

SECTION HISTORY
1975, c. 397, §2 (NEW). 1977, c. 20, §4 (AMD). 1979, c. 281, §1 (RPR).

§1471-F. CRITICAL AREAS

No person shall apply pesticides to any area of the State which the board has determined to be a critical area, except to the extent such application is within the limits prescribed by the board in establishing the area. [1975, c. 397, §2 (NEW).]

SECTION HISTORY
1975, c. 397, §2 (NEW).

§1471-G. REPORTS

1. **Pesticide dealers to maintain certain records.** All pesticide dealers shall maintain records of pesticide distribution for a period of at least 2 years and shall provide such reports and information as the board may, by regulation, require.

[1975, c. 397, §2 (NEW) .]

2. **Applicators and firms to maintain certain records.** All commercial applicators and spray contracting firms shall maintain, for a period of at least 2 years, records indicating the type and amount of pesticide used, the area of use and such other information as the board may require. Said applicators and firms shall provide such information, notification and reports as the board, by regulation, may require.

[1983, c. 819, Pt. A, §50 (AMD) .]

SECTION HISTORY
1975, c. 397, §2 (NEW). 1983, c. 819, §A50 (AMD).

§1471-H. INSPECTION

Upon presentation of appropriate credentials, the chair or any member of the board or any authorized employee or consultant of the board may enter upon any public or private premises at reasonable times for the purpose of inspecting any equipment, device or apparatus used in applying pesticides; inspecting storage and disposal areas; inspecting or investigating complaints of injury to persons or land from pesticides; observing the use and application of pesticides; sampling pesticides in use or storage; and sampling pesticide residues on crops, foliage, soil, water or elsewhere in the environment. Upon denial of access to the board or its agents, the board or its agents may seek an appropriate search warrant in a court of competent jurisdiction. Notwithstanding other provisions of this section, a board member or any authorized employee or consultant of the board may enter public or private premises without notification if an emergency exists. The need to take a residue sample in a timely manner constitutes an emergency under this section. [1989, c. 841, §7 (AMD).]

SECTION HISTORY
1975, c. 397, §2 (NEW). 1989, c. 841, §7 (AMD).

§1471-I. ENFORCEMENT

(REPEALED)

SECTION HISTORY
1975, c. 397, §2 (NEW). 1979, c. 644, §4 (RP).

§1471-J. PENALTIES

A person who violates any provision of this chapter or any order, rule, decision, certificate or license issued by the board or commits any act constituting a ground for revocation, except acts punishable under section 1471-D, subsection 8, paragraphs A and H, commits a civil violation subject to the penalties established in Title 7, section 616-A. [1989, c. 841, §8 (AMD).]

SECTION HISTORY
1975, c. 397, §2 (NEW). 1975, c. 623, §26A (AMD). 1975, c. 770, §§91,92 (RPR). 1989, c. 841, §8 (AMD).

§1471-K. APPEAL

Any person aggrieved by any action of the board may obtain a review thereof by filing in the Superior Court, within 30 days of notice of the action, a written petition praying that the action of the board be set aside. A copy of such petition shall forthwith be delivered to the board, and within 30 days thereafter the board shall certify and file in the court a transcript of evidence received, whereupon the court shall have jurisdiction to affirm, set aside or modify the action of the board, except that the findings of the board as to the facts, if supported by substantial evidence, shall be conclusive. [1975, c. 397, §2 (NEW).]

SECTION HISTORY
1975, c. 397, §2 (NEW).

§1471-L. SUBPOENAS

The board may issue subpoenas to compel the attendance of witnesses and production of such books, documents and records anywhere in the State in any hearing affecting the authority or privilege granted by a license or permit issued under this chapter, as may be relevant to proceedings of the board. If any person refuses to obey a subpoena issued by the board under this section, the board may apply to any Justice of the Superior Court for an order compelling such person to comply with the requirements of the subpoena. Such justice may issue such order and may punish failure to obey the same as a contempt thereof. [1975, c. 397, §2 (NEW).]

SECTION HISTORY
1975, c. 397, §2 (NEW).

§1471-M. POWERS OF BOARD

1. **Establishment of categories and standards.** The board shall, by regulation promulgated in conformity with Title 5, chapter 375, subchapter II:

A. Establish categories, and where applicable subcategories, of commercial pesticide applicators depending upon the nature and extent of the pesticide use, the type of pesticide equipment, the degree of knowledge or skill required in their application and such other factors as the board considers relevant, as long as such categories are consistent with, but not limited to, the categories established by the United States Environmental Protection Agency; [2015, c. 58, §9 (AMD).]

B. Establish competency standards for the established categories for the certification and renewal of certification of commercial applicators. Such standards shall require, as a minimum, that the applicant demonstrate, by written examination and, as appropriate, performance testing, knowledge of pests, formulation and labelling of pesticides, equipment and application techniques, safety precautions, potential harmful effects on the environment, and applicable federal and state laws and regulations. [1975, c. 397, §2 (NEW).]

C. Establish standards for the certification and renewal of certification of private applicators. Such standards shall require that the private applicator indicate satisfactory knowledge of pest problems and pest control practices, including as a minimum the ability to recognize common pests and the damage they cause, to understand the pesticide label, to apply pesticides in accordance with label instructions and warnings, to recognize local environmental situations that must be considered to avoid contamination, to recognize poisoning symptoms and corrective procedures, and to understand applicable federal and state laws and regulations. [1975, c. 397, §2 (NEW).]

C-1. Establish standards for the certification and renewal of certification of private applicators of general use pesticides. Such standards must require that the private applicator of general use pesticides indicate satisfactory knowledge of pest problems and pest control practices, including as a minimum the ability to recognize common pests and the damage they cause, to understand the pesticide label and to apply pesticides in accordance with label instructions and warnings. [2011, c. 169, §3 (NEW).]

D. Establish the standards for issuance and renewal of licenses of pesticide dealers. These standards shall include, but not be limited to, requirements concerning transportation of pesticides, the applicant's knowledge of applicable federal and state statutes and regulations, and the applicant's understanding of the dangers involved and the precautions necessary for the safe storage and distribution of pesticides; [1983, c. 819, Pt. A, §51 (AMD).]

E. Establish guidelines and requirements for reporting of information by commercial applicators, pesticide dealers and spray contracting firms to the board; and [2015, c. 58, §10 (AMD).]

F. [2015, c. 58, §11 (RP).]

G. [2015, c. 58, §12 (RP).]

H. Establish standards for the certification and renewal of certification of spray contracting firms. [1983, c. 819, Pt. A, §53 (NEW).]

[2015, c. 58, §§9-12 (AMD) .]

2. **Designation of critical areas; cooperation; promulgation of rules and regulations.** The board may:

A. [1987, c. 702, §3 (RP).]

B. Cooperate with any other agency of this State or its subdivisions, or with any agency of any other state or the Federal Government for the purpose of administering this chapter and of securing uniformity of regulations; [1975, c. 397, §2 (NEW).]

C. On its own or in cooperation with other agencies or persons, publish such information as it deems appropriate, including information concerning injury which might result from improper application or handling of pesticides, and methods and precautions designed to prevent the injury; and [1987, c. 702, §4 (AMD).]

D. Promulgate such other rules and regulations and take such other actions as it deems appropriate to control the use and distribution of pesticides within the State and to otherwise provide that the purposes and policies of this chapter are insured. [1975, c. 397, §2 (NEW).]

[1987, c. 702, §§3, 4 (AMD) .]

3. **Hazard communication and community right to know.** The board shall assist the Director of the Bureau of Labor Standards in providing education and training to aid agricultural employers in complying with the federal Occupational Safety and Health Administration requirements for hazard communication and shall assist the responsible state agencies in providing education and training to aid agricultural employers in complying with the federal requirements for emergency and hazardous chemical inventory forms and community right-to-know reporting.

[1999, c. 57, Pt. B, §2 (RPR) .]

4. **Designation of critical areas.** The board may designate critical areas which shall include, but not be limited to, areas where pesticide use would jeopardize endangered species or critical wildlife habitat, present an unreasonable threat to quality of the water supply, be contrary to a master plan for the area where such area is held or managed by an agency of the State or Federal Government, or would otherwise result in unreasonable adverse effects on the public health, welfare or the environment of the area. The designation of a critical area may prohibit pesticide use or may include such limitations on such use as the board deems appropriate. The proceedings to designate a critical area under this section shall conform to Title 5, chapter 375, subchapter II.

The board, by rule, shall establish criteria for designation of critical areas by March 1, 1989.

In addition to the provisions of the Maine Administrative Procedure Act, Title 5, section 8001, any municipality and, for the purpose of representing unorganized territory, any county may petition the board for establishment of a critical area within their boundaries. If the board designates a critical area, the board shall develop a pesticide management plan for that area after receiving comments from the municipality or, for unorganized territory, the county; the volunteer medical advisory panel as established through the board; local applicators; owners of land within the critical area; and other interested parties and agencies.

[1989, c. 502, Pt. A, §67 (AMD) .]

5. **Disclosure of rights.** When issuing a license, the board shall provide to each licensee a written statement outlining the enforcement process and the process of negotiating agreements in lieu of court action that may occur in the event enforcement action is pursued. The Department of the Attorney General and the Department of Agriculture, Conservation and Forestry shall assist the board in developing an appropriate written statement. The board shall make this information available to all existing licensees within 30 days of the effective date of this section.

[1989, c. 841, §9 (NEW); 2011, c. 657, Pt. W, §5 (REV) .]

6. **Notification.** Whenever the board or its staff investigates a complaint alleging a violation of rules adopted pursuant to Title 7, section 606, subsection 2, paragraph G, the staff shall make all reasonable efforts to notify the alleged violator, if identity is known, prior to collecting samples.

[1989, c. 841, §9 (NEW) .]

7. **Data collection; report.** The board shall implement a system of record keeping, reporting, data collection and analysis that provides information on the quantity of product and brand names of pesticides sold. The board, in cooperation with the University of Maine Cooperative Extension Service, shall study ways to improve pesticide information data bases and to optimize the useful analysis of reported information.

Before April 1, 2002, the board shall submit a report on pesticide activities during the previous calendar year to the joint standing committee of the Legislature having jurisdiction over pesticide control matters. The report must contain sales information on quantities of pesticides sold listed by the common name of the active ingredient.

The board shall also include in the report aggregate data on pesticide use based on reports submitted to the board by commercial applicators and other persons required to submit reports under this chapter and rules adopted pursuant to this chapter. The board shall provide the data by sector of use whenever possible. The board shall provide the data by category of pesticide, including data for herbicides, insecticides, fungicides and other major categories. In addition, the board shall include in the report a summary of survey results or other information published by the University of Maine Cooperative Extension Service or the United States Department of Agriculture relating to pesticides use in the State.

The board shall develop a measure to estimate sales and types of pesticides commonly used by homeowners and track trends in the quantities and types of pesticides used by homeowners.

The board shall provide historical information on pesticide use and sales in the report when the information available is appropriate for comparison.

[2001, c. 355, §1 (AMD) .]

SECTION HISTORY
1975, c. 397, §2 (NEW). 1977, c. 694, §§343,344 (AMD). 1981, c. 374, §§8,9 (AMD). 1981, c. 470, §§A68,A69 (AMD). 1983, c. 568, §2 (AMD). 1983, c. 819, §§A51-A53 (AMD). 1987, c. 660, §1 (AMD). 1987, c. 702, §§3-5 (AMD). 1989, c. 502, §A67 (AMD). 1989, c. 841, §9 (AMD). 1997, c. 389, §1 (AMD). 1999, c. 57, §B2 (AMD). 1999, c. 724, §1 (AMD). 2001, c. 355, §1 (AMD). 2011, c. 169, §3 (AMD). 2011, c. 657, Pt. W, §5 (REV). 2015, c. 58, §§9-12 (AMD).

§1471-N. CHEMICAL CONTROL OF VERTEBRATE ANIMALS

(REPEALED)

SECTION HISTORY
1977, c. 65, (NEW). 1979, c. 187, (AMD). 2009, c. 393, §8 (RP).

§1471-O. EXERCISE OF POWERS BY BOARD OF PESTICIDES CONTROL

The powers established under the Maine Pesticide Control Act of 1975, Title 7, chapter 103, subchapter II-A, shall be exercised by the Board of Pesticides Control established by section 1471-B. [1981, c. 112, §2 (NEW).]

SECTION HISTORY
1981, c. 112, §2 (NEW).

§1471-P. STORAGE OF ILLEGAL AND OBSOLETE PESTICIDES

1. **Board to accept illegal and obsolete pesticides.** Within the limits of resources made available to it for the storage or disposal of illegal and obsolete pesticides purchased for use in Maine, the board shall accept, store and dispose of pesticides from persons who purchased them with the intent of applying them.

[1981, c. 705, Pt. S, §1 (NEW) .]

2. **Board may adopt rules and fees.** The board may adopt any rules necessary to implement this section, including rules limiting the quantity and nature of pesticides it accepts for storage or disposal. The board may adopt and charge fees for storage or disposal of pesticides presented to it where the amount of pesticides, or special treatments necessary for safe storage or disposal, will require a substantial cost to the board; provided, that the fees charged are close to the actual cost incurred by the board.

[1981, c. 705, Pt. S, §1 (NEW) .]

SECTION HISTORY
1981, c. 705, §S1 (NEW).

§1471-Q. RETURN AND DISPOSAL OF LIMITED AND RESTRICTED USE PESTICIDE CONTAINERS

(REPEALED)

SECTION HISTORY

1983, c. 542, §§2,3 (NEW). 1985, c. 54, §1 (AMD). 2011, c. 510, §3 (RP).

§1471-R. NOTIFICATION AND MONITORING

(REPEALED)

SECTION HISTORY
1983, c. 819, Pt. A, §54 (NEW). 2011, c. 657, Pt. W, §7 (REV). 2013, c. 405, Pt. A, §23 (REV). 2015, c. 58, §13 (RP).

§1471-S. REQUIREMENT FOR SPOTTERS AND MONITORS

(REPEALED)

SECTION HISTORY
1983, c. 819, §A54 (NEW). 2015, c. 58, §14 (RP).

§1471-T. EXEMPTION

(REPEALED)

SECTION HISTORY
1983, c. 819, §A54 (NEW). 2015, c. 58, §14 (RP).

§1471-U. MUNICIPAL ORDINANCES

1. **Centralized listing.** The Board of Pesticides Control shall maintain for informational purposes, for the entire State, a centralized listing of municipal ordinances that specifically apply to pesticide storage, distribution or use.

[1989, c. 93, §1 (RPR) .]

2. **Existing ordinances.** The clerk of any municipality which, on the effective date of this section, has an ordinance to be listed under subsection 1 shall file a copy of that ordinance with the board by December 31, 1988.

[1989, c. 93, §1 (RPR) .]

3. **New ordinances.** The clerk of the municipality shall provide the board with notice and a copy of any ordinance to be listed under subsection 1 at least 7 days prior to the meeting of the legislative body or the public hearing at which adoption of the ordinance will be considered. The clerk shall notify the board within 30 days after adoption of the ordinance.

[1989, c. 93, §1 (RPR) .]

4. **Intent.** It is the intent of this section to provide information on municipal ordinances. This section shall not affect municipal authority to enact ordinances.

[1989, c. 93, §1 (RPR) .]

5. **Failure to file.** For any ordinance which is not filed with the board, with notice given to the board in accordance with this section, which is otherwise valid under the laws of this State, any provision that specifically applies to storage, distribution or use of pesticides shall be considered void and of no effect after the deadline for filing and until the board is given proper notice and the ordinance is filed with the board.

[1989, c. 93, §1 (RPR) .]

SECTION HISTORY
1987, c. 702, §6 (NEW). 1987, c. 723, §§4,6 (NEW). 1989, c. 93, §1 (RPR).

§1471-V. LOCAL PARTICIPATION

l. **Representation.** When the board, under section l47l-M, considers the designation of a critical area or the establishment of a pesticide management plan for a critical area, the municipal officers of any affected municipality, or county commissioners in the case of unorganized territories, shall be given the opportunity to select a local representative to serve as an additional board member. For a given action, there shall be only one local representative who shall represent the affected municipality or unorganized territory.

[1987, c. 702, §6 (NEW) .]

2. **Participation and voting procedure.** A local representative appointed under this section may participate officially and vote in deliberations on the designation of a critical area or on the establishment of a pesticide management plan only for a critical area which is in the municipality or unorganized territory represented. A local representative may participate on the board until final designation of the critical area or final establishment of the pesticide management plan, including any administrative or judicial appeals. When the board considers a proposed critical area or pesticide management plan that affects more than one municipality, the board shall take separate action on the portion in each municipality.

[1987, c. 702, §6 (NEW) .]

3. **Compensation.** Local representatives shall be reimbursed only for expenses as regular board members during the period of their service, to be paid by the board.

[1987, c. 702, §6 (NEW) .]

SECTION HISTORY
1987, c. 702, §6 (NEW).

§1471-W. GENERAL USE PESTICIDE DEALERS

1. **License required.** Unless exempted under subsection 5, no person may distribute general use pesticides without a license.

[1989, c. 93, §2 (NEW) .]

2. **Issuance of license.** The Board of Pesticides Control shall issue a license to distribute general use pesticides to any person upon payment of a fee of $20 for a calendar year or any part of a calendar year. The Board of Pesticide Control may issue a license for a one-year, 2-year or 3-year period. Licenses for a period in excess of one year may only be issued with the agreement of or at the request of the applicant. The fee for a 2-year license is 2 times the annual fee. The fee for a 3-year license is 3 times the annual fee. Any

person licensed to distribute restricted use pesticides is considered licensed to distribute general use pesticides without any additional fee. All fees collected under this section are deposited in the Board of Pesticides Control Special Fund.

[1997, c. 454, §9 (AMD) .]

3. **Records; reporting.** Any person who distributes general use pesticides to licensed general use pesticide dealers in the State shall keep and maintain records of these sales for annual reporting purposes. These annual reports must include the names of all licensed general use pesticide dealers to whom general use pesticides were distributed, the names of the pesticides, the United States Environmental Protection Agency registration number and the quantity sold. These records must be kept for 2 years after the end of the calendar year. For the purposes of this subsection, "distributes" means sells, ships or delivers general use pesticides to a licensed general use pesticide dealer engaged in retail sales. The board may adopt rules to further clarify who is responsible for reporting under this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[1997, c. 139, §1 (RPR) .]

4. **Violations; penalty.**

[1989, c. 93, §2 (NEW); 1989, c. 841, §10 (RP) .]

5. **Exemptions.** The following situations are exempt from the provisions of this section.

A. Any person may distribute the following products without a general use pesticide dealer license:

(1) Household use pesticide products with no more than 3% active ingredients;

(2) The following products, which have limited percentages of active ingredients:

(a) Dichlorovos (DDVP) impregnated strips with concentrations not more than 25% in resin strips and pet collars;

(3) The following products with unlimited percentages of active ingredients:

(a) Pet supplies such as shampoos, tick and flea collars and dusts;

(b) Disinfectants, germicides, bactericides and virucides;

(c) Insect repellents;

(d) Indoor and outdoor animal repellents;

(e) Moth flakes, crystals, cakes and nuggets;

(f) Indoor aquarium supplies;

(g) Swimming pool supplies;

(h) Pediculocides and mange cure on man;

(i) Aerosol products; and

(j) General use paints, stains, and wood preservatives and sealants. [1989, c. 93, §2 (NEW).]

B. The board may promulgate rules to exempt the sale of additional general use pesticide products from the dealer licensing provisions of this section. [1989, c. 93, §2 (NEW).]

[1989, c. 93, §2 (NEW) .]

SECTION HISTORY
1989, c. 93, §2 (NEW). 1989, c. 841, §10 (AMD). 1997, c. 139, §1 (AMD). 1997, c. 454, §9 (AMD).

§1471-X. STATE POLICY; PUBLIC AND PRIVATE INITIATIVES TO MINIMIZE RELIANCE ON PESTICIDES

It is the policy of the State to work to find ways to use the minimum amount of pesticides needed to effectively control targeted pests in all areas of application. The agencies of the State involved in the regulation or use of pesticides shall promote the principles and the implementation of integrated pest management and other science-based technology to minimize reliance on pesticides while recognizing that outbreaks of disease, insects and other pests will necessitate fluctuations in pesticide use. These agencies, in cooperation with private interest groups, shall work to educate pesticide users and the general public in the proper use of pesticides and to determine other actions needed to accomplish the state policy. [1997, c. 389, §2 (NEW).]

SECTION HISTORY
1997, c. 389, §2 (NEW).

§1471-Y. NOTIFICATION OF OUTDOOR PESTICIDES APPLICATION USING AIRCRAFT OR AIR-CARRIER EQUIPMENT

(REPEALED)

SECTION HISTORY
2009, c. 378, §1 (NEW). 2009, c. 584, §1 (RP).

§1471-Z. REGISTRY OF PROPERTY REQUIRING NOTIFICATION FOR PESTICIDES APPLICATIONS

(REPEALED)

SECTION HISTORY
2009, c. 378, §2 (NEW). 2009, c. 584, §2 (AMD). 2011, c. 332, §1 (RP).

§1471-AA. AWARENESS OF OUTDOOR PESTICIDES APPLICATIONS; ROLE OF THE BOARD

(REPEALED)

SECTION HISTORY
2009, c. 584, §3 (NEW). 2011, c. 332, §2 (RP).

§1471-BB. REFUND OF DEPOSITS

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL 12/31/17)
(WHOLE SECTION TEXT REPEALED 12/31/17)

A pesticide dealer shall refund deposits paid in accordance with former section 1471-Q on returned pesticide containers bearing the board's identifying stickers. The board shall refund deposits paid on out-of-state sales in accordance with former section 1471-Q. [2011, c. 510, §4 (NEW).]

This section is repealed December 31, 2017. [2011, c. 510, §4 (NEW).]

SECTION HISTORY
2011, c. 510, §4 (NEW).

Chapter 259: OCCUPATIONAL DISEASES

§1481. REPORTS FROM PHYSICIANS

(REPEALED)

SECTION HISTORY
1977, c. 304, §8 (RP).

§1482. LEAD POISONING

(REPEALED)

SECTION HISTORY
1977, c. 304, §8 (RP).

§1483. PENALTY; PROSECUTIONS

(REPEALED)

SECTION HISTORY
1977, c. 304, §8 (RP).

Chapter 259-A: OCCUPATIONAL DISEASE REPORTING

§1491. OCCUPATIONAL DISEASE REPORTING

As used in this chapter the term "occupational disease" means any abnormal condition or disorder, including an occupational injury, caused by exposure to environmental factors associated with employment. Occupational diseases include the following: Asbestosis; mesothelioma; silicosis; and exposure to heavy metals. Reporting of other occupational diseases may be required only by departmental rules. [1993, c. 270, §1 (AMD).]

SECTION HISTORY
1985, c. 452, §1 (NEW). 1993, c. 270, §1 (AMD).

§1492. OCCUPATIONAL DISEASE REPORTING SYSTEM

The Department of Health and Human Services shall establish, maintain and operate a statewide occupational disease reporting system. The data collected shall be analyzed and interpreted in order to better identify risk factors associated with occupational diseases and strategies to prevent or reduce these risks. The results of this analysis shall be made available to the public. The department shall share and discuss this information with the Department of Labor. [1989, c. 502, Pt. A, §68 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY
1985, c. 452, §1 (NEW). 1987, c. 816, §KK18 (AMD). 1989, c. 502, §A68 (AMD). 2003, c. 689, §B6 (REV).

§1493. DUTIES OF HEALTH CARE PROVIDERS, HEALTH CARE FACILITIES AND MEDICAL LABORATORIES

All health care providers, health care facilities and medical laboratories shall report to the Department of Health and Human Services all persons diagnosed as having an occupational disease no later than 30 days from the date of diagnosis or from discharge from a hospital. The report must include any factor known to the physician that is suspected of being a contributing factor to the disease, including, but not limited to, whether or not the person smokes and, if so, the frequency of smoking. [2011, c. 337, §1 (AMD).]

A health care provider, health care facility or medical laboratory, upon notification by the Department of Health and Human Services, shall report to the department any further information requested by the department concerning any person now or formerly under its care diagnosed as having or having had an occupational disease. [2011, c. 337, §1 (AMD).]

A health care provider, health care facility or medical laboratory complying with the reporting requirements of this section is not liable for any civil damages as a result of those acts. [2011, c. 337, §1 (AMD).]

SECTION HISTORY
1985, c. 452, §1 (NEW). 2003, c. 689, §B6 (REV). 2011, c. 337, §1 (AMD).

§1494. CONFIDENTIALITY

Unless otherwise authorized by section 42, subsection 5, the department may not release any information described in section 1493 regarding reporting of occupational diseases if that information identifies persons with occupational diseases directly or indirectly. The department may disclose information that relates to the site of employment to the Department of Labor, Bureau of Labor Standards if the disclosure contains only the information necessary to advance the public health and does not directly identify an individual having an occupational disease. [2011, c. 337, §2 (RPR).]

All other information submitted pursuant to this chapter may be made available to the public. [2011, c. 337, §2 (NEW).]

SECTION HISTORY
1985, c. 452, §1 (NEW). 2011, c. 337, §2 (RPR).

§1495. TRAINING

The department shall establish a program to train health care providers in the recognition of occupational diseases and on the appropriate case management of selected occupational illnesses occurring in the State. [1987, c. 816, Pt. KK, §19 (NEW).]

SECTION HISTORY
1987, c. 816, §KK19 (NEW).

Chapter 260: CONSENT OF MINORS FOR HEALTH SERVICES

§1501. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 694, Pt. C, §8 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

1. **Health care practitioner.** "Health care practitioner" has the same meaning as set forth in Title 24, section 2502, subsection 1-A.

[1995, c. 694, Pt. C, §8 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

1-A. **Health care.** "Health care" means any care, treatment, service or procedure to maintain, diagnose or otherwise affect an individual's physical or mental condition.

[2015, c. 444, §1 (NEW) .]

2. **Health care provider.** "Health care provider" has the same meaning as set forth in Title 24, section 2502, subsection 2.

[1995, c. 694, Pt. C, §8 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

3. **Minor.** "Minor" means a person under 18 years of age.

[1995, c. 694, Pt. C, §8 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

4. **Surrogate.** "Surrogate" means:

A. An adult who is not a parent or legal guardian but who is related to a minor by blood, marriage or adoption and with whom the minor resides and from whom the minor receives the ongoing care and support expected of a parent. "Surrogate" does not include a person to whom a parent has delegated parental authority to consent to the minor's medical treatment through a power of attorney or other written instrument; or [2015, c. 444, §1 (NEW).]

B. If an adult relative described in paragraph A does not exist, an adult to whom a parent or legal guardian has not delegated parental authority through a power of attorney or other written instrument with whom the minor resides and from whom the minor receives the ongoing care and support expected of a parent. [2015, c. 444, §1 (NEW).]

[2015, c. 444, §1 (NEW) .]

SECTION HISTORY
1995, c. 694, §C8 (NEW). 1995, c. 694, §E2 (AFF). 2015, c. 444, §1 (AMD).

§1502. CONSENT

In addition to the ability to consent to treatment for health services as provided in sections 1823 and 1908 and Title 32, sections 2595, 3292, 3817, 6221 and 7004, a minor may consent to treatment for abuse of alcohol or drugs or for emotional or psychological problems. [1995, c. 694, Pt. C, §8 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY
1995, c. 694, §C8 (NEW). 1995, c. 694, §E2 (AFF).

§1502-A. CONSENT TO GIVE BLOOD

A minor may consent to give blood if the minor is at least 17 years of age, notwithstanding any other provision of law. [1999, c. 10, §1 (NEW).]

SECTION HISTORY
1999, c. 10, §1 (NEW).

§1503. AUTHORITY

A minor may give consent to all medical, mental, dental and other health counseling and services if the minor: [1995, c. 694, Pt. C, §8 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

1. **Living separately; independent of parental support.** Has been living separately from parents or legal guardians for at least 60 days and is independent of parental support;

[1995, c. 694, Pt. C, §8 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

2. **Married.** Is or was legally married;

[1995, c. 694, Pt. C, §8 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

3. **Armed Forces.** Is or was a member of the Armed Forces of the United States; or

[1995, c. 694, Pt. C, §8 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

4. **Emancipated.** Has been emancipated by the court pursuant to Title 15, section 3506-A.

[1995, c. 694, Pt. C, §8 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY
1995, c. 694, §C8 (NEW). 1995, c. 694, §E2 (AFF).

§1503-A. AUTHORITY FOR CONSENT BY A SURROGATE

1. **Consent by a surrogate; notice of need for health care.** A surrogate may give consent for health care for a minor except that a surrogate may not withhold or withdraw life-sustaining treatment or deny surgery, procedures or other interventions that are life-saving and medically necessary. The existence of a surrogate does not affect the ability of a minor to give consent as otherwise provided by law. Before the surrogate may give consent, the surrogate must make a reasonable good faith attempt to inform the minor's parents or legal guardian of the minor's need for health care and the parents' right to make those decisions. If parental notification is not required by other provisions of law, the surrogate is not required to inform or attempt to inform the minor's parents or legal guardian.

[2015, c. 444, §2 (NEW) .]

2. **Notice of health care received.** Unless parental notification is not required by other provisions of law, a surrogate giving consent pursuant to subsection 1 shall make a reasonable good faith attempt to inform the minor's parents or legal guardian of the health care that the minor received. A health care practitioner or health care provider who provides health care pursuant to this section shall inform the minor's surrogate of this obligation. The sending of correspondence by regular mail, e-mail, texting, posting to a personal website or other written means of communication to the last known address or contacting by telephone using the last known telephone number of the minor's parents or legal guardian, whichever means the surrogate believes to be the most effective way to ensure actual notification, is deemed a reasonable good faith attempt to provide notice for purposes of this subsection.

[2015, c. 444, §2 (NEW) .]

3. **Penalties.** The following penalties apply to violations of this section.

A. A surrogate who makes decisions for a minor knowing that the decisions are prohibited by subsection 1 commits a Class E crime. [2015, c. 444, §2 (NEW).]

B. A person who knowingly acts as a surrogate for a minor without meeting the definition of "surrogate" in section 1501, subsection 4 commits a Class E crime. [2015, c. 444, §2 (NEW).]

C. A surrogate who fails to attempt to give notice as required in subsection 1 or 2 commits a Class E crime. [2015, c. 444, §2 (NEW).]

[2015, c. 444, §2 (NEW) .]

SECTION HISTORY
2015, c. 444, §2 (NEW).

§1504. GOOD FAITH RELIANCE ON CONSENT

1. **Reliance on minor's consent.** A health care practitioner or health care provider who takes reasonable steps to ascertain that a minor is authorized to consent to health care as authorized in section 1503 and who subsequently renders health care in reliance on that consent is not liable for failing to have secured consent of the minor's parents or legal guardian prior to providing health care to the minor.

[2015, c. 444, §3 (NEW) .]

2. **Reliance on surrogate's consent.** Recovery is not allowed against any health care practitioner or health care provider upon the grounds that the health care was rendered without informed consent if consent is given by the minor's surrogate pursuant to section 1503-A and the health care practitioner or provider acts with good faith reliance on that consent.

[2015, c. 444, §3 (NEW) .]

SECTION HISTORY
1995, c. 694, §C8 (NEW). 1995, c. 694, §E2 (AFF). 2015, c. 444, §3 (RPR).

§1505. CONFIDENTIALITY; NOTIFICATION

1. **Confidentiality.** Except as otherwise provided by law, a minor who may consent to health care services, as provided in this chapter or by other provision of law, is entitled to the same confidentiality afforded to adults.

[1995, c. 694, Pt. C, §8 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

2. **Parental notification.** A health care practitioner or health care provider may notify the parent or guardian of a minor who has sought health care under this chapter if, in the judgment of the practitioner or provider, failure to inform the parent or guardian would seriously jeopardize the health of the minor or would seriously limit the practitioner's or provider's ability to provide treatment.

[1995, c. 694, Pt. C, §8 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY
1995, c. 694, §C8 (NEW). 1995, c. 694, §E2 (AFF).

§1506. FINANCIAL RESPONSIBILITY

Unless the parent or guardian expressly agrees to assume full or partial responsibility, a minor who consents to health care services as provided in this chapter is responsible for the costs of those services. A minor may not be denied benefits or services to which the minor is entitled from a health care practitioner, health care provider, insurer or public agency because the minor has given the consent for those services as provided in this chapter. [1995, c. 694, Pt. C, §8 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY
1995, c. 694, §C8 (NEW). 1995, c. 694, §E2 (AFF).

§1507. CONSENT FOR SEXUAL ASSAULT FORENSIC EXAMINATION

Notwithstanding the limitations set forth in section 1503 or the existence of a surrogate described in section 1503-A, a minor may consent to health services associated with a sexual assault forensic examination to collect evidence after an alleged sexual assault. [2015, c. 444, §4 (AMD).]

SECTION HISTORY
1999, c. 90, §1 (NEW). 2015, c. 444, §4 (AMD).

Chapter 260-A: SETTLEMENT FUNDS

§1511. FUND FOR A HEALTHY MAINE ESTABLISHED

1. **Fund established.** The Fund for a Healthy Maine, referred to in this chapter as the "fund," is established for the purposes specified in this chapter as a separate and distinct fund for accounting and budgetary reporting purposes.

[2011, c. 701, §1 (AMD) .]

2. **Sources of fund.** The State Controller shall credit to the fund:

A. All money received by the State in settlement of or in relation to the lawsuit State of Maine v. Philip Morris, et al., Kennebec County Superior Court, Docket No. CV-97-134; [1999, c. 401, Pt. V, §1 (NEW).]

B. Money from any other source, whether public or private, designated for deposit into or credited to the fund; and [1999, c. 401, Pt. V, §1 (NEW).]

C. Interest earned or other investment income on balances in the fund. [1999, c. 401, Pt. V, §1 (NEW).]

[1999, c. 401, Pt. V, §1 (NEW) .]

3. **Allocation; amounts.**

[2001, c. 358, Pt. Q, §1 (RP) .]

3-A. **Unencumbered balances.** Any unencumbered balance remaining at the end of any fiscal year lapses back to the Fund for a Healthy Maine, the account within the Department of Administrative and Financial Services established pursuant to this section, and may not be made available for expenditure without specific legislative approval.

[2001, c. 559, Pt. AA, §3 (NEW); 2001, c. 559, Pt. AA, §5 (AFF) .]

3-B. **Departmental indirect cost allocation plans.** Any revenue transfer made on or after July 1, 2000 from a Fund for a Healthy Maine account to another account pursuant to an approved departmental indirect cost allocation plan is determined by the Legislature to be an authorized use of revenue credited to the Fund for a Healthy Maine. The State Budget Officer shall reduce allotment for the amount of any transfer made from a Fund for a Healthy Maine account for the purpose authorized in this subsection.

[2003, c. 513, Pt. Y, §1 (NEW) .]

4. **Restrictions.** This section does not require the provision of services for the purposes specified in subsection 6. When allocations are made to direct services, services to lower income consumers must have priority over services to higher income consumers. Allocations from the fund must be used to supplement, not supplant, appropriations from the General Fund.

[1999, c. 401, Pt. V, §1 (NEW) .]

5. **General Fund limitation.** Notwithstanding any provision to the contrary in this section, any program, expansion of a program, expenditure or transfer authorized by the Legislature using the Fund for a Healthy Maine may not be transferred to the General Fund without specific legislative approval.

[1999, c. 401, Pt. V, §1 (NEW) .]

6. **Health promotion purposes.** Allocations are limited to the following prevention and health promotion purposes:

A. Smoking prevention, cessation and control activities, including, but not limited to, reducing smoking among the children of the State; [1999, c. 401, Pt. V, §1 (NEW).]

A-1. Prevention, education and treatment activities concerning unhealthy weight and obesity; [2011, c. 617, §1 (NEW).]

B. Prenatal and young children's care including home visits and support for parents of children from birth to 6 years of age; [1999, c. 401, Pt. V, §1 (NEW).]

C. Child care for children up to 15 years of age, including after-school care; [1999, c. 401, Pt. V, §1 (NEW).]

D. Health care for children and adults, maximizing to the extent possible federal matching funds; [1999, c. 401, Pt. V, §1 (NEW).]

E. Prescription drugs for adults who are elderly or disabled, maximizing to the extent possible federal matching funds; [1999, c. 401, Pt. V, §1 (NEW).]

F. Dental and oral health care to low-income persons who lack adequate dental coverage; [1999, c. 401, Pt. V, §1 (NEW).]

G. Substance abuse prevention and treatment; and [1999, c. 401, Pt. V, §1 (NEW).]

H. Comprehensive school health and nutrition programs, including school-based health centers. [2007, c. 539, Pt. IIII, §3 (AMD).]

[2011, c. 617, §1 (AMD) .]

7. **Investment; plan; report.**

[2001, c. 358, Pt. Q, §3 (RP) .]

8. **Report by Treasurer of State.** The Treasurer of State shall report at least annually on or before the 2nd Friday in December to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over health and human services matters. The report must summarize the activity in any funds or accounts directly related to this section.

[2001, c. 358, Pt. Q, §4 (NEW) .]

9. **Working capital advance.** Beginning July 1, 2003, the State Controller is authorized to provide an annual advance up to $37,500,000 from the General Fund to the fund to provide money for allocations from the fund. This money must be returned to the General Fund as the first priority from the amounts credited to the fund pursuant to subsection 2, paragraph A.

[2001, c. 714, Pt. OO, §1 (NEW) .]

10. **Restricted accounts.**

[2003, c. 687, Pt. B, §11 (AFF); 2003, c. 687, Pt. B, §6 (RP) .]

11. **Restricted accounts.** The State Controller is authorized to establish separate accounts within the fund in order to segregate money received by the fund from any source, whether public or private, that requires as a condition of the contribution to the fund that the use of the money contributed be restricted to one or more of the purposes specified in subsection 6. Money credited to a restricted account established under this subsection may be applied only to the purposes to which the account is restricted.

[2003, c. 687, Pt. A, §9 (NEW); 2003, c. 687, Pt. B, §11 (AFF) .]

12. **Adjustment to allocations.** For state fiscal years beginning on or after July 1, 2008, the State Budget Officer is authorized to adjust allocations if actual revenue collections for the fiscal year are less than the approved legislative allocations. The State Budget Officer shall review the programs receiving funds from the fund and shall adjust the funding in the All Other line category to stay within available resources. These adjustments must be calculated in proportion to each account's allocation in the All Other line category in relation to the total All Other allocation for fund programs. Notwithstanding any other provision of law, the allocation for the identified amounts may be reduced by financial order upon the recommendation of the State Budget Officer and approval of the Governor. The State Budget Officer shall report annually on the allocation adjustments made pursuant to this subsection to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over health and human services matters by May 15th.

[2009, c. 1, Pt. F, §1 (NEW) .]

13. **Separate accounts; annual reporting.** A state agency that receives allocations from the fund and a contractor or vendor that receives funding allocated from the fund shall maintain that money in a separate account and shall report by September 1st of each year to the Commissioner of Administrative and Financial Services providing a description of how those funds for the prior state fiscal year were targeted to the prevention and health-related purposes listed in subsection 6. The Commissioner of Administrative and Financial Services shall by October 1st of each year compile the reports provided under this subsection and forward the information in a report to the Legislature.

(Subsection 13 as enacted by PL 2011, c. 655, Pt. M, §1 is REALLOCATED TO TITLE 22, SECTION 1511, SUBSECTION 15)

[2011, c. 701, §2 (NEW) .]

14. **Legislative committee review of legislation.** Whenever a proposal in a resolve or bill before the Legislature, including but not limited to a budget bill, affects the fund, the joint standing committee of the Legislature having jurisdiction over the proposal shall hold a public hearing and determine the level of support for the proposal among members of the committee. If there is support for the proposal among a majority of the members of the committee, the committee shall request the joint standing committee of the Legislature having jurisdiction over health and human services matters to review and evaluate the proposal

as it pertains to the fund. The joint standing committee of the Legislature having jurisdiction over health and human services matters shall conduct the review and report to the committee of jurisdiction and to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs.

[2011, c. 701, §2 (NEW) .]

15. (REALLOCATED FROM T. 22, §1511, sub-§13) **Attrition adjustment.** For state fiscal years beginning on or after July 1, 2012, the State Budget Officer is authorized to adjust allocations to address shortfalls that occur as a direct result of Personal Services allocation reductions for projected vacancies. Accrued savings generated from vacant positions within a Fund for a Healthy Maine account's allocation for Personal Services or available balances in the Fund for a Healthy Maine program within the Department of Administrative and Financial Services may be transferred by financial order to offset Personal Services shortfalls in other Fund for a Healthy Maine accounts except that these transfers are subject to review by the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs.

[2011, c. 2, §24 (RAL) .]

SECTION HISTORY
1999, c. 401, §V1 (NEW). 2001, c. 358, §§Q1-4 (AMD). 2001, c. 559, §AA3 (AMD). 2001, c. 559, §AA5 (AFF). 2001, c. 714, §OO1 (AMD). IB 2003, c. 1, §6 (AMD). 2003, c. 513, §Y1 (AMD). 2003, c. 687, §§A9,B6 (AMD). 2003, c. 687, §B11 (AFF). 2007, c. 539, Pt. IIII, §3 (AMD). 2009, c. 1, Pt. F, §1 (AMD). RR 2011, c. 2, §24 (COR). 2011, c. 617, §1 (AMD). 2011, c. 655, Pt. M, §1 (AMD). 2011, c. 701, §§1, 2 (AMD).

§1512. TRUST FUND FOR A HEALTHY MAINE ESTABLISHED

(REPEALED)

SECTION HISTORY
1999, c. 401, §V1 (NEW). 2001, c. 358, §Q5 (RP).

Chapter 261: PREVENTION OF BLINDNESS

§1521. CARE OF INFANTS AFTER BIRTH

(REPEALED)

SECTION HISTORY
1983, c. 848, §1 (RP).

§1522. DETECTION OF MENTAL RETARDATION

(REPEALED)

SECTION HISTORY
1965, c. 224, (NEW). 1983, c. 848, §1 (RP).

Chapter 261-A: PREVENTION OF HANDICAPPING CONDITIONS

§1531. CARE OF INFANTS AFTER BIRTH

Every physician, midwife or nurse in charge shall instill or cause to be instilled into the eyes of an infant upon its birth one or 2 drops of a prophylactic solution prescribed by the department and provided without cost by the department, except an infant whose parents object to this procedure on the grounds that it conflicts with their religious tenets and practices. If one or both eyes of an infant become reddened or inflamed at any time within 4 weeks after birth, the midwife, nurse or person having charge of the infant shall report the condition of the eyes at once to a physician licensed under Title 32, chapter 36 or 48. Failure to comply with this section shall be punishable by a fine of not more than $100 or by imprisonment for not more than 6 months. [1983, c. 848, §2 (NEW).]

SECTION HISTORY
1983, c. 848, §2 (NEW).

§1532. DETECTION OF SERIOUS CONDITIONS

The department shall require hospitals, birthing centers and other birthing services to test newborn infants, or to cause them to be tested, by means of blood spot screening for the presence of treatable congenital, genetic or metabolic conditions that may be expected to result in subsequent cognitive disabilities, serious illness or death and by means of appropriate technology for the presence of critical congenital heart disease. [2013, c. 397, §1 (NEW).]

1. **Define requirement and methods; assistance.** The department shall define the requirement under this section that a newborn infant must be tested for the presence of treatable congenital, genetic or metabolic conditions that may be expected to result in subsequent cognitive disabilities and the approved testing methods, materials, procedures and sequences. Reports and records of those making these tests may be required to be submitted to the department in accordance with departmental rules. The department may, on request, offer consultation, training and evaluation services to those testing facilities.

[2013, c. 397, §1 (NEW) .]

2. **Referrals.** The department shall in a timely fashion refer newborn infants with confirmed treatable congenital, genetic or metabolic conditions or critical congenital heart disease to the Child Development Services System as defined in Title 20-A, section 7001, subsection 1-A. The department shall in a timely fashion refer a newborn infant to the Child Development Services System if at least 6 months have passed since an initial positive test result of a treatable congenital, genetic or metabolic condition without the specific nature of the condition having been confirmed. The department and the Department of Education shall execute an interagency agreement to facilitate all referrals made pursuant to this section. In accordance with the interagency agreement, the Department of Education shall offer a single point of contact for the Department of Health and Human Services to use in making referrals. Also in accordance with the interagency agreement, the Child Development Services System may make direct contact with the families who are referred. The referrals may be made electronically. For purposes of quality assurance and improvement, the Child Development Services System shall supply aggregate data to the department at least annually on the numbers of children referred to the Child Development Services System under this section who were found eligible and ineligible for early intervention services. The department shall supply data at least annually to the Child Development Services System on how many children in the newborn blood spot screening program as established by rule of the department under section 1533, subsection 2, paragraph G were screened and how many were found to have a disorder.

[2013, c. 397, §1 (NEW) .]

3. **Religious objection exemption.** The requirement under this section that a newborn infant must be tested for the presence of treatable congenital, genetic or metabolic conditions that may be expected to result in subsequent cognitive disabilities or for the presence of critical congenital heart disease does not apply to a child if the parents of that child object on the grounds that the test conflicts with their religious tenets and practices.

[2013, c. 397, §1 (NEW) .]

4. **Report.** A hospital, birthing center or other birthing service that tests a newborn infant pursuant to this section shall report to the department aggregate data on the testing, including but not limited to the number of infants born, the number tested for treatable congenital, genetic or metabolic conditions, the number screened for critical congenital heart disease, the results of the screening and testing and, for heart disease screening the type of screening tool used.

[2013, c. 397, §1 (NEW) .]

SECTION HISTORY
1983, c. 848, §2 (NEW). 2007, c. 450, Pt. A, §7 (AMD). 2009, c. 514, §2 (AMD). 2013, c. 397, §1 (RPR).

§1533. ADVISORY PROGRAM FOR GENETIC CONDITIONS

1. **Purpose; program.** A voluntary statewide genetics program is established, which offers testing, counseling and education to parents and prospective parents. The program shall include, but not be limited to, the following services:

A. Follow-up programs for newborn testing, with emphasis on the counseling and education of women at risk for maternal phenylketonuria (PKU); [1983, c. 848, §2 (NEW).]

B. Comprehensive genetic services to all areas of the State and all segments of the population; [1983, c. 848, §2 (NEW).]

C. Development of counseling and testing programs for the diagnosis and management of genetic conditions and metabolic disorders; and [1983, c. 848, §2 (NEW).]

D. Development and expansion of educational programs for physicians, allied health professionals and the public, with respect to:

(1) The nature of genetic processes;

(2) The inheritance patterns of genetic conditions; and

(3) The means, methods and facilities available to diagnose, counsel and treat genetic conditions and metabolic disorders. [1983, c. 848, §2 (NEW).]

[1983, c. 848, §2 (NEW) .]

2. **Responsibility for the program.** The commissioner shall designate personnel within the department's division of family health to:

A. Coordinate matters pertaining to detection, prevention and treatment of genetic conditions and metabolic disorders; [1983, c. 848, §2 (NEW).]

A-1. Establish, maintain and operate a tracking system to assess and coordinate treatment related to congenital, genetic and metabolic disorders; [2009, c. 514, §3 (NEW).]

A-2. Evaluate the effectiveness of screening, counseling and health care services in reducing the morbidity and mortality caused by heritable disorders in newborns and children; [2009, c. 514, §3 (NEW).]

A-3. Collect, analyze and make available to families data on certain heritable disorders; [2009, c. 514, §3 (NEW).]

A-4. Ensure access to treatment and other services that will improve clinical and developmental outcomes. To accomplish this, the department is authorized to share data with other states' public health newborn blood spot screening programs; [2009, c. 514, §3 (NEW).]

B. Cooperate with and stimulate public and private not-for-profit associations, agencies, corporations, institutions or other entities involved in developing and implementing eligible programs and activities designed to provide services for genetic conditions and metabolic disorders; [1983, c. 848, §2 (NEW).]

C. Administer any funds that are appropriated for the services and expenses of a genetic screening, counseling and education program; [2009, c. 514, §3 (AMD).]

D. Enter into agreements and contracts for the delivery of genetic services; [1983, c. 848, §2 (NEW).]

E. Establish, promote and maintain a public information program on genetic conditions and metabolic disorders and the availability of counseling and treatment services; [1983, c. 848, §2 (NEW).]

F. Publish, from time to time, the results of any relevant research, investigation or survey conducted on genetic conditions and metabolic disorders and, from time to time, collate those publications for distribution to scientific organizations and qualified scientists and physicians; and [1983, c. 848, §2 (NEW).]

G. Adopt rules necessary to carry out the purposes of this chapter. [2009, c. 514, §3 (AMD).]

[2009, c. 514, §3 (AMD) .]

3. **Eligibility for contracts.** A public or private not-for-profit association, agency, corporation, institution or other entity shall be eligible to enter into contracts pursuant to this section if it satisfies the following requirements.

A. The entity shall submit an application for a contract in the manner and on forms prescribed by the commissioner. [1983, c. 848, §2 (NEW).]

B. The project or activity to be carried out by the entity, either directly or through an integrated, coordinated arrangement, shall include some or all of the following services:

(1) Prenatal testing and diagnosis;

(2) Genetic diagnosis, treatment and counseling;

(3) Newborn metabolic testing, laboratory services and nutritional follow-up; or

(4) Genetics education programs for health professionals and the public. [1983, c. 848, §2 (NEW).]

C. The project or activity shall be consistent with the objectives of this section and shall be coordinated with resources existing in the community in which it is located. [1983, c. 848, §2 (NEW).]

[1983, c. 848, §2 (NEW) .]

SECTION HISTORY
1983, c. 848, §2 (NEW). 2009, c. 514, §3 (AMD).

Chapter 262: SMOKING

§1541. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1993, c. 342, §1 (NEW); 1993, c. 342, §9 (AFF).]

1. **Designated smoking area.** "Designated smoking area" means an enclosed area designated as a place for smoking. A designated area must be designed to prevent smoke escaping from the designated area into a public place.

[2005, c. 257, §1 (AMD) .]

1-A. **Electronic smoking device.** "Electronic smoking device" means a device used to deliver nicotine or any other substance intended for human consumption that may be used by a person to simulate smoking through inhalation of vapor or aerosol from the device, including, without limitation, a device manufactured, distributed, marketed or sold as an electronic cigarette, electronic cigar, electronic pipe, electronic hookah or so-called vape pen.

[2015, c. 318, §1 (NEW) .]

2. **Enclosed area.** "Enclosed area" means a space between a floor and a ceiling that is demarcated on all sides by walls, windows, shutters, doors or passageways. A partition, partial wall or office divider is a demarcation of an enclosed area if it extends from the floor to within 4 feet of the ceiling or from the ceiling to within 4 feet of the floor.

[2005, c. 257, §1 (AMD) .]

3. **Private office.**

[2005, c. 338, §1 (RP) .]

4. **Public place.** "Public place" means any place not open to the sky into which the public is invited or allowed. Except as provided in section 1542, subsection 2, paragraph J, a private residence is not a public place.

[2003, c. 493, §2 (AMD); 2003, c. 493, §14 (AFF) .]

5. **Restaurant.**

[2003, c. 493, §14 (AFF); 2003, c. 493, §3 (RP) .]

6. **Smoking.** "Smoking" includes carrying or having in one's possession a lighted or heated cigarette, cigar or pipe or a lighted or heated tobacco or plant product intended for human consumption through inhalation whether natural or synthetic in any manner or in any form. "Smoking" includes the use of an electronic smoking device.

[2015, c. 318, §2 (AMD) .]

7. **Tobacco specialty store.** "Tobacco specialty store" means a retail business under 2,000 square feet in which at least 60% of the business's gross revenue for the last calendar year was derived from the sale of tobacco or tobacco-related products.

[2005, c. 223, §1 (NEW) .]

8. **Waterpipe or hookah.** "Waterpipe" or "hookah" means a device used for smoking tobacco that consists of a tube connected to a container where the smoke is cooled by passing through water.

[2007, c. 180, §1 (NEW) .]

SECTION HISTORY
1993, c. 342, §1 (NEW). 1993, c. 342, §9 (AFF). 1999, c. 54, §§1,2 (AMD). 2003, c. 493, §§2,3 (AMD). 2003, c. 493, §14 (AFF). 2005, c. 223, §1 (AMD). 2005, c. 257, §1 (AMD). 2005, c. 338, §1 (AMD). 2007, c. 180, §1 (AMD). 2015, c. 318, §§1, 2 (AMD).

§1542. SMOKING PROHIBITED IN PUBLIC PLACES

1. **Prohibition.** Smoking is prohibited in all enclosed areas of public places, outdoor eating areas as provided in section 1550 and all rest rooms made available to the public. In the case of a child care facility that is not home-based, smoking is also prohibited in a facility-designated motor vehicle within 12 hours before transporting a child who is in the care of the child care facility, and whenever such a child is present in the vehicle. Smoking is also prohibited in outdoor areas of the facility where children may be present.

[2009, c. 140, §1 (AMD) .]

2. **Limitations.** The prohibition in subsection 1 is subject to the following limitations.

A. Smoking is not prohibited in an enclosed area of a public place during a period of time that the facility containing the enclosed area of the public place is not open to the public. During its normal business hours, a public place must be closed for at least one hour to be considered "not open to the public." [2005, c. 257, §3 (AMD).]

B. Smoking is not prohibited in theaters or other enclosed structures used for plays, lectures, recitals or other similar purposes if the smoking is solely by a performer and the smoking is part of the performance. [1993, c. 342, §1 (NEW); 1993, c. 342, §9 (AFF).]

C. Smoking is not prohibited in any area where undertaken as part of a religious ceremony or as part of a cultural activity by a defined group. [1993, c. 342, §1 (NEW); 1993, c. 342, §9 (AFF).]

D. [1999, c. 54, §3 (RP).]

E. Smoking in places of employment is governed by the provisions of section 1580-A. If public employees' rights provided in collective bargaining agreements are affected by this section, the employees have the right to reopen negotiations for the purpose of bargaining for smoking areas in nonpublic areas of publicly owned buildings. [1993, c. 342, §1 (NEW); 1993, c. 342, §9 (AFF).]

F. [2009, c. 300, §1 (RP).]

G. [2003, c. 493, §14 (AFF); 2003, c. 493, §4 (RP).]

H. Smoking is not prohibited in motel or hotel rooms that are rented to members of the public. [1993, c. 342, §1 (NEW); 1993, c. 342, §9 (AFF).]

I. [2005, c. 338, §2 (RP).]

J. Smoking is not prohibited in a private residence, subject to section 1580-A, unless the private residence is used as a day care or baby-sitting service. If a private residence is used as a day care or baby-sitting service, smoking is prohibited:

(1) In the residence, during the hours of operation as a day care or baby-sitting service;

(2) In outdoor areas on the property of that private residence, wherever a child under care may be present; and

(3) During the facility's hours of operation, in a motor vehicle owned or operated by the facility whenever a child under care is in the vehicle. [2009, c. 300, §2 (AMD).]

K. Smoking is not prohibited in public places when beano or bingo games are being conducted in accordance with the provisions of Title 17, section 314-A. [2003, c. 379, §1 (AMD).]

L. Smoking is not prohibited in a tobacco specialty store. The on-premises service, preparation or consumption of food or drink, if the tobacco specialty store is not licensed for such service or consumption prior to January 1, 2007, is prohibited in such a store. Smoking a waterpipe or hookah is prohibited in a tobacco specialty store that is newly licensed or that requires a new license after January 1, 2007. [2007, c. 180, §2 (AMD).]

M. [2005, c. 257, §5 (RP).]

N. Smoking is not prohibited in designated smoking areas in an off-track betting facility or simulcast racing facility at a commercial track, if that facility is licensed pursuant to Title 8, chapter 11 and in operation on June 30, 2003, is purchased from the owner or purchaser of a facility licensed pursuant to Title 8, chapter 11 and in operation on June 30, 2003 or is moved to another location within the same municipality by the owner or purchaser of a facility licensed pursuant to Title 8, chapter 11 and in operation on June 30, 2003, as long as:

(1) No sales or services are provided in the designated smoking area, except that television equipment and stand-alone betting terminals or other means of placing wagers may be provided;

(2) No employees work in or are required to pass through the designated smoking area;

(3) Members of the public, except for those who choose to be present in the designated smoking area, are not required to utilize or pass through the designated smoking area for any purpose;

(4) No one under 18 years of age is permitted in the designated smoking area;

(5) The designated smoking area within the purchased or relocated off-track betting facility or purchased or relocated simulcast racing facility has a floor area no larger than 2,000 square feet, except that any designated smoking area larger than 2,000 square feet and in existence on January 1, 2005 is exempt from this subparagraph;

(6) No slot machines are located within the off-track betting or simulcast racing facility. For the purposes of this subparagraph, an off-track betting facility or a simulcast racing facility must be in a separately enclosed area, whether stand-alone or within another facility, that is accessible by either an interior or exterior door; and

(7) The designated smoking area is located entirely within a separately enclosed area of an off-track betting facility or simulcast racing facility and proper signs are mounted to the exterior of the designated smoking area indicating that use of that area is for off-track betting and simulcast racing patrons only. [2005, c. 362, §1 (AMD).]

[2009, c. 300, §§1, 2 (AMD) .]

3. Location of designated smoking area.

[2003, c. 493, §14 (AFF); 2003, c. 493, §6 (RP) .]

SECTION HISTORY
1993, c. 342, §1 (NEW). 1993, c. 342, §9 (AFF). 1997, c. 150, §1 (AMD). 1999, c. 54, §3 (AMD). 2003, c. 379, §1 (AMD). 2003, c. 493, §§4-6 (AMD). 2003, c. 493, §14 (AFF). 2005, c. 223, §2 (AMD). 2005, c. 257, §§2-5 (AMD). 2005, c. 338, §2 (AMD). 2005, c. 362, §1 (AMD). 2007, c. 180, §2 (AMD). 2009, c. 140, §1 (AMD). 2009, c. 300, §§1, 2 (AMD).

§1543. POSTING SIGNS

Signs must be posted conspicuously in buildings where smoking is regulated by this chapter. Designated areas must have signs that read "Smoking Permitted" with letters at least one inch in height. Places where smoking is prohibited must have signs that read "No Smoking" with letters at least one inch in height or the international symbol for no smoking. [1993, c. 342, §1 (NEW); 1993, c. 342, §9 (AFF).]

SECTION HISTORY
1993, c. 342, §1 (NEW). 1993, c. 342, §9 (AFF).

§1544. RETALIATION PROHIBITED

A person may not discharge, refuse to hire, discipline or otherwise retaliate against any person who pursues any remedy available to enforce the requirements of this chapter. [2005, c. 257, §6 (AMD).]

SECTION HISTORY
1993, c. 342, §1 (NEW). 1993, c. 342, §9 (AFF). 2005, c. 257, §6 (AMD).

§1545. PENALTY

A person who violates any provision of this chapter commits a civil violation for which a fine of $100 may be adjudged, except that a fine of up to $1,500 may be adjudged for each violation of this chapter in cases when a person engages in a pattern of conduct that demonstrates a lack of good faith in complying with this chapter. [2005, c. 257, §7 (AMD).]

SECTION HISTORY
1993, c. 342, §1 (NEW). 1993, c. 342, §9 (AFF). 2005, c. 257, §7 (AMD).

§1546. TOBACCO TAX RELIEF FUND

(REPEALED)

SECTION HISTORY
1997, c. 560, §A1 (NEW). 1997, c. 560, §A5 (AFF). 1997, c. 643, §T6 (AFF). 1997, c. 643, §T2 (RP). 1997, c. 750, §D1 (AFF).

§1547. TOBACCO SPECIALTY STORE; ENTRY PROHIBITED FOR PERSONS UNDER 18 YEARS OF AGE

A person under 18 years of age is prohibited from entering a business licensed as a tobacco specialty store unless accompanied by a parent or legal guardian, regardless of whether smoking is allowed in that store. [2005, c. 223, §3 (NEW).]

§1547. Enforcement

(As enacted by PL 2005, c. 257, §8 is REALLOCATED TO TITLE 22, SECTION 1548)

SECTION HISTORY
RR 2005, c. 1, §5 (RAL). 2005, c. 223, §3 (NEW). 2005, c. 257, §8 (NEW).

§1548. ENFORCEMENT

(REALLOCATED FROM TITLE 22, SECTION 1547)

The Attorney General may bring an action to enforce this chapter in District Court or Superior Court and may seek injunctive relief, including a preliminary or final injunction, and fines, penalties and equitable relief and may seek to prevent or restrain actions in violation of this chapter by a person or any person controlling such person. [2005, c. 1, §5 (RAL).]

SECTION HISTORY
RR 2005, c. 1, §5 (RAL).

§1549. SMOKING IN VEHICLES WHEN MINOR UNDER 16 YEARS OF AGE IS PRESENT

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

A. "Motor vehicle" has the same meaning as in Title 29-A, section 101, subsection 42. [2007, c. 591, §1 (NEW); 2007, c. 591, §2 (AFF).]

B. "Smoking" means inhaling, exhaling, burning or carrying a lighted cigarette, cigar, pipe, weed, plant, regulated narcotic or other combustible substance. [2007, c. 591, §1 (NEW); 2007, c. 591, §2 (AFF).]

[2007, c. 591, §1 (NEW); 2007, c. 591, §2 (AFF) .]

2. **Prohibition.** Smoking is prohibited in a motor vehicle by the operator or a passenger when a person who has not attained 16 years of age is present in that motor vehicle, regardless of whether the motor vehicle's windows are open.

[2007, c. 591, §1 (NEW); 2007, c. 591, §2 (AFF) .]

3. **Prohibition on inspection or search.** A motor vehicle, the contents of the motor vehicle or the operator or a passenger in the motor vehicle may not be inspected or searched solely because of a violation of this section.

[2007, c. 591, §1 (NEW); 2007, c. 591, §2 (AFF) .]

4. **Not a moving violation.** A violation of this section is a not a moving violation as defined in Title 29-A, section 101, subsection 44.

[2007, c. 591, §1 (NEW); 2007, c. 591, §2 (AFF) .]

5. **Penalty; warning.** Notwithstanding section 1545, penalties for violations of this section are as set out in this subsection.

A. From September 1, 2008 to August 31, 2009, a law enforcement officer shall give a written warning to an operator or passenger of a motor vehicle who is in violation of this section. [2007, c. 591, §1 (NEW); 2007, c. 591, §2 (AFF).]

B. Beginning September 1, 2009, a person who violates this section commits a civil violation for which a fine of $50 must be assessed, except that a law enforcement officer may give a written warning to the operator or a passenger of a motor vehicle who is in violation of this section. [2007, c. 591, §1 (NEW); 2007, c. 591, §2 (AFF).]

[2007, c. 591, §1 (NEW); 2007, c. 591, §2 (AFF) .]

SECTION HISTORY
2007, c. 591, §1 (NEW). 2007, c. 591, §2 (AFF).

§1550. SMOKING IN OUTDOOR EATING AREAS

1. **Definition.** As used in this section, "outdoor eating area" means a patio, deck or other property that is partially enclosed or open to the sky that is permitted for outdoor eating or drinking under the control of an eating establishment, as defined in section 2491, subsection 7, as long as food or drink is served by the eating establishment to the public for consumption on the premises.

[2009, c. 140, §2 (NEW) .]

2. **Smoking prohibited.** Smoking is prohibited in an outdoor eating area if the outdoor eating area or any portion thereof is open and available for dining and beverage service.

[2009, c. 140, §2 (NEW) .]

3. **Notification; request for compliance.** An eating establishment with an outdoor eating area shall post signs in accordance with section 1543, notify its patrons of the prohibition on smoking in outdoor eating areas and request that all persons within an outdoor eating area comply with this section.

[2009, c. 140, §2 (NEW) .]

SECTION HISTORY
2009, c. 140, §2 (NEW).

Chapter 262-A: RETAIL TOBACCO SALES

Subchapter 1: RETAIL TOBACCO LICENSES

§1551. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

1. **Cigarette paper.** "Cigarette paper" means those papers or paper-like products used to roll cigarettes, which by advertising, design or use facilitate the use of tobacco or other products for inhalation.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF) .]

1-A. **Consumer.** "Consumer" means an individual who purchases, receives or possesses tobacco products for personal consumption and not for resale.

[2003, c. 444, §1 (NEW) .]

1-B. **Delivery sale.** "Delivery sale" means a sale of tobacco products to a consumer in this State when:

A. The purchaser submits the order for the sale by means of telephonic or other electronic method of voice transmission, the Internet or any delivery service; or [2003, c. 444, §1 (NEW).]

B. The tobacco products are delivered by use of a delivery service. [2003, c. 444, §1 (NEW).]

A sale to a person who is not licensed as a tobacco distributor or tobacco retailer is a delivery sale.

[2003, c. 444, §1 (NEW) .]

1-C. **Delivery service.** "Delivery service" means a person, including the United States Postal Service, who is engaged in the commercial delivery of letters, packages or other containers.

[2003, c. 444, §1 (NEW) .]

2. **Juvenile.** "Juvenile" means any individual who is younger than 18 years of age.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF) .]

2-A. **Person.** "Person" means an individual, corporation, partnership or unincorporated association.

[2003, c. 444, §1 (NEW) .]

2-B. **Tobacco distributor.** "Tobacco distributor" or "distributor" means a person licensed as a distributor under Title 36, chapter 704.

[2003, c. 444, §1 (NEW) .]

3. **Tobacco products.** "Tobacco products" includes any form of tobacco and any material or device used in the smoking, chewing or other form of tobacco consumption, including cigarette papers and pipes.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF) .]

3-A. **Tobacco retailer.** "Tobacco retailer" or "retailer" means a person located within or outside the State who sells tobacco products to a person in the State for personal consumption.

[2003, c. 444, §1 (NEW) .]

4. **Vending machine.** "Vending machine" means any automated, self-service device that upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF) .]

5. **Premium cigar.** "Premium cigar" means a cigar that weighs more than 3 pounds per 1,000 and is wrapped in whole tobacco leaf.

[2009, c. 398, §1 (NEW); 2009, c. 398, §6 (AFF) .]

SECTION HISTORY
1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 2003, c. 444, §1 (AMD). 2009, c. 398, §1 (AMD). 2009, c. 398, §6 (AFF).

§1551-A. RETAIL TOBACCO SALES LICENSE REQUIRED

1. **Retail tobacco license.** It is unlawful for any person, partnership or corporation that engages in retail sales, including retail sales through vending machines or in free distribution of tobacco products, to sell, keep for sale or give away in the course of trade any tobacco products to anyone without first obtaining a retail tobacco license from the department, in accordance with this chapter.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF) .]

2. **Violation; penalty.** Penalties for violation of subchapters I and II are in accordance with those subchapters.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF) .]

3. **Enforcement.** The department shall enforce this chapter in cooperation with all law enforcement officers.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF) .]

4. **Publish laws and rules.** Every 4 years the department shall publish a compilation of laws and rules concerning retail tobacco sales.

A. The department shall supply a copy of the compilation of laws and rules to every new tobacco retail sales licensee at no charge. The department may charge a reasonable fee for that compilation to cover the cost of producing the compilation to persons other than licensees. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

B. The department shall notify all licensees of changes in the tobacco laws and rules within 90 days of adjournment of each regular session of the Legislature.

(1) The department shall supply a copy of the new laws and rules at no charge when requested by licensees.

(2) The department shall supply a copy of the new laws and rules to persons other than licensees for a reasonable fee. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF) .]

5. **Report.**

[2011, c. 657, Pt. AA, §59 (RP) .]

SECTION HISTORY
1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 2011, c. 657, Pt. AA, §59 (AMD).

§1552. APPLICATION PROCEDURE

1. **Application process; license fees.** An applicant for an annual retail tobacco license shall file an application in the form required by the department. The department shall make provisions for applications under this section. The department shall determine annually by rulemaking the fee for a retail tobacco license, including the proration of an initial license that is issued for less than one year. The applicant shall enclose the fee with the application for the license. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 199, §1 (AMD) .]

2. **Term of license.** All retail tobacco licenses are valid for a term beginning April 1st and ending the following March 31st, or in the case of an initial license issued after April 1st, for a term beginning on the date of issue and ending the following March 31st, unless suspended, revoked or not subject to the transfer under section 1553. Licenses that have been suspended or revoked may be reinstated, as permitted by the District Court decision issued under subchapter 2, upon the receipt of an application for reinstatement and payment of all penalties and an application fee of $50.

[2009, c. 199, §2 (AMD) .]

3. **Multiple licenses.** Except as provided in subsection 3-A, a licensee applying for licenses to operate more than one premises or more than one vending machine shall obtain a separate license for each premises and each machine and shall pay the fee prescribed for each premises and each machine.

[2005, c. 145, §1 (AMD) .]

3-A. **Seasonal mobile tobacco vendor license.** An applicant who is a seasonal mobile tobacco vendor may purchase a single annual license authorizing that vendor to operate at 2 or more agricultural fairs, festivals or exhibitions held during the agricultural fair season. A license issued under this subsection must clearly specify the name and location of each fair, festival or exhibition at which the licensee is authorized to operate and, for each location, the specific dates and number of machines for which the licensee is authorized. A licensee may not operate at any agricultural fair, festival or exhibit except as specifically provided in that license. A seasonal mobile tobacco vendor license expires upon the conclusion of the agricultural fairs, festivals or exhibitions for which it was issued. Upon issuing a license under this subsection, the department shall immediately provide the information required by this subsection to the Office of the Attorney General for purposes of inspection and enforcement.

[2009, c. 199, §3 (AMD) .]

4. **Application fees.** All application fees must be deposited in the General Fund.

[2003, c. 673, Pt. CC, §1 (AMD) .]

5. **False answer given intentionally.** A person who intentionally gives a false answer in an application for a retail tobacco license violates Title 17-A, section 453.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF) .]

SECTION HISTORY
1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2003, c. 673, §CC1 (AMD). 2005, c. 12, §TT1 (AMD). 2005, c. 145, §§1,2 (AMD). 2009, c. 199, §§1-3 (AMD).

§1552-A. PRODUCTION OF LICENSE; NOTICES

1. **Production of licenses.** A licensee shall make available a copy of the license on the premises for inspection by the commissioner, the commissioner's representatives and agents or authorized municipal officials.

[2011, c. 535, §1 (AMD) .]

2. **Display of prohibition against sales to juveniles.** All licensees shall post notice of the prohibition on tobacco sales to juveniles pursuant to section 1555-B. Notices must be publicly and conspicuously displayed in the licensee's place of business in letters at least 3/8 inches high. Signs required by this section must be provided at cost by the department. Any person who violates this subsection commits a civil violation for which a forfeiture of not less than $50 nor more than $200 may be adjudged for any one offense.

[1997, c. 305, §1 (AMD) .]

SECTION HISTORY
1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 1997, c. 305, §1 (AMD). 2011, c. 535, §1 (AMD).

§1553. TRANSFER OF LICENSES; DEATH; BANKRUPTCY; RECEIVERSHIP; GUARDIANSHIP; CORPORATIONS

Except as otherwise provided in this section, a license or any interest in a license may not be sold, transferred, assigned or otherwise subjected to control by any person other than the licensee. If the business or any interest in the business connected with a licensed activity is sold, transferred or assigned, the license holder shall send immediately to the department the license and a sworn statement showing the name and address of the purchaser. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

1. **Transfer within same municipality.** Upon receipt of a written application, the department may transfer any retail tobacco license from one place to another within the same municipality. A transfer may not be made to a premises for which a license could not have been originally legally issued.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF) .]

2. **Death, bankruptcy or receivership.** In the case of death, bankruptcy or receivership of any licensee, the executor or administrator of the deceased licensee, the trustee or receiver of the bankrupt licensee or the licensee in receivership may retain the license.

A. For the benefit of the estate of the deceased licensee, the personal representative, receiver or trustee of the estate may operate the premises alone or through a manager for one year from the date of appointment.

(1) A new license application must be submitted at the end of the one-year grace period.

(2) Within one year from the date of appointment, the original license becomes void and must be returned to the department for cancellation.

(3) Any suspension or revocation of the license by the District Court for any violation applies to the manager or the personal representative, receiver or trustee of the estate.

(4) A personal representative, receiver or trustee of an estate or a duly appointed manager may not operate under the license unless approved by the department. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF).]

B. If a licensee dies, the following persons, with the written approval of the department, may continue to operate under the license for not more than 60 days pending appointment of a personal representative of the estate:

(1) The surviving spouse;

(2) A person who has filed a petition for appointment as executor or administrator for the estate of the deceased licensee;

(3) The sole heir of the deceased licensee; or

(4) A person designated by all of the heirs of the deceased licensee. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

C. When administration of the estate of a deceased licensee is not contemplated, the surviving spouse or person designated by all the heirs of the deceased licensee may take over the license under the same conditions as are provided for operation and transfer by an executor or an administrator. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

3. **Guardian; conservator.** A duly appointed and qualified guardian or conservator of the estate of a licensee may take over and operate any license of the ward of the deceased licensee for a period not to exceed one year if the guardian or conservator or the guardian or conservator's managers are approved by the department.

A. A guardian or conservator must apply for a new license on the ward's behalf within one year of the guardian's or conservator's appointment, if the guardian or conservator intends to continue to sell tobacco products. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

B. Penalties for violations apply to both guardians or conservators and guardians' or conservators' managers in the same manner as to executors or administrators and guardians' or conservators' managers in subsection 2, paragraph A, subparagraph (3). [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF) .]

4. **Transfers.** The following changes in a licensee's business are considered transfers under this section:

A. The sale or transfer of stock of a corporate licensee whose stock is not publicly traded that results in the sale or transfer of more than 10% of the shares of stock of the corporate licensee; [1995, c. 593, §1 (AMD).]

A-1. The sale or transfer of stock of a corporate licensee whose stock is publicly traded that results in the sale or transfer of more than 51% of the voting shares of the corporate licensee; [1995, c. 593, §2 (NEW).]

B. The incorporation of a licensee's business or a change in the form of incorporation of a licensee's business; [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

C. The addition or deletion of a partner in a partnership; or [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

D. The merger or acquisition of a licensee that is incorporated. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

[1995, c. 593, §§1, 2 (AMD) .]

SECTION HISTORY
1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 1995, c. 593, §§1,2 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF).

§1553-A. SALES OF TOBACCO PRODUCTS; VENDING MACHINES

In addition to the tobacco license required in section 1551-A, the sale of cigarettes or any other tobacco product through a vending machine is subject to the following provisions. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

1. **Vending requirements.** When the sale of cigarettes or any other tobacco product is made from a vending machine the following is required.

A. Only cigarettes or any other tobacco products may be dispensed by that machine. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

B. A sign must be affixed conspicuously to the front of the machine. The sign must:

(1) Contain lettering that is at least 3/8 inches in height; and

(2) State the following: "WARNING. It is unlawful for any person under the age of 18 to purchase cigarettes in this State." [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

C. At all times during the hours the vending machine is accessible, it must be located within the unobstructed line of sight and under the direct supervision of an adult. That adult is responsible for preventing persons under 18 years of age from purchasing cigarettes or any other tobacco product from that vending machine. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

Vending machines may be located only in areas in which minors are allowed only when accompanied by an adult.

[1997, c. 305, §2 (AMD) .]

2. **Penalty.** Any person, firm or corporation, in control of a facility in which a vending machine is located, who violates this section commits a civil violation for which a forfeiture of not less than $100 nor more than $500 may be adjudged or for which the person, firm or corporation may be prohibited for a period of not more than 6 months from having a cigarette vending machine located on the premises or both.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF) .]

SECTION HISTORY
1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 1997, c. 305, §2 (AMD).

Subchapter 2: PROHIBITED SALES, POSSESSION AND USE

§1554. SALE WITHOUT A VALID LICENSE; CRIME; PENALTY

(REPEALED)

SECTION HISTORY
1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 2003, c. 452, §X2 (AFF). 2003, c. 452, §K4 (RP).

§1554-A. SALE OF UNPACKAGED CIGARETTES

1. **Prohibition.** A person may not:

A. Sell cigarettes except in the original sealed package in which they were placed by the manufacturer, which may not be smaller than 20 cigarettes per package; or [2003, c. 452, Pt. K, §5 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. Sell cigarettes in smaller quantities than placed in the package by the manufacturer. [2003, c. 452, Pt. K, §5 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. K, §5 (RPR); 2003, c. 452, Pt. X, §2 (AFF) .]

2. **Penalty; employee.** A person who violates this section commits a civil violation for which a fine of not less than $10 and not more than $100 may be adjudged. In all cases of violations, the court shall impose a fine that may not be suspended, except pursuant to Title 15, section 3314.

[2003, c. 452, Pt. K, §5 (RPR); 2003, c. 452, Pt. X, §2 (AFF) .]

3. **Penalty; employer.** The employer of a person who violates this section commits a civil violation for which a fine of not less than $100 and not more than $1,000 may be adjudged. In all cases of violations, the court shall impose a fine that may not be suspended.

[2003, c. 452, Pt. K, §5 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY

1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 1997, c. 305, §3 (AMD). 2003, c. 452, §X2 (AFF). 2003, c. 452, §K5 (RPR).

§1554-B. SALE WITHOUT VALID LICENSE; MULTIPLE VIOLATIONS; PENALTIES

1. **License required.** A person may not engage in retail tobacco sales or in free distribution of tobacco products in the ordinary course of trade in this State without a valid license issued under subchapter 1.

[2003, c. 452, Pt. K, §6 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

2. **Penalties.** The following penalties apply to violations of this section.

A. A person who violates subsection 1 commits a Class E crime for which the court shall impose a sentencing alternative involving a fine of not less than $300 plus court costs and not more than $500 plus court costs. The fine and costs may not be suspended. The court also may impose a sentencing alternative involving a term of imprisonment of not more than 30 days. [2003, c. 452, Pt. K, §6 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A person who violates subsection 1 and, at the time of the violation, has one prior conviction for violating this section commits a Class E crime for which the court shall impose a sentencing alternative involving a fine of not less than $500 plus court costs and not more than $1,000 plus court costs. The fine and costs may not be suspended. The court also may impose a sentencing alternative involving a term of imprisonment of not more than 60 days. [2003, c. 452, Pt. K, §6 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. A person who violates subsection 1 and, at the time of the violation, has 2 or more prior convictions for violating this section commits a Class E crime for which the court shall impose a sentencing alternative involving a fine of not less than $1,000 plus court costs and a term of imprisonment of 60 days. The fine, court costs and term of imprisonment may not be suspended. The court also may impose as a sentencing alternative an additional term of imprisonment of not more than 4 months. [2003, c. 452, Pt. K, §6 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. K, §6 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

3. **Strict liability.** Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

[2003, c. 452, Pt. K, §6 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

4. **Prior convictions.** Title 17-A, section 9-A governs the use of prior convictions when determining a sentence.

[2003, c. 452, Pt. K, §6 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY
2003, c. 452, §K6 (NEW). 2003, c. 452, §X2 (AFF).

§1555. SALES OF TOBACCO PRODUCTS TO JUVENILES

(REPEALED)

SECTION HISTORY
1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 1995, c. 593, §3 (AMD). 1997, c. 305, §4 (RP).

§1555-A. IDENTIFICATION CARDS

A licensee may refuse to sell tobacco to any person who fails to display upon request an identification card issued under Title 29-A, section 1410 or a motor vehicle operator's license bearing the photograph of the operator and issued under Title 29-A. [1997, c. 437, §2 (AMD).]

SECTION HISTORY
1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 1997, c. 437, §2 (AMD).

§1555-B. SALES OF TOBACCO PRODUCTS

1. **Retail sales.** Tobacco products may be sold at retail only in a direct, face-to-face exchange in which the purchaser may be clearly identified. For direct, face-to-face sales, employees who sell tobacco products must be at least 17 years of age. An employee who is at least 17 years of age but less than 21 years of age may sell tobacco products only in the presence of an employee who is at least 21 years of age and is in a supervisory capacity.

[2009, c. 398, §2 (AMD); 2009, c. 398, §6 (AFF) .]

2. **Sales to minors prohibited.** A person may not sell, furnish, give away or offer to sell, furnish or give away a tobacco product to any person under 18 years of age. Tobacco products may not be sold at retail to any person under 27 years of age unless the seller first verifies that person's age by means of reliable photographic identification containing the person's date of birth.

[1997, c. 305, §5 (NEW) .]

3. **Sales through vending machines.** Tobacco products may be sold through vending machines according to section 1553-A.

[1997, c. 305, §5 (NEW) .]

4. **Wholesale sales.** Tobacco products may be distributed at wholesale without a face-to-face exchange only in the normal course of trade and under procedures approved by the Bureau of Revenue Services to ensure that tobacco products are not provided to any person under 18 years of age.

[1997, c. 305, §5 (NEW); 1997, c. 526, §14 (AMD) .]

5. **Possession and use of cigarettes, cigarette papers or tobacco products; use of false identification by minors prohibited.**

[2003, c. 452, Pt. K, §7 (RP); 2003, c. 452, Pt. X, §2 (AFF) .]

5-A. **Possession and use of cigarettes, cigarette papers or tobacco products by minors prohibited.** Except as provided in subsection 5-B, a person under 18 years of age may not:

A. Purchase, possess or use cigarettes, cigarette papers or any tobacco product; [2003, c. 452, Pt. K, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. Violate paragraph A after having previously violated this subsection; or [2003, c. 452, Pt. K, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. Violate paragraph A after having previously violated this subsection 2 or more times. [2003, c. 452, Pt. K, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. K, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

5-B. **Exception to possession by minor.** A person under 18 years of age may transport or permit to be transported in a motor vehicle cigarettes, cigarette papers or tobacco products in the original sealed package in which they were placed by the manufacturer if the transportation is in the scope of that person's employment.

[2003, c. 452, Pt. K, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

5-C. **Use of false identification by minors prohibited.** A person under 18 years of age may not:

A. Offer false identification in an attempt to purchase a tobacco product or to purchase, possess or use cigarettes, cigarette papers or any other tobacco product; [2003, c. 452, Pt. K, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. Violate paragraph A after having previously violated this subsection; or [2003, c. 452, Pt. K, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. Violate paragraph A after having previously violated this subsection 2 or more times. [2003, c. 452, Pt. K, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. K, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

6. **Display of prohibition of sales to juveniles.** A dealer or distributor of tobacco products shall post notice of this section prohibiting tobacco and cigarette paper sales to persons under 18 years of age. Notices must be publicly and conspicuously displayed in the dealer's or distributor's place of business in letters at least 3/8 inches in height. Signs required by this section may be provided at cost by the department.

[1997, c. 305, §5 (NEW) .]

7. **Enforcement.** Law enforcement officers shall enforce this section. A citizen may register a complaint under this section with the law enforcement agency having jurisdiction. The law enforcement agency may notify any establishment or individual subject to this section of a citizen complaint regarding that establishment's or individual's alleged violation of this section and shall keep a record of that notification.

[1997, c. 305, §5 (NEW) .]

8. **Fines.** Violations of this section are subject to fines according to this subsection.

A. A person who violates subsection 1, 2, 3 or 4 commits a civil violation for which a fine of not less than $50 and not more than $1,500, plus court costs, must be adjudged for any one offense. Except pursuant to Title 15, section 3314, the fine may not be suspended. [2003, c. 452, Pt. K, §9 (AMD); 2003, c. 452, Pt. X, §2 (AFF).]

A-1. An employer of a person who violates subsection 1, 2, 3 or 4 commits a civil violation for which a fine of not less than $50 and not more than $1,500, plus court costs, must be adjudged. The fine may not be suspended. [2003, c. 452, Pt. K, §9 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A person who violates subsection 5-A or 5-C commits a civil violation for which the following fines may be adjudged.

(1) For a first offense, a fine of not less than $100 and not more than $300 may be imposed. The judge, as an alternative to or in addition to the fine permitted by this subparagraph, may assign the violator to perform specified work for the benefit of the State, the municipality or other public entity or a charitable institution.

(2) For a 2nd offense, a fine of not less than $200 and not more than $500 may be imposed. The judge, as an alternative to or in addition to the fine permitted by this subparagraph, may assign the violator to perform specified work for the benefit of the State, the municipality or other public entity or a charitable institution.

(3) For all subsequent offenses, a fine of $500 must be imposed and that fine may not be suspended. The judge, in addition to the fine permitted by this subparagraph, may assign the violator to perform specified work for the benefit of the State, the municipality or other public entity or a charitable institution. [2003, c. 452, Pt. K, §9 (AMD); 2003, c. 452, Pt. X, §2 (AFF).]

C. A person who violates subsection 6 commits a civil violation for which a fine of not less than $50 and not more than $200 may be adjudged for any one offense. [2003, c. 452, Pt. K, §9 (AMD); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. K, §9 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

9. **Distribution of fines.** Fines and forfeitures collected pursuant to subchapter 1 and this subchapter must be credited as follows: one half to the General Fund and 1/2 to be deposited in a nonlapsing account of the Maine Criminal Justice Academy for the purpose of providing funds for training and recertification of part-time and full-time law enforcement officers.

[2003, c. 20, Pt. R, §7 (AMD) .]

10. **Affirmative defense.** It is an affirmative defense to prosecution for a violation of subsection 1, 2 or 4 that the defendant sold, furnished, gave away or offered to sell, furnish or give away a tobacco product to a person under 18 years of age in reasonable reliance upon a fraudulent proof of age presented by the purchaser.

[1997, c. 305, §5 (NEW) .]

11. **Manner of displaying and offering for sale.** Tobacco products may be displayed or offered for sale only in a manner that does not allow the purchaser direct access to the tobacco products. The requirements of this subsection do not apply to the display or offering for sale of tobacco products in multi-unit packages of 10 or more units, in tobacco specialty stores or in locations in which the presence of minors is generally prohibited. This requirement does not preempt a municipal ordinance that provides for more restrictive regulation of the sale of tobacco products.

[1999, c. 314, §1 (NEW); 1999, c. 314, §2 (AFF) .]

SECTION HISTORY
1997, c. 305, §5 (NEW). 1997, c. 393, §D1 (AMD). 1997, c. 562, §D3 (AMD). 1997, c. 562, §D11 (AFF). 1997, c. 578, §1 (AMD). 1999, c. 314, §1 (AMD). 1999, c. 314, §2 (AFF). 2003, c. 20, §R7 (AMD). 2003, c. 452, §§K7-9 (AMD). 2003, c. 452, §X2 (AFF). 2005, c. 223, §4 (AMD). 2009, c. 398, §2 (AMD). 2009, c. 398, §6 (AFF).

§1555-C. DELIVERY SALES OF PREMIUM CIGARS

The following requirements apply to delivery sales of premium cigars within the State beginning October 1, 2009. [2009, c. 398, §3 (AMD); 2009, c. 398, §6 (AFF).]

1. **License required.** It is unlawful for any person to accept an order for a delivery sale of premium cigars to a consumer in the State unless that person is licensed under this chapter as a tobacco retailer. The following penalties apply to violations of this subsection.

A. A person who violates this subsection commits a civil violation for which a fine of not less than $50 and not more than $1,500 may be adjudged for each violation. [2003, c. 444, §2 (NEW).]

B. A person who violates this subsection after having been previously adjudicated as violating this subsection or subsection 2 or 4 commits a civil violation for which a fine of not less than $1,000 and not more than $5,000 may be adjudged. [2009, c. 398, §3 (AMD); 2009, c. 398, §6 (AFF).]

[2009, c. 398, §3 (AMD); 2009, c. 398, §6 (AFF) .]

2. **Requirements for accepting order for delivery sale.** The following provisions apply to acceptance of an order for a delivery sale of premium cigars.

A. When accepting the first order for a delivery sale from a consumer, the tobacco retailer shall obtain the following information from the person placing the order:

(1) A copy of a valid government-issued document that provides the person's name, current address, photograph and date of birth; and

(2) An original written statement signed by the person documenting that the person:

(a) Is of legal age to purchase tobacco products in the State;

(c) Understands that providing false information may constitute a violation of law; and

(d) Understands that it is a violation of law to purchase premium cigars for subsequent resale or for delivery to persons who are under the legal age to purchase premium cigars. [2009, c. 398, §3 (AMD); 2009, c. 398, §6 (AFF).]

B. If an order is made as a result of advertisement over the Internet, the tobacco retailer shall request the e-mail address of the purchaser and shall receive payment by credit card or check prior to shipping. [2003, c. 444, §2 (NEW).]

C. Prior to shipping the premium cigars, the tobacco retailer shall verify the information provided under paragraph A against a commercially available database derived solely from government records consisting of age and identity information, including date of birth. [2009, c. 398, §3 (AMD); 2009, c. 398, §6 (AFF).]

D. A person who violates this subsection commits a civil violation for which a fine of not less than $50 and not more than $1,500 may be adjudged for each violation. [2003, c. 444, §2 (NEW).]

E. A person who violates this subsection after having been previously adjudicated as violating this subsection or subsection 1 or 4 commits a civil violation for which a fine of not less than $1,000 and not more than $5,000 may be adjudged. [2009, c. 652, Pt. A, §30 (AMD).]

[2009, c. 652, Pt. A, §30 (AMD) .]

3. **Requirements for shipping a delivery sale.**

[2009, c. 398, §6 (AFF); 2009, c. 398, §3 (RP) .]

4. **Reporting requirements.** No later than the 10th day of each calendar month, a tobacco retailer that has made a delivery sale of premium cigars or shipped or delivered premium cigars into the State in a delivery sale in the previous calendar month shall file with the Department of Administrative and Financial Services, Bureau of Revenue Services a memorandum or a copy of each invoice that provides for each delivery sale the name and address of the purchaser and the brand or brands and quantity of premium cigars sold. The following penalties apply to violations of this subsection.

A. A person who violates this subsection commits a civil violation for which a fine of not less than $50 and not more than $1,500 may be adjudged for each violation. [2003, c. 444, §2 (NEW).]

B. A person who violates this subsection after having been previously adjudicated as violating this subsection or subsection 1 or 2 commits a civil violation for which a fine of not less than $1,000 and not more than $5,000 may be adjudged. [2009, c. 398, §3 (AMD); 2009, c. 398, §6 (AFF).]

[2009, c. 398, §3 (AMD); 2009, c. 398, §6 (AFF) .]

5. **Unlawful ordering.** It is unlawful to submit ordering information for premium cigars by delivery sale under subsection 2, paragraph A in the name of another person. A person who violates this subsection commits a civil violation for which a fine of not more than $10,000 may be adjudged.

[2009, c. 398, §3 (AMD); 2009, c. 398, §6 (AFF) .]

6. **Rulemaking.** The department and the Department of Administrative and Financial Services 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.

[2003, c. 444, §2 (NEW) .]

7. **Forfeiture.** Any premium cigar sold or attempted to be sold in a delivery sale that does not meet the requirements of this section is deemed to be contraband and is subject to forfeiture in the same manner as and in accordance with the provisions of Title 36, section 4372-A.

[2009, c. 398, §3 (AMD); 2009, c. 398, §6 (AFF) .]

8. **Enforcement.** The Attorney General may bring an action to enforce this section in District Court or Superior Court and may seek injunctive relief, including a preliminary or final injunction, and fines, penalties and equitable relief and may seek to prevent or restrain actions in violation of this section by any person or any person controlling such person. In addition, a violation of this section is a violation of the Maine Unfair Trade Practices Act.

[2003, c. 444, §2 (NEW) .]

SECTION HISTORY
2003, c. 444, §2 (NEW). 2009, c. 398, §3 (AMD). 2009, c. 398, §6 (AFF). 2009, c. 652, Pt. A, §30 (AMD).

§1555-D. ILLEGAL DELIVERY OF TOBACCO PRODUCTS

A person may not knowingly transport or cause to be delivered to a person in this State a tobacco product purchased from a person who is not licensed as a tobacco retailer in this State, except that this provision does not apply to the transportation or delivery of tobacco products to a licensed tobacco distributor or tobacco retailer. [2009, c. 398, §4 (AMD); 2009, c. 398, §6 (AFF).]

1. **Lists.**

[2011, c. 524, §1 (RP) .]

2. **Penalty.** The following penalties apply for violation of this section.

A. A person who violates this section commits a civil violation for which a fine of not less than $50 nor more than $1500 may be adjudged for each violation. A fine imposed under this paragraph may not be suspended. [2003, c. 444, §2 (NEW).]

B. An employer of a person who, while working and within the scope of that person's employment, violates this section commits a civil violation for which a fine of not less than $50 nor more than $1,500 may be adjudged for each violation. A fine imposed under this paragraph may not be suspended. [2003, c. 444, §2 (NEW).]

[2003, c. 444, §2 (NEW) .]

3. **Enforcement.** The Attorney General may bring an action to enforce this section in District Court or Superior Court and may seek injunctive relief, including a preliminary or final injunction, and fines, penalties and equitable relief and may seek to prevent or restrain actions in violation of this section by any person or any person controlling such person. In addition, a violation of this section is a violation of the Maine Unfair Trade Practices Act.

[2003, c. 444, §2 (NEW) .]

4. **Affirmative defense.** It is an affirmative defense to a prosecution under this section that a person who transported tobacco products or caused tobacco products to be delivered reasonably relied on licensing information provided by the Attorney General under this section.

[2003, c. 444, §2 (NEW) .]

5. **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.

[2003, c. 444, §2 (NEW) .]

6. **Forfeiture.** Any tobacco product sold or attempted to be sold in a delivery sale that does not meet the requirements of this section is deemed to be contraband and is subject to forfeiture in the same manner as and in accordance with the provisions of Title 36, section 4372-A.

[2003, c. 444, §2 (NEW) .]

SECTION HISTORY
2003, c. 444, §2 (NEW). 2009, c. 398, §4 (AMD). 2009, c. 398, §6 (AFF). 2011, c. 524, §1 (AMD).

§1555-E. REDUCED IGNITION PROPENSITY CIGARETTES

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

A. "Agent" means any person licensed by the State Tax Assessor to purchase and affix stamps on packages of cigarettes. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

B. "ASTM" means the American Society of Testing and Materials or a successor organization. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

C. "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use and consists of or contains any roll of tobacco wrapped in paper or in any substance not containing tobacco or in any substance other than tobacco and, because of its appearance, the type of tobacco used or its packaging or labeling, is offered to or purchased by consumers as a cigarette. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

D. "Distributor" has the same meaning as in Title 36, section 4401, subsection 2. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

E. "Manufacturer" means:

(1) An entity that manufactures or otherwise produces cigarettes, or causes cigarettes to be manufactured or produced anywhere, that the entity intends to be sold in this State, including cigarettes intended to be sold in the United States through an importer;

(2) The first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States; or

(3) An entity that becomes a successor of an entity described in subparagraph (1) or (2). [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

F. "Quality control and quality assurance program" means the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors and equipment-related problems do not affect the results of testing under subsection 2. A quality control and quality assurance program ensures that the testing repeatability remains within the required repeatability values stated in subsection 2, paragraph A, subparagraph (6) for all test trials used to certify cigarettes in accordance with this section. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

G. "Repeatability" means the range of values within which the results of repeated cigarette test trials from a single laboratory will fall 95% of the time. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

H. "Sale" means any transfer of possession or exchange or barter, conditional or otherwise, of cigarettes in any manner or by any means or any agreement. In addition to cash and credit sales, the giving of cigarettes as samples, prizes or gifts and the exchanging of cigarettes for any consideration other than money are considered sales. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

I. "Sell" includes offering to sell or agreeing to sell. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

J. "Tobacco retailer" has the same meaning as in section 1551, subsection 3-A. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

[2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF) .]

2. **Test methods and performance standards.** Cigarette test methods and performance standards are governed by the provisions of this subsection.

A. Unless federal law provides otherwise, cigarettes may not be sold or offered for sale in this State or offered for sale or sold to persons located in this State unless the cigarettes have been tested in accordance with the test methods and meet the performance standards specified in this subsection, a written certification has been filed by the manufacturer with the State Fire Marshal in accordance with subsection 3 and the cigarettes have been marked in accordance with subsection 4.

(1) Testing of cigarettes must be conducted in accordance with ASTM Standard E2187-04, "Standard Test Method for Measuring the Ignition Strength of Cigarettes."

(2) Testing must be conducted on 10 layers of filter paper.

(3) No more than 25% of the cigarettes tested in a test trial in accordance with this subsection may exhibit full-length burns. Forty replicate tests constitutes a complete test trial for each cigarette tested.

(4) The performance standards required by this subsection may be applied only to a complete test trial.

(5) Written certifications must be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization or other comparable accreditation standards required by the State Fire Marshal.

(6) Laboratories conducting testing in accordance with this subsection shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The repeatability value must be no greater than 0.19.

(7) This subsection does not require additional testing if cigarettes are tested consistent with this section for any other purpose.

(8) Testing performed or sponsored by the State Fire Marshal to determine a cigarette's compliance with the performance standards required by this subsection must be conducted in accordance with this subsection. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

B. Each cigarette listed in a certification submitted pursuant to subsection 3 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standards set forth in this subsection must have at least 2 nominally identical bands on the paper surrounding the tobacco column. At least one complete band must be located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there must be at least 2 bands located at least 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column or 10 millimeters from the labeled end of the tobacco column for nonfiltered cigarettes. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

C. The provisions of this paragraph apply to alternative test methods.

(1) A manufacturer of a cigarette that the State Fire Marshal determines cannot be tested in accordance with the test methods prescribed in paragraph A shall propose test methods and performance standards for the cigarette to the State Fire Marshal. Upon approval of the proposed test methods and a determination by the State Fire Marshal that the performance standards proposed by the manufacturer are equivalent to the performance standards prescribed in paragraph A, the manufacturer may employ the test methods and performance standards to certify the cigarette pursuant to subsection 3.

(2) If a manufacturer has certified a cigarette pursuant to subsection 3 and thereafter makes any change to the cigarette that is likely to alter its compliance with the reduced ignition propensity standards required by this section, that cigarette may not be sold or offered for sale in this State until the manufacturer retests the cigarette in accordance with the testing standards set forth in this subsection and maintains records of that retesting as required by this subsection. Any altered cigarette that does not meet the performance standards set forth in this subsection may not be sold in this State.

(3) If the State Fire Marshal determines that another state has enacted reduced ignition propensity standards that include test methods and performance standards that are the same as those contained in this subsection and finds that the officials responsible for implementing those requirements have approved the proposed alternative test methods and performance standards for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation, then the State Fire Marshal shall authorize that manufacturer to employ the alternative test methods and performance standards to certify that cigarette for sale in this State, unless the State Fire Marshal finds a reasonable basis that the alternative test should not be accepted under this section. All other applicable requirements of this subsection apply to the manufacturer. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

D. Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of 3 years and shall make copies of these reports available to the State Fire Marshal and the Attorney General upon written request. Any manufacturer who fails to make copies of these reports available within 60 days of receiving a written request commits a civil violation for which a fine not to exceed $5,000 must be applied for each day after the 60th day that the manufacturer does not make such copies available. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

E. The State Fire Marshal may adopt a subsequent ASTM standard test method for measuring the ignition strength of cigarettes upon a finding that the subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage

of full-length burns the same cigarette would exhibit when tested in accordance with ASTM Standard E2187-04 and the performance standard in paragraph A, subparagraph (3). [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

[2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF) .]

3. **Certification.** This subsection governs the certification of cigarettes under this section.

A. Each manufacturer shall submit to the State Fire Marshal a written certification attesting that:

(1) Each cigarette listed in the certification has been tested in accordance with subsection 2; and

(2) Each cigarette listed in the certification meets the performance standards set forth in subsection 2. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

B. Information listed in the certification of each cigarette must include:

(1) Brand or trade name on the package;

(2) Style, such as light or ultra light;

(3) Length in millimeters;

(4) Circumference in millimeters;

(5) Flavor, such as menthol, if applicable;

(6) Filter or nonfilter;

(7) Package description, such as soft pack or box;

(8) Marking approved in accordance with subsection 4;

(9) The name, address and telephone number of the laboratory, if different than the manufacturer, that conducted the test; and

(10) The date that the testing occurred. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

C. The manufacturer must make a certification available to the Attorney General for purposes consistent with this section and the State Tax Assessor for the purposes of ensuring compliance with this section. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

D. Each cigarette certified under this subsection must be recertified every 3 years. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

[2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF) .]

4. **Marking of cigarette packaging.** The provisions of this subsection govern marking of cigarette packaging.

A. The packaging of cigarettes that are certified by a manufacturer in accordance with subsection 3 must be marked to indicate compliance with the requirements of subsection 2. The marking must be in 8-point or larger type and consist of:

(1) Modification of the universal product code to include a visible mark printed in the area of the universal product code. This mark may consist of an alphanumeric or symbolic character or characters permanently stamped, engraved, embossed or printed in conjunction with the universal product code; or

(2) Any visible combination of alphanumeric or symbolic characters or text permanently stamped, engraved or embossed upon the cigarette package or cellophane wrap. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

B. A manufacturer shall use only one marking and shall apply this marking uniformly for all packages, including, but not limited to, packs, cartons and cases, and brands marketed by that manufacturer. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

C. Prior to the certification of any cigarette, a manufacturer shall present its proposed marking to the State Fire Marshal for approval. Upon receipt of the request, the State Fire Marshal shall approve or disapprove the marking offered, except that the State Fire Marshal shall approve any marking in use and approved for sale in New York pursuant to the New York Fire Safety Standards for Cigarettes. Proposed markings are deemed approved if the State Fire Marshal fails to act within 10 business days of receiving a request for approval. The State Fire Marshal shall notify the State Tax Assessor as to the marking that has been approved. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

D. A manufacturer may not modify its approved marking unless the modification has been approved by the State Fire Marshal in accordance with this subsection. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

E. A manufacturer certifying cigarettes in accordance with subsection 3 shall provide a copy of the certification to all distributors and agents to which the manufacturer sells cigarettes and shall also provide sufficient copies of an illustration of the package marking used by the manufacturer pursuant to this section for each tobacco retailer to which the distributors or agents sell cigarettes. Distributors and agents shall provide copies of these illustrations to all tobacco retailers to which they sell cigarettes. Distributors, agents and tobacco retailers shall permit the State Fire Marshal, the State Tax Assessor, the Attorney General and their employees to inspect cigarette packaging marked in accordance with this subsection. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

[2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF) .]

5. **Violations.** Penalties for violating this section are as set out in this subsection.

A. A manufacturer, distributor, agent or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of subsection 2, paragraph A commits a civil violation for which a fine of not more than $10,000 per each sale of cigarettes must be imposed. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

B. A manufacturer, distributor, agent or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of subsection 2, paragraph A and has previously been adjudicated of violating that subsection commits a civil violation for which a fine of not more than $25,000 per each sale of cigarettes must be imposed, except that the fine against any one person or entity may not exceed $100,000 during any 30-day period. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

C. A tobacco retailer who knowingly sells 1,000 cigarettes or less in violation of subsection 2, paragraph A commits a civil violation for which a fine of not more than $500 per each sale or offer for sale of cigarettes must be imposed. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

D. A tobacco retailer who commits a violation as described in paragraph C and has previously been adjudicated of committing that violation commits a civil violation for which a fine of not more than $2,000 per each sale or offer for sale of cigarettes must be imposed. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

E. A tobacco retailer who knowingly sells more than 1,000 cigarettes in violation of subsection 2, paragraph A commits a civil violation for which a fine of not more than $1,000 per each sale or offer for sale of cigarettes must be imposed, except that this fine against any tobacco retailer may not exceed $25,000 during a 30-day period. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

F. A tobacco retailer who commits a violation as described in paragraph E and has previously been adjudicated of committing that violation commits a civil violation for which a fine of not more than $5,000 per each sale or offer for sale of cigarettes must be imposed, except that this fine against any tobacco retailer may not exceed $25,000 during a 30-day period. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

G. In addition to any other penalty prescribed by law, a corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to subsection 3 commits a civil violation for which a fine of not less than $75,000 must be imposed for each false certification. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

H. A corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that commits a violation as described in paragraph G after having previously being adjudicated of committing that violation commits a civil violation for which a fine of at least $75,000 and not more than $250,000 must be imposed for each false certification. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

I. A person who commits a violation of a provision of this section other than those described in paragraphs A to H commits a civil violation for which a fine of not more than $1,000 must be imposed for each violation. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

J. A person who commits a violation as described in paragraph I and has been previously adjudicated of committing a violation described in paragraph I commits a civil violation for which a fine of not more than $5,000 must be imposed for each violation. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

[2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF) .]

6. **Forfeiture.** Any cigarettes that have been sold or offered for sale that do not comply with the performance standards required by this section are subject to forfeiture under Title 36, section 4372-A, as long as, prior to the destruction of any cigarette forfeited pursuant to these provisions, the true holder of the trademark rights in the cigarette brand must be permitted to inspect the cigarette.

[2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF) .]

7. **Injunctive relief.** In addition to any other remedy provided by law, the Attorney General may file an action in District Court or Superior Court for a violation of this section, including petitioning for injunctive relief or to recover any costs or damages suffered by the State because of a violation of this section, including enforcement costs relating to the specific violation and attorney's fees. Each violation of this section or of rules adopted under this section constitutes a separate civil violation for which the State Fire Marshal or Attorney General may obtain relief.

[2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF) .]

8. **Implementation.** This section must be implemented as set out in this subsection.

A. The State Fire Marshal may adopt routine technical rules, pursuant to Title 5, chapter 375, subchapter 2-A, necessary to effectuate the purposes of this section. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

B. The State Tax Assessor in the regular course of conducting inspections of distributors, agents and tobacco retailers, as authorized under Title 36, section 4373-A, may inspect cigarette packaging to determine if it is marked as required in subsection 4. If the packaging is not marked as required, the State Tax Assessor shall notify the State Fire Marshal. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

C. Beginning in 2009 and every 3 years thereafter, the State Fire Marshal shall review the effectiveness of this section and report to the Legislature the State Fire Marshal's findings and, if appropriate, recommendations for legislation to improve the effectiveness of the implementation of the standards and certification of those standards in this section. The report and legislative recommendations must be submitted no later than March 1st of each year a report is required. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

D. This section must be implemented by the State Fire Marshal in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes or a comparable or successor standard. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

[2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF) .]

9. **Inspection.** To enforce the provisions of this section, the Attorney General and the State Fire Marshal may examine the books, papers, invoices and other records of any person in possession, control or occupancy of any premises where cigarettes are manufactured, tested, placed, stored, sold or offered for sale, as well as the stock of cigarettes on the premises. Such a person shall give the Attorney General and the State Fire Marshal the means, facilities and opportunity for the examinations authorized by this subsection.

[2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF) .]

10. **Fire Prevention and Public Safety Fund.** The Fire Prevention and Public Safety Fund is established as a nonlapsing fund. The fund must consist of all money recovered as penalties for violations of this section. The money must be deposited to the credit of the fund and, in addition to any other money made available for such purpose, must be made available to the State Fire Marshal to support fire safety and prevention programs.

[2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF) .]

11. **Sale outside of State.** Nothing in this section may be construed to prohibit a person or entity from manufacturing or selling cigarettes that do not meet the requirements of this section if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States and that person or entity has taken reasonable steps to ensure that such cigarettes will not be sold or offered for sale to persons located in this State.

[2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF) .]

SECTION HISTORY
2007, c. 253, §1 (NEW). 2007, c. 253, §3 (AFF).

§1555-F. DELIVERY SALES OF TOBACCO PRODUCTS

1. **Prohibition against delivery sales to consumers.** The following requirements apply to delivery sales of tobacco products within the State.

A. A tobacco product may not be shipped to anyone other than a licensed tobacco distributor or licensed tobacco retailer in this State. [2009, c. 398, §5 (NEW); 2009, c. 398, §6 (AFF).]

B. A person may not, with knowledge or reason to know of the violation, provide substantial assistance to a person in violation of this section. [2009, c. 398, §5 (NEW); 2009, c. 398, §6 (AFF).]

[2009, c. 398, §5 (NEW); 2009, c. 398, §6 (AFF) .]

2. **Acceptance of delivery of tobacco products.** Only a licensed tobacco distributor or licensed tobacco retailer may accept delivery of tobacco products in this State.

[2009, c. 398, §5 (NEW); 2009, c. 398, §6 (AFF) .]

3. **Penalties.** The following penalties apply to violations of this section.

A. A person who violates this section commits a civil violation for which a fine of not less than $1,000 and not more than $5,000 may be adjudged for each violation. [2009, c. 398, §5 (NEW); 2009, c. 398, §6 (AFF).]

B. An employer of a person who, while working and within the scope of that person's employment, violates this section commits a civil violation for which a fine of not less than $1,000 and not more than $5,000 may be adjudged for each violation. [2009, c. 398, §5 (NEW); 2009, c. 398, §6 (AFF).]

C. For purposes of this section, each shipment or transport of tobacco products constitutes a separate violation. [2009, c. 398, §5 (NEW); 2009, c. 398, §6 (AFF).]

D. The Attorney General may bring an action to enforce this section in District Court or Superior Court and may seek injunctive relief, including preliminary or final injunction, and fines, penalties and equitable relief and may seek to prevent or restrain actions in violation of this section by any person or any person controlling such person. In addition, a violation of this section is a violation of the Maine Unfair Trade Practices Act. [2009, c. 398, §5 (NEW); 2009, c. 398, §6 (AFF).]

E. If a court determines that a person has violated the provisions of this section, the court shall order any profits, gains, gross receipts or other benefits from the violation to be disgorged and paid to the Treasurer of State for deposit in the General Fund. Unless otherwise expressly provided, the penalties or remedies or both under this section are in addition to any other penalties and remedies available under any other law of this State. [2009, c. 398, §5 (NEW); 2009, c. 398, §6 (AFF).]

[2009, c. 398, §5 (NEW); 2009, c. 398, §6 (AFF) .]

4. **Rulemaking.** The department and the Department of Administrative and Financial Services 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.

[2009, c. 398, §5 (NEW); 2009, c. 398, §6 (AFF) .]

5. **Forfeiture.** Any tobacco product sold or attempted to be sold in violation of this section is deemed to be contraband and is subject to forfeiture in the same manner as and in accordance with the provisions of Title 36, section 4372-A.

[2009, c. 398, §5 (NEW); 2009, c. 398, §6 (AFF) .]

6. **Exemption.** The provisions of this section do not apply to the delivery sale of premium cigars to a consumer.

[2009, c. 398, §5 (NEW); 2009, c. 398, §6 (AFF) .]

SECTION HISTORY
2009, c. 398, §5 (NEW). 2009, c. 398, §6 (AFF).

§1556. MUNICIPAL REGULATION

Except as otherwise provided in this section, nothing in this chapter affects the authority of municipalities to enact ordinances or regulations that are more restrictive than this chapter. [1997, c. 63, §1 (AMD).]

When a municipality intends to consider an ordinance or regulation or intends to amend an ordinance or regulation so that the ordinance or regulation would be more restrictive than this chapter, the municipality shall give notice of that intention by mail, at least 30 days prior to consideration of the ordinance, regulation or amendment, to the last known address of each retail tobacco licensee doing business within the municipal corporate limits. This notice must state the time, place and date of a hearing or proposed enactment and the subject matter of the proposed ordinance, regulation or amendment. [1997, c. 63, §1 (NEW).]

SECTION HISTORY
1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 1997, c. 63, §1 (AMD).

§1556-A. ENFORCEMENT

The provisions of this chapter and Title 36, section 4366-C may be enforced by law enforcement officers as defined by Title 17-A or by individuals hired by contract with the department to enforce this law. [1999, c. 616, §1 (AMD).]

1. **Contract officers.** The authority of contract officers hired under this chapter is limited to enforcement of this chapter and Title 36, section 4366-C. Authorization to enforce this chapter is granted by the Commissioner of Public Safety, by terms mutually agreed upon between the department and the Department of Public Safety. Contract officers must have an appropriate background in law enforcement. Contract officers are exempt from ongoing training requirements except as otherwise determined by the Commissioner of Public Safety. These contract officers are not considered law enforcement officers for the purposes of enforcing the Maine Juvenile Code.

[2007, c. 467, §1 (AMD) .]

2. **Enforcement; jurisdiction.** Enforcement of criminal offenses may be carried out by written summons pursuant to Title 17-A filed in the District Court. Enforcement of civil violations set forth in section 1555-B may be carried out by complaint filed in District Court. All civil violations involving licenses issued pursuant to section 1551-A are within the jurisdiction of the District Court pursuant to section 1557, subsection 1.

[1999, c. 2, §23 (AFF); 1999, c. 2, §22 (COR) .]

3. **Injunction.**

[1995, c. 593, §5 (RP) .]

SECTION HISTORY
1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 1995, c. 593, §§4,5 (AMD). 1997, c. 305, §6 (AMD). 1997, c. 562, §D4 (AMD). 1997, c. 562, §D11 (AFF). RR 1999, c. 2, §23 (AFF). RR 1999, c. 2, §22 (COR). 1999, c. 616, §§1,2 (AMD). 2007, c. 467, §1 (AMD).

Subchapter 3: FINES, REVOCATION AND SUSPENSION

§1557. JURISDICTION; DISTRICT COURT

1. **Jurisdiction.** The District Court, pursuant to the Maine Administrative Procedure Act, shall conduct hearings on all matters concerning violations by tobacco licensees of any state law related to tobacco sales. Notwithstanding Title 5, chapter 375, subchapter 6, the District Court Judge has exclusive jurisdiction over all violations of this chapter by licensees and their agents or employees when a criminal penalty is not provided.

[2009, c. 199, §4 (AMD) .]

2. **Powers.** The District Court may impose fines on licensees and their agents or employees and suspend or revoke licenses in accordance with this chapter.

[2009, c. 199, §4 (AMD) .]

3. **Injunction.** If the person licensed to sell tobacco products has engaged in or is about to engage in any act or practice that violates this chapter, the District Court may grant a permanent or temporary injunction, restraining order or other order as appropriate.

[1995, c. 593, §6 (NEW); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

SECTION HISTORY
1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 1995, c. 593, §6 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2009, c. 199, §4 (AMD).

§1557-A. IMPOSITION OF PENALTIES; CAUSES

The District Court may impose fines or revoke or suspend licenses for the following causes: [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF).]

1. **Violation of law or infraction of rule.** Violation of state law or rule related to the sale of tobacco products; or

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF) .]

2. **False material statement.** Knowingly making a false material statement of fact in an application for licensure of the sale of tobacco products.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF) .]

SECTION HISTORY
1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF).

§1558. REVOCATION OR SUSPENSION PROCEDURE

1. **Violation of law or rule.** Upon discovering a violation of state law or rule related to retail tobacco sales, the commissioner or the commissioner's designee shall:

A. Report the violation to the District Court in a signed complaint; or [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF).]

B. Issue warnings to the licensees involved. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

2. **Notice and hearing.** Except as provided under subsection 7, upon receipt of a signed complaint prepared under subsection 1, paragraph A, notice must be provided and a hearing must be held according to the following procedures.

A. The commissioner or the commissioner's designee shall notify the licensee or the licensee's agent or employee by serving the licensee or the licensee's agent or employee with a copy of the complaint and a notice that states the time and place of the hearing and that the licensee or the licensee's agent or employee may appear in person or be represented by counsel at the hearing. Service of the complaint and hearing notice upon the licensee is sufficient when served in hand by the commissioner's designee or when sent by registered or certified mail at least 7 days before the date of the hearing to the address given by the licensee at the time of application for a license. Service of the complaint and hearing notice upon a licensee's agent or employee is sufficient when served in hand by the commissioner's designee or when sent by registered or certified mail at least 7 days before the date of the hearing to the address given by the agent or employee at the time the agent or employee was initially notified by the department of the violation. The commissioner or the commissioner's designee shall file proof of service with the District Court. [2009, c. 199, §5 (AMD).]

B. The District Court shall conduct a hearing limited to the facts, laws and rules specified in the complaint. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF).]

C. The District Court shall conduct the hearing in the following manner.

(1) The District Court may administer oaths to witnesses and issue subpoenas at the request of any party, including subpoenas to compel the attendance of parents and legal guardians of unemancipated minors.

(a) The department shall pay to the witnesses the legal fees for travel and attendance, except that, notwithstanding Title 16, section 253, the department is not required to pay the fees before the travel and attendance occur.

(2) Hearsay testimony is not admissible during the hearing. The licensees, agents or employees named in the complaint have the right to have all witnesses testify in person at the hearing.

(3) The District Court shall render a decision in each case based on the facts, laws and rules cited in the complaint. The findings must specify the facts found and the laws or rules violated. [2009, c. 199, §5 (AMD).]

[2009, c. 199, §5 (AMD) .]

3. **Suspension or revocation decision.**

[2011, c. 559, Pt. A, §22 (RP) .]

4. **Suspension of penalty; case on file.** After the hearing, the District Court may:

A. Suspend a penalty; or [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

B. Place a case on file instead of imposing a penalty. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

5. **Application of suspension or revocation.** A suspension or revocation applies to premises and persons in the following manner.

A. If a licensee is interested directly or indirectly in more than one license, suspensions apply only to the premises where the violation occurs. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

B. If a licensee is interested directly or indirectly in more than one license, the District Court may order that a revocation apply to any of those premises or machines. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF).]

C. If the licensee is a corporation, the District Court shall treat the officers, directors and substantial stockholders as individuals. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF).]

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

6. **Term of suspension or revocation.** Suspensions must be for a definite period of time. If the District Court revokes a license, the court shall specify when the department may reinstate a license to the person whose license is revoked.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

7. **Warnings.** Upon the written recommendation of the commissioner, or the commissioner's designee, the District Court, instead of notifying a licensee against whom a complaint is pending to appear for hearing, may send the licensee a warning. Warnings must be sent by registered or certified mail and contain a copy of the complaint. A licensee to whom a warning is sent may demand a hearing by notifying the District Court by registered or certified mail within 10 days from the date the warning was mailed.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

8. **Fines.** Notwithstanding any other provisions of this Title, the District Court may impose on a licensee or the licensee's agent or employee a fine of a specific sum of not less than $50 nor more than $1,500 for any one offense. The fine is independent of any fine or forfeiture adjudged under subchapter 1 or 2 and may be imposed instead of or in addition to any suspension or revocation of a license.

A. The District Court shall maintain a record of all fines received by the court. Any fines received must be credited as follows: 1/2 to the Department of Health and Human Services in a nonlapsing account to be used by the department to defray administrative costs of retail tobacco licensing and 1/2 to a nonlapsing account to be used by the Attorney General to support enforcement and responsible retailing education programs. Annually, the court shall report to the department the total amount of fines collected. [2011, c. 657, Pt. AA, §60 (AMD).]

[2011, c. 657, Pt. AA, §60 (AMD) .]

SECTION HISTORY
1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2003, c. 689, §B6 (REV). 2005, c. 223, §5 (AMD). 2009, c. 199, §§5, 6 (AMD). 2011, c. 559, Pt. A, §22 (AMD). 2011, c. 657, Pt. AA, §60 (AMD).

§1558-A. RECORD OF PROCEEDINGS; TRANSCRIPT

1. **Court record.** The District Court shall keep a full and complete record of all proceedings before the court of any enforcement actions or on the revocation and suspension of any license issued by the department. The District Court is not required to have a transcript of the testimony prepared unless required for rehearing or appeal.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

2. **Notice to department.** The District Court shall forward to the department notice of final disposition of all proceedings conducted pursuant to this subchapter. The department shall maintain the records of the proceedings for at least 5 years.

[2011, c. 657, Pt. AA, §61 (AMD) .]

3. **Notice to defendant.** Notice of the decision of the District Court must be sent to the defendant by certified mail to the address given by the licensee to the department.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

SECTION HISTORY
1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2011, c. 657, Pt. AA, §61 (AMD).

§1559. APPEAL DECISION OF DISTRICT COURT

1. **Aggrieved person may appeal within 30 days.** A person aggrieved by the decision of the District Court in imposing any forfeiture or fine or in revoking or suspending a license issued by the department or by refusal of the department to issue a license applied for may appeal to the Superior Court by filing a complaint within 30 days of the decision or refusal.

A. The 30-day period for appeal begins on:

(1) The effective date of the suspension or revocation in the case of a license revocation or suspension; or

(2) The day when the department sends notice of refusal, by registered or certified mail, to the applicant for a license in the case of refusal by the department to issue a license. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

B. Filing the complaint in Superior Court suspends the running of the 30-day period. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

2. **Suspension or revocation suspended pending appeal.** If the licensee files an appeal in the Superior Court and notifies the District Court that the appeal has been filed within 7 days of the mailing of the decision of the District Court required in section 1558-A, subsection 3, the operation of a suspension or revocation of a license imposed by the District Court must be suspended, pending judgment of the Superior Court.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

3. **Superior Court hearing.**

[2011, c. 559, Pt. A, §23 (RP) .]

4. **Superior Court decision.** After the hearing, the Superior Court may affirm, modify or reverse the decision of the District Court.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

5. **Further appeal.** An aggrieved person may appeal the Superior Court decision to the Supreme Judicial Court. Upon appeal, the Supreme Judicial Court, after consideration, may reverse or modify any decree made by the Superior Court based upon an erroneous ruling or finding of law.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF) .]

SECTION HISTORY
1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2011, c. 559, Pt. A, §23 (AMD).

§1559-A. TRANSFER OF FUNDS

(REPEALED)

SECTION HISTORY
1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 2003, c. 673, §CC2 (RP).

Subchapter 4: NICOTINE-CONTAINING SUBSTANCES

§1560. NICOTINE WATER

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

A. "Nicotine water" means water that is sold in the State, that is intended for human consumption and that contains as an added ingredient nicotine or an alkaloid having similar physiological activity. [2003, c. 623, §1 (NEW).]

[2003, c. 623, §1 (NEW) .]

2. **Prohibition.** A person may not sell, furnish, give away or offer to sell, furnish or give away nicotine water in this State.

[2003, c. 623, §1 (NEW) .]

3. **Violation.** A person who violates this section commits a civil violation for which fines may be imposed under subsection 4.

[2003, c. 623, §1 (NEW) .]

4. **Fines.** The following fines apply to violations of this section.

A. A person who violates subsection 2 commits a civil violation for which a fine of $500 may be adjudged. [2003, c. 623, §1 (NEW).]

B. A person who violates subsection 2 after having previously violated subsection 2 commits a civil violation for which a fine of $1,000 may be adjudged. [2003, c. 623, §1 (NEW).]

C. A person who violates subsection 2 after having previously violated subsection 2 more than once commits a civil violation for which a fine of $5,000 may be adjudged. [2003, c. 623, §1 (NEW).]

[2003, c. 623, §1 (NEW) .]

SECTION HISTORY
2003, c. 623, §1 (NEW).

§1560-A. HARD SNUFF

(REPEALED)

SECTION HISTORY
2007, c. 467, §2 (NEW). 2007, c. 487, §1 (RP).

§1560-B. LIQUID NICOTINE

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

A. "Child-resistant packaging" means packaging meeting the specifications in 16 Code of Federal Regulations, Section 1700.15(b) (2015) and tested by the method described in 16 Code of Federal Regulations, Section 1700.20 (2015). [2015, c. 288, §1 (NEW).]

B. "Electronic nicotine delivery device" means any noncombustible device containing or delivering nicotine or any other substance intended for human consumption that employs a heating element, power source, electronic circuit or other electronic, chemical or mechanical means and that may be used to simulate smoking through inhalation of vapor or aerosol from the device, including, without limitation, a device manufactured, distributed, marketed or sold as an electronic cigarette, electronic cigar, electronic pipe, electronic hookah or so-called vape pen. "Electronic nicotine delivery device" does not include any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act. [2015, c. 288, §1 (NEW).]

C. "Nicotine liquid container" means a container used to hold a liquid, gel or other substance containing nicotine that is sold, marketed or intended for use as or with an electronic nicotine delivery device. "Nicotine liquid container" does not include a cartridge or other container that contains a liquid or other substance containing nicotine and is sold, marketed or intended for use as long as the cartridge or other container is prefilled and sealed by the manufacturer and not intended to be opened by the consumer. [2015, c. 288, §1 (NEW).]

[2015, c. 288, §1 (NEW) .]

2. **Prohibition.** Beginning January 1, 2016, a person may not sell, furnish, give away or offer to sell, furnish or give away a nicotine liquid container unless the container is child-resistant packaging.

[2015, c. 288, §1 (NEW) .]

3. **Penalties.** This subsection applies to violations of subsection 2.

A. A person who violates subsection 2 commits a civil violation for which a fine of $500 may be adjudged. [2015, c. 288, §1 (NEW).]

B. A person who violates subsection 2 after having previously violated subsection 2 commits a civil violation for which a fine of $1,000 may be adjudged. [2015, c. 288, §1 (NEW).]

C. A person who violates subsection 2 after having previously violated subsection 2 more than once commits a civil violation for which a fine of $5,000 may be adjudged. [2015, c. 288, §1 (NEW).]

[2015, c. 288, §1 (NEW) .]

4. **Repeal.** The commissioner shall monitor the status of any effective date of final regulations issued by the United States Food and Drug Administration or by any other federal agency that mandate child-resistant packaging standards for nicotine liquid containers. The commissioner shall notify the joint standing committee of the Legislature having jurisdiction over health and human services matters when the final regulations have been adopted. The joint standing committee, upon receiving this notification, may report out a bill repealing this section.

[2015, c. 288, §1 (NEW) .]

SECTION HISTORY
2015, c. 288, §1 (NEW).

Subchapter 5: FLAVORED CIGARS

§1560-D. FLAVORED CIGARS

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

A. "Characterizing flavor" means a distinguishable taste or aroma of candy, chocolate, vanilla, fruit, berry, nut, herb, spice, honey or an alcoholic drink that is imparted to tobacco or tobacco smoke either prior to or during consumption. "Characterizing flavor" does not include a taste or aroma from tobacco. A cigar is deemed to have a characterizing flavor if the cigar is advertised or marketed as having or producing the taste or aroma of candy, chocolate, vanilla, fruit, berry, nut, herb, spice, honey or an alcoholic drink. [2009, c. 606, §1 (AMD).]

B. "Component part" includes but is not limited to the tobacco, filter and paper in a cigar. [2009, c. 606, §1 (AMD).]

C. "Constituent" means any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to the tobacco, paper or filter of a cigar during the processing, manufacture or packing of the cigar. "Constituent" includes a smoke constituent. [2009, c. 606, §1 (AMD).]

D. "Flavored cigar" means a cigar or any component part of the cigar that contains a constituent that imparts a characterizing flavor. [2009, c. 606, §1 (AMD).]

E. [2009, c. 606, §1 (RP).]

E-1. "Premium cigar" means a cigar that weighs more than 3 pounds per 1,000 cigars and is wrapped in whole tobacco leaf. [2009, c. 606, §1 (NEW).]

F. "Smoke constituent" means any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the cigar to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product. [2009, c. 606, §1 (AMD).]

[2009, c. 606, §1 (AMD) .]

2. **Prohibition on sale or distribution of flavored cigars.** Except as provided in subsection 5-A, a person may not sell or distribute or offer to sell or distribute in this State any flavored cigar unless the cigar is a premium cigar.

A. [2009, c. 606, §1 (RP).]

B. [2009, c. 606, §1 (RP).]

C. [2009, c. 606, §1 (RP).]

[2009, c. 606, §1 (AMD) .]

3. **Violation.** A person who violates this section commits a civil violation for which fines may be imposed under subsection 4.

[2007, c. 467, §3 (NEW) .]

4. **Fines.** The fines that apply to violations of this section are as set out in this subsection.

A. A person who violates subsection 2 commits a civil violation for which a fine of $1,000 may be adjudged. [2009, c. 606, §1 (AMD).]

B. A person who violates subsection 2 after having previously been convicted of a violation of that subsection commits a civil violation for which a fine of $5,000 may be adjudged. [2009, c. 606, §1 (AMD).]

[2009, c. 606, §1 (AMD) .]

5. **Exemptions.**

[2009, c. 606, §1 (RP) .]

5-A. **Exemptions.** Any flavored cigar that the Attorney General determined had no characterizing flavor or was otherwise exempt under former subsection 5 is exempt from the prohibition on flavored nonpremium cigars in subsection 2 so long as no material change is made to the cigar's flavoring, packaging or labeling subsequent to the Attorney General's determination.

[2009, c. 606, §1 (NEW) .]

6. **Tobacco distributors.**

[2009, c. 606, §1 (RP) .]

7. **Transition.**

[2009, c. 606, §1 (RP) .]

8. **Website information.** To the extent that resources permit, the Attorney General shall maintain on a publicly accessible website a list of flavored cigars that are exempt from the prohibition under subsection 5-A and authorized for distribution and sale in the State.

[2009, c. 606, §1 (AMD) .]

9. **Rulemaking.**

[2009, c. 606, §1 (RP) .]

10. **Transfers of funds.** Notwithstanding any other provision of law, for fiscal years beginning on or after July 1, 2009 the State Controller shall transfer $92,660 no later than June 30, 2010 and $145,147 no later than June 30, 2011 from the Fund for a Healthy Maine to General Fund undedicated revenue.

[2011, c. 380, Pt. II, §2 (AMD) .]

SECTION HISTORY
2007, c. 467, §3 (NEW). 2007, c. 612, §1 (AMD). 2009, c. 606, §1 (AMD). 2011, c. 380, Pt. II, §2 (AMD).

Chapter 263: OFFENSES AGAINST PUBLIC HEALTH

Subchapter 1: NUISANCES

§1561. REMOVAL OF PRIVATE NUISANCE

When any source of filth whether or not the cause of sickness is found on private property and deemed to be potentially injurious to health, the owner or occupant thereof shall, within 24 hours after notice from the local health officer, at his own expense, remove or discontinue it. If he neglects or unreasonably delays to do so, he forfeits not exceeding $300. Said local health officer shall cause said nuisance to be removed or discontinued, and all expenses thereof shall be repaid to the town by such owner or occupant, or by the person who caused or permitted it. [1973, c. 430, (AMD).]

SECTION HISTORY
1973, c. 430, (AMD).

§1562. DEPOSITING OF DEAD ANIMAL WHERE NUISANCE

Whoever personally or through the agency of another leaves or deposits the carcass of a dead horse, cow, sheep, hog or of any domestic animals or domestic fowl or parts thereof in any place where it may cause a nuisance shall, upon receiving a notice to that effect from the local health officer, promptly remove, bury or otherwise dispose of such carcass. If he fails to do so within such time as may be prescribed by the local health officer, and in such manner as may be satisfactory to such health officer, he shall be punished by a fine of not less than $10 nor more than $100, or by imprisonment for not more than 3 months.

§1563. REUSE OF CONTAINERS

(REPEALED)

SECTION HISTORY
1977, c. 457, §3 (RP).

§1564. SPITTING IN PUBLIC PLACES

(REPEALED)

SECTION HISTORY
1977, c. 457, §3 (RP).

§1565. X-RAY SHOE-FITTING MACHINES

(REPEALED)

SECTION HISTORY
1977, c. 457, §3 (RP).

§1566. PURPOSE

(REPEALED)

SECTION HISTORY
1971, c. 521, §1 (NEW). 1977, c. 696, §182 (RP).

§1567. DEFINITIONS

(REPEALED)

SECTION HISTORY
1971, c. 521, §1 (NEW). 1977, c. 696, §182 (RP).

§1568. LICENSE

(REPEALED)

SECTION HISTORY
1971, c. 521, §1 (NEW). 1977, c. 696, §182 (RP).

§1569. FEES

(REPEALED)

SECTION HISTORY
1971, c. 521, (NEW). 1977, c. 696, §182 (RP).

§1570. RULES AND REGULATIONS

(REPEALED)

SECTION HISTORY
1971, c. 521, §1 (NEW). 1977, c. 696, §182 (RP).

§1571. PENALTY

(REPEALED)

SECTION HISTORY
1971, c. 521, §1 (NEW). 1977, c. 696, §182 (RP).

§1572. IMMUNITY AND EMPLOYMENT PROTECTION

(REPEALED)

SECTION HISTORY
1973, c. 518, §1 (NEW). 1977, c. 696, §183 (RP).

§1573. DISCRIMINATION FOR REFUSAL

(REPEALED)

SECTION HISTORY
1973, c. 518, §2 (NEW). 1977, c. 696, §183 (RP).

§1574. SALE AND USE OF FETUSES

(REPEALED)

SECTION HISTORY
1973, c. 518, §3 (NEW). 1977, c. 696, §183 (RP).

§1575. FAILURE TO PRESERVE LIFE OF LIVE BORN PERSON

(REPEALED)

SECTION HISTORY
1973, c. 518, §4 (NEW). 1977, c. 696, §183 (RP).

§1576. LIVE BORN AND LIVE BIRTH, DEFINED

(REPEALED)

SECTION HISTORY
1973, c. 518, §5 (NEW). 1977, c. 696, §183 (RP).

§1577. ABORTION DATA

(REPEALED)

SECTION HISTORY
1977, c. 389, (NEW). 1977, c. 696, §184 (RP).

§1578. SMOKING PROHIBITED AT PUBLIC MEETINGS

(REPEALED)

SECTION HISTORY
1981, c. 333, (NEW). 1985, c. 779, §61 (AMD). 1987, c. 20, §2 (AMD).
1993, c. 342, §9 (AFF). 1993, c. 342, §2 (RP).

§1578-A. SMOKING IN PUBLICLY OWNED BUILDINGS

(REPEALED)

SECTION HISTORY
1987, c. 332, (NEW). 1993, c. 342, §9 (AFF). 1993, c. 342, §3 (RP).

Subchapter 2: SMOKING

§1578-B. TOBACCO USE IN ELEMENTARY AND SECONDARY SCHOOLS PROHIBITED

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

A. "Elementary or secondary school" means any public elementary or secondary school approved in accordance with Title 20-A, chapter 206, subchapter I. [1987, c. 687, (NEW).]

B. "Principal" has the same meaning as defined in Title 20-A, section 1, subsection 21. [1987, c. 687, (NEW).]

C. "Student" means any elementary or secondary student enrolled in an elementary or secondary school as defined in Title 20-A, chapter 1. [1987, c. 687, (NEW).]

D. "Tobacco use" includes smoking, which means carrying or having in one's possession a lighted cigarette, cigar, pipe or other object giving off or containing any substance giving off smoke, and the use of smokeless tobacco. [1987, c. 687, (NEW).]

[1987, c. 687, (NEW) .]

2. **Prohibition.** Except as provided in subsection 3, tobacco use in the buildings or on the grounds of any elementary or secondary school is prohibited.

[2007, c. 156, §2 (AMD) .]

3. **Exceptions.** Tobacco use may be permitted in classrooms only as part of a bona fide demonstration during a class lesson, with prior notice being given to the school's administrator.

[1987, c. 687, (NEW) .]

4. **Employees.**

[2007, c. 156, §3 (RP) .]

5. **Public.**

[2007, c. 156, §4 (RP) .]

6. **Enforcement.** The principal of the elementary or secondary school, or the principal's designee, shall enforce the law prohibiting and restricting tobacco use under this section.

[1987, c. 687, (NEW) .]

SECTION HISTORY
1987, c. 687, (NEW). 1993, c. 342, §4 (AMD). 1993, c. 342, §9 (AFF). 2007, c. 156, §§2-4 (AMD).

§1579. PROHIBITION

(REPEALED)

SECTION HISTORY
1983, c. 226, (NEW). 1983, c. 239, (NEW). 1983, c. 816, §A15 (RAL). 1989, c. 445, §8 (RPR). RR 1993, c. 1, §52 (COR). 1993, c. 301, §1 (AMD). 1995, c. 470, §19 (AFF). 1995, c. 470, §12 (RP).

§1579-A. SMOKING IN RESTAURANTS

(REPEALED)

SECTION HISTORY
1987, c. 191, (NEW). 1989, c. 451, §§1,2 (AMD). 1999, c. 54, §4 (RP).

§1580. SMOKING PROHIBITED IN JURY ROOMS

(REPEALED)

SECTION HISTORY
1983, c. 816, §A15 (RAL). 2009, c. 300, §3 (RP).

§1580-A. SMOKING IN PLACES OF EMPLOYMENT

1. **Title.** This law shall be known as the "Workplace Smoking Act of 1985."

[1985, c. 126, (NEW) .]

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

A. "Business facility" means a structurally enclosed location or portion thereof at which employees perform services for their employer. A business facility does not include any workplace or portion of a workplace that also serves as the employee's or employer's personal residence. A business facility is a place of employment. Notwithstanding this paragraph, a personal residence or unit or apartment in a residential facility is a business facility only during the period of time that an employee is physically present to perform work there. A residential facility, nursing home or a hospital is a business facility. [2009, c. 300, §4 (AMD).]

A-1. "Club" means a reputable group of individuals, including a veterans' service organization chartered under 36 United States Code, Subtitle II, Part B (2004), incorporated and operating in a bona fide manner solely for purposes of a recreational, social, patriotic or fraternal nature and not for pecuniary gain. [2005, c. 338, §3 (NEW).]

A-2. "Designated smoking area" means an outdoor area where smoking is permitted, which must be at least 20 feet from entryways, vents and doorways. [2009, c. 300, §5 (NEW).]

B. "Employee" means a person who performs a service for wages or other remuneration under a contract of hire, written or oral, expressed or implied. Employee includes a person employed by the State or a political subdivision of the State. [1985, c. 126, (NEW).]

C. "Employer" means a person who has one or more employees. Employer includes an agent of an employer and the State or a political subdivision of the State. [1985, c. 126, (NEW).]

C-1. "Member" means a person who, whether as a charter member or admitted in accordance with applicable bylaws, is a bona fide member of a club and who maintains membership in good standing by payment of dues in a bona fide manner in accordance with bylaws and whose name and address are entered on the list of members. A person who does not have full membership privileges may not be considered a bona fide member. [2005, c. 338, §3 (NEW).]

C-2. "Qualifying club" means a veterans' service organization chartered under 36 United States Code, Subtitle II, Part B (2004) that is not open to the public or any other club that was not open to the public and that was in operation prior to January 1, 2004. [2005, c. 581, §1 (NEW).]

C-3. "Residential facility" means a facility with one or more residential units or apartments that is licensed by the Department of Health and Human Services. [2009, c. 300, §6 (NEW).]

D. "Smoking" means carrying or having in one's possession a lighted cigarette, cigar, pipe or other object giving off or containing any substance giving off tobacco smoke. [1985, c. 126, (NEW).]

[2009, c. 300, §§4-6 (AMD) .]

3. **Policy; notice.** Each employer shall establish, or may negotiate through the collective bargaining process, a written policy concerning smoking and nonsmoking by employees in that portion of any business facility for which the employer is responsible, subject to paragraph A. In order to protect the employer and employees from the detrimental effects of smoking by others, the policy must prohibit smoking indoors subject to paragraph A, prevent environmental tobacco smoke from circulating into enclosed areas and prohibit smoking outdoors except in designated smoking areas. The policy may prohibit smoking throughout the business facility, including outdoor areas. The employer shall post and supervise the implementation of

the policy. The employer shall provide a copy of this policy to any employee upon request. Nothing in this section may be construed to subject an employer to any additional liability, other than liability that may exist by law, for harm to an employee from smoking by others in any business facility covered by this section.

A. All areas of a business facility into which members of the public are invited or allowed are governed by the provisions of chapter 262. [2009, c. 300, §7 (NEW).]

B. The Maine Center for Disease Control and Prevention shall accept inquiries from employers and employees and shall, when requested, assist employers in developing a policy. [2009, c. 300, §7 (NEW).]

[2009, c. 300, §7 (RPR) .]

4. **Violations.** Any violation of this section is a civil violation for which a fine of not more than $100 may be adjudged, except that a fine of not more than $1,500 may be adjudged for each violation of this section in cases in which the employer has engaged in a pattern of conduct that demonstrates a lack of good faith in complying with the requirements of this section. The Bureau of Health has authority to enforce provisions of this section.

[2005, c. 338, §4 (AMD) .]

4-A. **Injunctive relief.** The Attorney General may bring an action to enforce this section in District Court or Superior Court and may seek injunctive relief, including a preliminary or final injunction and fines, penalties and equitable relief, and may seek to prevent or restrain violations of this section by any person.

[2005, c. 338, §5 (NEW) .]

5. **Civil remedies.** Nothing in the section may be construed as precluding any person from pursuing, in any court of competent jurisdiction, any civil remedy that person may have at law or in equity for harm occasioned to that person from smoking by others in any business facility covered by this section.

[1985, c. 126, (NEW) .]

6. **Discharge, discipline or discrimination against employees.** It is unlawful for any employer to discharge, discipline or otherwise discriminate against any of its employees because that employee has assisted in the supervision or enforcement of this section.

[1985, c. 126, (NEW) .]

7. **Application.**

[2005, c. 683, Pt. G, §1 (AMD); 2005, c. 683, Pt. G, §3 (AFF); T. 22, §1580-A, sub-§7 (RP) .]

8. **Effective date.** This section shall take effect January 1, 1986.

[1985, c. 126, (NEW) .]

9. **Exception.** Beginning September 1, 2006, and notwithstanding any provision to the contrary in this section, a qualifying club may allow smoking in its business facility in accordance with the following provisions.

A. Policies concerning smoking must have been mutually agreed upon by the employer and all the employees. [2005, c. 581, §3 (NEW); 2005, c. 683, Pt. G, §3 (AFF).]

B. The qualifying club must have met the requirements of this paragraph.

(1) The qualifying club must have written policies allowing onto the premises only the employer and employees, members and invited guests accompanied by a member.

(2) A vote in favor of smoking has been conducted according to the following provisions:

(a) The qualifying club must provide all members notice of the date of the vote at least 30 days prior to the vote and an opportunity for an absentee ballot. Information designed to influence the vote of the member may not be provided with the notice and the absentee ballot;

(b) Members may not be subjected to undue influence regarding the vote;

(c) A majority of all valid ballots received must be in favor of smoking; and

(d) The ballot and procedures for voting and making available, collecting and counting absentee ballots must meet the requirements established by rule adopted by the Maine Center for Disease Control and Prevention.

(3) The qualifying club must have provided written notice to the Maine Center for Disease Control and Prevention of the results of the vote within 30 days of the vote. [2005, c. 581, §3 (NEW); 2005, c. 683, Pt. G, §3 (AFF).]

C. The qualifying club may allow smoking under authority of this subsection for no longer than 3 years from the date of the vote. [2005, c. 581, §3 (NEW); 2005, c. 683, Pt. G, §3 (AFF).]

D. The qualifying club may revote under this subsection at any time. [2005, c. 581, §3 (NEW); 2005, c. 683, Pt. G, §3 (AFF).]

E. The qualifying club must have retained all ballots for at least 3 years and make them available to the Maine Center for Disease Control and Prevention upon request. [2005, c. 581, §3 (NEW); 2005, c. 683, Pt. G, §3 (AFF).]

F. The Maine Center for Disease Control and Prevention shall adopt rules to implement this subsection. Rules adopted pursuant to this subparagraph are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [2005, c. 581, §3 (NEW); 2005, c. 683, Pt. G, §3 (AFF).]

[2005, c. 683, Pt. G, §2 (AMD); 2005, c. 683, Pt. G, §3 (AFF) .]

SECTION HISTORY
1985, c. 126, (NEW). 2005, c. 338, §§3-6 (AMD). 2005, c. 581, §§1-3 (AMD). 2005, c. 581, §4 (AFF). 2005, c. 683, §§G1,2 (AMD). 2005, c. 683, §G3 (AFF). 2009, c. 300, §§4-7 (AMD).

§1580-B. SMOKING IN HOSPITALS

(REPEALED)

SECTION HISTORY
1989, c. 210, (NEW). 1989, c. 241, (NEW). 1989, c. 715, (AMD). 1989, c. 878, §G1 (RPR). 1991, c. 501, (AMD). 2001, c. 59, §§1-3 (AMD). 2009, c. 300, §8 (RP).

§1580-C. SMOKING ON PUBLIC TRANSPORTATION BUSES PROHIBITED

(REPEALED)

SECTION HISTORY
1989, c. 743, (NEW). 1993, c. 342, §9 (AFF). 1993, c. 342, §5 (RP).

§1580-D. SMOKING IN ENCLOSED AREAS ON FERRIES PROHIBITED

(REPEALED)

SECTION HISTORY
1989, c. 878, §G2 (NEW). 1993, c. 342, §9 (AFF). 1993, c. 342, §6 (RP).

§1580-E. SMOKING IN STATE PARKS AND STATE HISTORIC SITES

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

A. "Enclosed area" has the same meaning as in section 1541, subsection 2; [2009, c. 65, §1 (NEW).]

B. "Public place" has the same meaning as in section 1541, subsection 4; [2009, c. 65, §1 (NEW).]

C. "Smoking" has the same meaning as in section 1541, subsection 6; [2009, c. 65, §1 (NEW).]

D. "State historic site" has the same meaning as "historic site" in Title 12, section 1801, subsection 5; and [2009, c. 65, §1 (NEW).]

E. "State park" has the same meaning as "park" in Title 12, section 1801, subsection 7. [2009, c. 65, §1 (NEW).]

[2009, c. 65, §1 (NEW) .]

2. **Smoking prohibited.** A person may not smoke tobacco or any other substance in, on or within 20 feet of a beach, playground, snack bar, group picnic shelter, business facility, enclosed area, public place or restroom in a state park or state historic site.

[2009, c. 65, §1 (NEW) .]

3. **Signs; public education.** To the extent possible within existing budgeted resources, the Maine Center for Disease Control and Prevention shall erect signs and undertake public education initiatives regarding the prohibition on smoking in certain areas of state parks and state historic sites.

[2009, c. 65, §1 (NEW) .]

SECTION HISTORY
2009, c. 65, §1 (NEW).

Subchapter 3: TOBACCO MANUFACTURERS ACT

§1580-G. FINDINGS AND PURPOSE

Cigarette smoking presents serious public health concerns to the State and to the citizens of the State. The Surgeon General has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking. [1999, c. 401, Pt. U, §1 (NEW); 1999, c. 401, Pt. U, §2 (AFF).]

Cigarette smoking also presents serious financial concerns for the State. Under certain health-care programs, the State may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance. [1999, c. 401, Pt. U, §1 (NEW); 1999, c. 401, Pt. U, §2 (AFF).]

Under these programs, the State pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking. [1999, c. 401, Pt. U, §1 (NEW); 1999, c. 401, Pt. U, §2 (AFF).]

It is the policy of the State that financial burdens imposed on the State by cigarette smoking be borne by tobacco product manufacturers rather than by the State to the extent that such manufacturers either determine to enter into a settlement with the State or are found culpable by the courts. [1999, c. 401, Pt. U, §1 (NEW); 1999, c. 401, Pt. U, §2 (AFF).]

On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "Master Settlement Agreement," with the State. The Master Settlement Agreement obligates these manufacturers, in return for a release of past, present and certain future claims against them as described therein, to pay substantial sums to the State (tied in part to their volume of sales); to fund a national foundation devoted to the interest of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking. [1999, c. 401, Pt. U, §1 (NEW); 1999, c. 401, Pt. U, §2 (AFF).]

It would be contrary to the policy of the State if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the State will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the State to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise. [1999, c. 401, Pt. U, §1 (NEW); 1999, c. 401, Pt. U, §2 (AFF).]

SECTION HISTORY
1999, c. 401, §U1 (NEW). 1999, c. 401, §U2 (AFF).

§1580-H. DEFINITIONS

1. "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

[1999, c. 401, Pt. U, §1 (NEW); 1999, c. 401, Pt. U, §2 (AFF) .]

2. "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

[1999, c. 401, Pt. U, §1 (NEW); 1999, c. 401, Pt. U, §2 (AFF) .]

3. "Allocable share" means allocable share as that term is defined in the Master Settlement Agreement.

[1999, c. 401, Pt. U, §1 (NEW); 1999, c. 401, Pt. U, §2 (AFF) .]

4. "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains

A. any roll of tobacco wrapped in paper or in any substance not containing tobacco; or [1999, c. 401, Pt. U, §1 (NEW); 1999, c. 401, Pt. U, §2 (AFF).]

B. tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or [1999, c. 401, Pt. U, §1 (NEW); 1999, c. 401, Pt. U, §2 (AFF).]

C. any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph A of this definition. The term "cigarette" includes "roll-your-own" (i.e, any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette." [1999, c. 401, Pt. U, §1 (NEW); 1999, c. 401, Pt. U, §2 (AFF).]

[1999, c. 401, Pt. U, §1 (NEW); 1999, c. 401, Pt. U, §2 (AFF) .]

5. "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on November 23, 1998 by the State and the leading United States tobacco product manufacturers, docketed by the Superior Court on December 9, 1998, in State of Maine v. Philip Morris, et al., Kennebec County Superior Court, Docket No. CV-97-134.

[1999, c. 401, Pt. U, §1 (NEW); 1999, c. 401, Pt. U, §2 (AFF) .]

6. "Qualified escrow fund" means an escrow arrangement with a federally or State chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least $1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with section 1580-I, subsection 2, paragraph A of this Act.

[1999, c. 401, Pt. U, §1 (NEW); 1999, c. 401, Pt. U, §2 (AFF) .]

7. "Released claims" means Released Claims as that term is defined in the Master Settlement Agreement.

[1999, c. 401, Pt. U, §1 (NEW); 1999, c. 401, Pt. U, §2 (AFF) .]

8. "Releasing parties" means releasing parties as that term is defined in the Master Settlement Agreement.

[1999, c. 401, Pt. U, §1 (NEW); 1999, c. 401, Pt. U, §2 (AFF) .]

9. "Tobacco Product Manufacturer" means an entity that after the date of enactment of this Act directly (and not exclusively through any affiliate):

A. manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States); [1999, c. 401, Pt. U, §1 (NEW); 1999, c. 401, Pt. U, §2 (AFF).]

B. is the first purchaser anywhere for the resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or [1999, c. 401, Pt. U, §1 (NEW); 1999, c. 401, Pt. U, §2 (AFF).]

C. becomes a successor of an entity described in paragraph A or B. [1999, c. 401, Pt. U, §1 (NEW); 1999, c. 401, Pt. U, §2 (AFF).]

The term "tobacco product manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of paragraphs A to C above. [1999, c. 401, Pt. U, §1 (NEW); 1999, c. 401, Pt. U, §2 (AFF).]

10. "Units sold" means the number of individual cigarettes sold in the State by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the State on packs bearing the excise tax stamp of the State or "roll-your-own" tobacco containers. The Attorney General may adopt rules as are necessary to obtain information from any tobacco product retailer, distributor or manufacturer to ascertain the amount of state excise tax paid on tobacco products of each tobacco product manufacturer for each year. Rules established pursuant to this section are routine technical rules, as provided in Title 5, chapter 375, subchapter 2-A. Notwithstanding any other provision of law, the Bureau of Revenue Services may provide information to the Attorney General as is necessary for a tobacco product manufacturer to compile its escrow payment hereunder. In addition, the Attorney General may subpoena the records of any tobacco product retailer, distributor or manufacturer to enforce this Act.

[2003, c. 435, §1 (AMD) .]

SECTION HISTORY
1999, c. 401, §U1 (NEW). 1999, c. 401, §U2 (AFF). 2003, c. 435, §1 (AMD).

§1580-I. REQUIREMENTS

Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the date of enactment of this Act shall do one of the following: [1999, c. 401, Pt. U, §1 (NEW); 1999, c. 401, Pt. U, §2 (AFF).]

1. Become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

[1999, c. 401, Pt. U, §1 (NEW); 1999, c. 401, Pt. U, §2 (AFF) .]

2. place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation) --

1999: $.0094241 per unit sold after the date of enactment of this Act.
2000: $.0104712 per unit sold.
For each of 2001 and 2002: $.0136125 per unit sold.
For each of 2003 through 2006: $.0167539 per unit sold.
For each of 2007 and each year thereafter: $.0188482 per unit sold.

A. A tobacco product manufacturer that places funds into escrow pursuant to this subsection shall receive the interest or other appreciation on such funds as earned. Such funds themselves must be released from escrow only under the following circumstances:

(1) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds must be released from escrow under this subparagraph:

(a) in the order in which they were placed into escrow; and

(b) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(2) (TEXT REPEALED ON CONTINGENCY: If court of competent jurisdiction holds that subparagraph (2) is unconstitutional) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the State in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of that agreement including after final determination of all adjustments, that such manufacturer would have been required to make an account of such units sold had it been a participating manufacturer, the excess must be released from escrow and revert back to such tobacco product manufacturer. If a court of competent jurisdiction holds that this subparagraph is unconstitutional, then this subparagraph is deemed repealed; or

(2-A) (TEXT EFFECTIVE ON CONTINGENCY: Only if, following repeal of subparagraph (2), court of competent jurisdiction holds that paragraph A is unconstitutional) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment) had it been a participating manufacturer, the excess must be released from escrow and revert back to such tobacco product manufacturer. This subparagraph takes effect only if, following the repeal of subparagraph (2), as described therein, a court of competent jurisdiction holds that paragraph A is unconstitutional; or

(3) to the extent not released from escrow under subparagraph (1) or (2), funds must be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow. [2003, c. 435, §2 (AMD).]

B. Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General that it is in compliance with this subsection. The Attorney General may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall --

(1) be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(2) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow;

(3) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years. [1999, c. 401, Pt. U, §1 (NEW); 1999, c. 401, Pt. U, §2 (AFF).]

[2003, c. 435, §2 (AMD) .]

Each failure to make an annual deposit required under this section shall constitute a separate violation. In addition to the amounts set forth above, the State's costs and attorney's fees shall be paid by the violator. [1999, c. 401, Pt. U, §1 (NEW); 1999, c. 401, Pt. U, §2 (AFF).]

SECTION HISTORY
1999, c. 401, §U1 (NEW). 1999, c. 401, §U2 (AFF). 2003, c. 435, §2 (AMD).

Subchapter 4: TOBACCO PRODUCT MANUFACTURERS

§1580-L. TOBACCO PRODUCT MANUFACTURER

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

A. "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers, including, but not limited to, menthol, lights, kings and 100s. "Brand family" includes any brand name alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors or any other indicia of product identification identical or similar to or identifiable with a previously known brand of cigarettes. [2003, c. 439, §1 (NEW).]

B. "Cigarette" has the same meaning as in section 1580-H, subsection 4. [2003, c. 439, §1 (NEW).]

C. "Distributor" means a person that is authorized to affix tax stamps to packages or other containers of cigarettes under Title 36, section 4366-A or any person that is required to pay the excise tax imposed on cigarettes, including roll-your-own tobacco, pursuant to Title 36, chapter 703 or chapter 704. [2003, c. 439, §1 (NEW).]

D. "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer. [2003, c. 439, §1 (NEW).]

E. "Participating manufacturer" means a manufacturer as defined in the Master Settlement Agreement, as that agreement is defined in section 1580-H, subsection 5. [2003, c. 439, §1 (NEW).]

F. "Qualified escrow fund" has the same meaning as in section 1580-H, subsection 6. [2003, c. 439, §1 (NEW).]

G. "Tobacco product manufacturer" has the same meaning as in section 1580-H, subsection 9. "Tobacco product manufacturer" also means a participating manufacturer or a nonparticipating manufacturer. [2003, c. 439, §1 (NEW).]

H. "Units sold" has the same meaning as in section 1580-H, subsection 10. [2003, c. 439, §1 (NEW).]

[2003, c. 439, §1 (NEW) .]

2. **Certification; participating manufacturer.** Every participating manufacturer whose cigarettes are sold in this State, whether directly or through a distributor, retailer or similar intermediary, shall execute and deliver in the manner prescribed by the Attorney General a certification to the Attorney General no earlier than April 15th of each year and no later than April 30th of each year under penalty of perjury that as of the date of certification the tobacco product manufacturer is a participating manufacturer.

A. A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall provide an updated list 30 calendar days prior to any addition to or modification of its brand families and deliver a supplemental certification to the Attorney General. [2003, c. 439, §1 (NEW).]

[2003, c. 439, §1 (NEW) .]

3. **Certification; nonparticipating manufacturer.** Every nonparticipating manufacturer whose cigarettes are sold in this State, whether directly or through a distributor, retailer or similar intermediary, shall execute and deliver in the manner prescribed by the Attorney General a certification to the Attorney General no earlier than April 15th of each year and no later than April 30th of each year under penalty of perjury that as of the date of certification the tobacco product manufacturer is in full compliance with subchapter 3.

A. A nonparticipating manufacturer shall include in its certification a complete list of all of its brand families that:

(1) Separately lists for each brand family the number of units sold in the State during the preceding calendar year;

(2) Indicates all of the nonparticipating manufacturer's brand families that have been sold in the State at any time during the current calendar year;

(3) Indicates by an asterisk any brand family sold in the State during the preceding calendar year that is no longer being sold in the State as of the date of certification; and

(4) Identifies by name and address any other manufacturer of the brand families in the preceding or current calendar year.

The nonparticipating manufacturer shall provide an updated list to the Attorney General 30 days prior to any addition to or modification of its brand families and deliver a supplemental certification to the Attorney General. [2003, c. 439, §1 (NEW).]

B. In addition to submitting the lists required in paragraph A, a nonparticipating manufacturer shall also state in its certification that:

(1) The nonparticipating manufacturer is registered to do business in the State or has appointed a resident agent for service of process and provided notice of the registration as required under subsection 8;

(2) The nonparticipating manufacturer has:

(a) Established and continues to maintain a qualified escrow fund pursuant to section 1580-I; and

(b) Executed an escrow agreement, reviewed and approved by the Attorney General, that governs the qualified escrow fund;

(3) The nonparticipating manufacturer is in full compliance with subchapter 3 and any rules adopted pursuant to this section and subchapter 3;

(4) The name, address and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required under section 1580-I;

(5) The account number of the qualified escrow fund and the subaccount number for the State;

(6) The amount the nonparticipating manufacturer placed in the qualified escrow fund for cigarettes sold in the State during the preceding calendar year, the date and amount of each deposit and evidence or verification as may be determined necessary by the Attorney General to confirm the amount; and

(7) The amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the qualified escrow fund or from any other qualified escrow fund into which the nonparticipating manufacturer has made escrow payments. [2003, c. 439, §1 (NEW).]

[2003, c. 439, §1 (NEW) .]

4. **Tobacco product manufacturer; brand family.** A tobacco product manufacturer may not include a brand family in its certification unless:

A. In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is deemed to be the participating manufacturer's cigarettes for purposes of calculating its payments under the Master Settlement Agreement for the relevant year, in the volume and shares determined pursuant to the Master Settlement Agreement; and [2003, c. 439, §1 (NEW).]

B. In the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is deemed to be the nonparticipating manufacturer's cigarettes for purposes of subchapter 3.

Nothing in this subsection may be construed as limiting or otherwise affecting the State's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of subchapter 3. [2003, c. 439, §1 (NEW).]

[2003, c. 439, §1 (NEW) .]

5. **Maintain invoices.** A tobacco product manufacturer of any cigarettes sold in this State shall maintain all invoices and documentation of sales and other information relied upon for certification for a period of 5 years unless otherwise required by law to maintain those invoices and documentation of sales and other information for a greater period of time.

[2003, c. 439, §1 (NEW) .]

6. **Directory of cigarettes.** The Attorney General shall develop and make available for public inspection a directory listing all tobacco product manufacturers that have provided accurate certifications conforming to the requirements of this section and all brand families that are listed in the certifications.

A. The Attorney General may not include or retain in the directory the name or brand families of any nonparticipating manufacturer that fails to provide the required certification or whose certification the Attorney General determines is not in compliance with subsection 3, paragraphs A and B, unless the Attorney General has determined that the nonparticipating manufacturer is no longer in violation of subsection 3, paragraphs A and B. [2003, c. 439, §1 (NEW).]

B. Neither a tobacco product manufacturer nor brand family may be included or retained in the directory if the Attorney General concludes that:

(1) In the case of a nonparticipating manufacturer, all escrow payments required pursuant to subchapter 3 for any period for any brand family, whether or not listed by the nonparticipating manufacturer, have not been fully deposited into a qualified escrow fund governed by an escrow agreement that has been approved by the Attorney General; or

(2) All outstanding final judgments, including interest on the judgment, for violations of subchapter 3 have not been fully satisfied for the brand family or the tobacco product manufacturer. [2003, c. 439, §1 (NEW).]

C. The Attorney General shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this section. A determination by the Attorney General not to list or to remove from the directory a brand family or tobacco product manufacturer is a final agency action as defined in Title 5, section 8002. [2003, c. 439, §1 (NEW).]

[2003, c. 439, §1 (NEW) .]

7. **Prohibition against stamping or sale of cigarettes.** It is unlawful for any person to affix a tax stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory or to distribute, sell or offer or possess for sale in this State cigarettes of a tobacco product manufacturer or brand family not included in the directory.

A person who violates this subsection engages in an unfair and deceptive act in violation of the Maine Unfair Trade Practices Act.

[2003, c. 439, §1 (NEW) .]

8. **Agent for service of process.** Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the State as a foreign corporation or business entity shall, as a condition precedent to having its brand families listed or retained in the directory, appoint and continually engage without interruption the services of an agent in this State for the service of process concerning or arising out

of the enforcement of this section and subchapter 3. Such service constitutes legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, phone number and proof of the appointment and availability of the agent to the Attorney General.

The nonparticipating manufacturer shall provide notice to the Attorney General 30 days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the Attorney General of the appointment of a new agent no less than 5 days prior to the termination of an existing agent appointment. In the event an agent terminates that agent's appointment by the nonparticipating manufacturer, the nonparticipating manufacturer shall notify the Attorney General of the termination within 5 days and shall include proof to the satisfaction of the Attorney General of the appointment of a new agent.

[2003, c. 439, §1 (NEW) .]

9. **Reporting by distributors.** No later than 20 days after the end of each calendar quarter and more frequently if so directed by the Attorney General, each distributor shall submit information as the Attorney General requires to facilitate compliance with this section, including, but not limited to, a list by brand family of the total number of cigarettes upon which the distributor affixed tax stamps during the previous calendar quarter or, in the case of roll-your-own tobacco, the equivalent stick count for which the distributor paid the tax due. The distributor shall maintain all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the Attorney General for a period of 5 years.

[2003, c. 439, §1 (NEW) .]

10. **Disclosure of information.** Notwithstanding any other provision of law, the Department of Administrative and Financial Services, Bureau of Revenue Services is authorized to disclose to the Attorney General any tax information received by the Bureau of Revenue Services and requested by the Attorney General for purposes of determining compliance with and enforcing the provisions of this section. The Attorney General may share any information received under this section, other than information received from the Bureau of Revenue Services, with other federal, State or local agencies but only for purposes of enforcement of this section, subchapter 3 or corresponding laws of other states. The Attorney General shall provide notice to the Department of Administrative Services, Bureau of Revenue Services of those persons certified under this section.

[2003, c. 439, §1 (NEW) .]

11. **Verification of qualified escrow fund.** The Attorney General may require at any time that the nonparticipating manufacturer provide from the financial institution in which the nonparticipating manufacturer has established a qualified escrow fund for the purpose of compliance with subchapter 3 proof of the amount of money in the qualified escrow fund being held on behalf of the State, the dates of deposits and a listing of the amounts of all withdrawals from the fund and the dates of the withdrawals.

[2003, c. 439, §1 (NEW) .]

12. **Requests for additional information.** The Attorney General may require a distributor or tobacco product manufacturer to submit any additional information, including, but not limited to, samples of the packaging or labeling of each brand family necessary to enable the Attorney General to determine whether a tobacco product manufacturer is in compliance with this section.

[2003, c. 439, §1 (NEW) .]

13. **Escrow installments.** To promote compliance with the provisions of this section, the Attorney General may adopt rules requiring a tobacco product manufacturer subject to the requirements of subsection 3, paragraph A to make the required deposits in the qualified escrow fund in installments during the year in which the sales covered by the deposits are made. The Attorney General may require sufficient information to enable the Attorney General to determine the adequacy of the amount of the installment deposit.

[2003, c. 439, §1 (NEW) .]

14. **Rules.** The Attorney General may adopt rules necessary to carry out the purposes of this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2003, c. 439, §1 (NEW) .]

15. **Unlawful acts.** A person may not:

A. Sell or distribute cigarettes in violation of subsection 7; [2003, c. 439, §1 (NEW).]

B. Violate paragraph A after having been previously convicted of a violation of this section; [2003, c. 439, §1 (NEW).]

C. Acquire, hold, own, possess, transport, import or cause to be imported cigarettes that the person knows or should have known are intended for distribution or sale in the State in violation of subsection 7; or [2003, c. 439, §1 (NEW).]

D. Violate paragraph C after having been previously convicted of a violation of this section. [2003, c. 439, §1 (NEW).]

[2003, c. 439, §1 (NEW) .]

16. **Criminal penalty.** A violation of this section is a Class E crime except that violation of this section is a Class D crime when the person has one or more prior convictions for violation of this section. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence.

Each stamp affixed and each offer to sell cigarettes in violation of subsection 7 constitutes a separate violation.

[2003, c. 439, §1 (NEW) .]

17. **Contraband; seizure.** Cigarettes that have been sold, offered for sale or possessed for sale in this State in violation of subsection 7 are deemed contraband under Title 36, section 4372-A and the cigarettes are subject to seizure and forfeiture as provided in section 4372-A. All cigarettes so seized and forfeited must be destroyed and may not be resold.

[2003, c. 439, §1 (NEW) .]

18. **Injunction.** The Attorney General may seek an injunction to restrain a threatened or actual violation of subsection 7, 9 or 12 and to compel compliance with these subsections.

[2003, c. 439, §1 (NEW) .]

19. **Recovery of costs.** In any action brought by the State to enforce this section, the State is entitled to recover the costs of investigation, expert witness fees, costs of the action and reasonable attorney's fees.

[2003, c. 439, §1 (NEW) .]

20. **Profits.** If a court determines that a person has violated this section, the court shall order any profits, gain, gross receipts or other benefit from the violation to be paid to the Fund for a Healthy Maine. Unless otherwise expressly provided, the remedies or penalties provided by this section are cumulative to each other and to the remedies or penalties available under all other laws of this State.

[2003, c. 439, §1 (NEW) .]

21. **Construction; severability.** If a court of competent jurisdiction finds that the provisions of this section and of subchapter 3 conflict, then the provisions of subchapter 3 control. If any portion of this section causes subchapter 3 to no longer constitute a qualifying or model statute, as those terms are defined in the Master Settlement Agreement, then that portion of this section is not valid.

[2003, c. 439, §1 (NEW) .]

SECTION HISTORY
2003, c. 439, §1 (NEW).

Chapter 263-A: COMPRESSED AIR

§1581. PURPOSE

The purpose of this chapter is to protect the public health; to regulate and license the suppliers of compressed air used in self-contained breathing apparatus; to set up rules and regulations to establish the maximum permissible amount of all contaminants expressed either in percentages or in parts per million of volume, or both; to set up standards for the condition of the compression equipment; and to prescribe penalties for violations of this chapter. [1977, c. 696, §185 (NEW).]

SECTION HISTORY
1977, c. 696, §185 (NEW).

§1582. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings. [1977, c. 696, §185 (NEW).]

1. **Breathing apparatus.** "Breathing apparatus" means any breathing device, either high or low pressure, which is used to sustain human life under adverse conditions.

[1977, c. 696, §185 (NEW) .]

2. **Department.** "Department" means the Department of Health and Human Services.

[1977, c. 696, §185 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

3. **Suppliers of compressed air.** "Suppliers of compressed air" means any organization, agency, individual, firm, partnership or corporation that provides compressed air to be used in self-contained breathing apparatus.

[1977, c. 696, §185 (NEW) .]

4. **Tester of compressed air.** "Tester of compressed air" means any organization, agency, individual, firm, partnership or corporation that is recognized by the department as qualified to inspect and test suppliers of compressed air.

[1993, c. 314, §1 (NEW) .]

SECTION HISTORY
1977, c. 696, §185 (NEW). 1993, c. 314, §1 (AMD). 2003, c. 689, §B6 (REV).

§1583. LICENSE

It is unlawful for any supplier of compressed air to fill or supply any breathing apparatus with life supporting gases in the State of Maine unless licensed to do so by the department. The initial license fee and the annual renewal license fee shall be $10, except that fire departments shall be exempt from the licensing requirements of this chapter, so long as the use of the apparatus is restricted to departmental use. [1977, c. 696, §185 (NEW).]

SECTION HISTORY
1977, c. 696, §185 (NEW).

§1583-A. INSPECTIONS

1. **Satisfactory inspection.** To be eligible for an initial or renewal license, a supplier of compressed air must provide certification from a tester of compressed air based on an inspection in the 6 months prior to application that the compressor equipment, air quality and compressor filling procedures are in compliance with rules of the department.

[1993, c. 314, §2 (NEW) .]

2. **Unsatisfactory inspection.** If any aspect of the supplier operation fails to meet department standards, the tester of compressed air shall notify the department of the nature of the deficiencies. The department shall evaluate the deficiencies and determine appropriate licensing action.

If the air provided by a supplier of compressed air exceeds the maximum permissible amount of any contaminant, the tester of compressed air shall notify the supplier that operations must cease and the supplier shall immediately cease operation until the reason is determined, corrections made and a retest conducted to confirm that the contaminant no longer exceeds the maximum permissible amount. The department shall take action to see that the supplier is not operating while this condition exists.

[1993, c. 314, §2 (NEW) .]

SECTION HISTORY
1993, c. 314, §2 (NEW).

§1584. FEES

All fees shall be collected by the department and remitted to the Treasurer of State and credited to the General Fund. [1977, c. 696, §185 (NEW).]

SECTION HISTORY
1977, c. 696, §185 (NEW).

§1585. RULES AND REGULATIONS

The department shall have the authority to promulgate rules and regulations as are necessary to promptly and effectively enforce this chapter. [1977, c. 696, §185 (NEW).]

SECTION HISTORY
1977, c. 696, §185 (NEW).

§1586. PENALTY

Whoever violates any of the provisions of this chapter or any rules and regulations made thereunder shall be punished by a fine of not less than $100, nor more than $500, or by imprisonment for not more than 6 months, or by both. [1977, c. 696, §185 (NEW).]

SECTION HISTORY
1977, c. 696, §185 (NEW).

Chapter 263-B: ABORTIONS

§1591. IMMUNITY AND EMPLOYMENT PROTECTION

No physician, nurse or other person who refuses to perform or assist in the performance of an abortion, and no hospital or health care facility that refuses to permit the performance of an abortion upon its premises, shall be liable to any person, firm, association or corporation for damages allegedly arising from the refusal, nor shall such refusal constitute a basis for any civil liability to any physician, nurse or other person, hospital or health care facility nor a basis for any disciplinary or other recriminatory action against them or any of them by the State or any person. [1977, c. 696, §186 (NEW).]

No physician, nurse or other person, who refuses to perform or assist in the performance of an abortion, shall, because of that refusal, be dismissed, suspended, demoted or otherwise prejudiced or damaged by a hospital, health care facility, firm, association, professional association, corporation or educational institution with which he or she is affiliated or requests to be affiliated or by which he or she is employed, nor shall such refusal constitute grounds for loss of any privileges or immunities to which such physician, nurse or other person would otherwise be entitled nor shall submission to an abortion or the granting of consent therefor be a condition precedent to the receipt of any public benefits. [1977, c. 696, §186 (NEW).]

SECTION HISTORY
1977, c. 696, §186 (NEW).

§1592. DISCRIMINATION FOR REFUSAL

No person, hospital, health care facility, firm, association, corporation or educational institution, directly or indirectly, by himself or another, shall discriminate against any physician, nurse or other person by refusing or withholding employment from or denying admittance, when such physician, nurse or other person refuses to perform, or assist in the performance of an abortion, nor shall such refusal constitute grounds for loss of any privileges or immunities to which such physician, nurse or other person would otherwise be entitled. [1977, c. 696, §186 (NEW).]

SECTION HISTORY
1977, c. 696, §186 (NEW).

§1593. SALE AND USE OF FETUSES

1. **Prohibition.** A person may not use, transfer, distribute or give away a live human fetus, whether intrauterine or extrauterine, or any product of conception considered live born, for scientific experimentation or for any form of experimentation.

[2003, c. 452, Pt. K, §10 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

2. **Consenting, aiding or assisting.** A person may not consent to violating subsection 1 or aid or assist another in violating subsection 1.

[2003, c. 452, Pt. K, §10 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

3. **Penalty.** A person who violates this section commits a Class C crime. Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

[2003, c. 452, Pt. K, §10 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY
1977, c. 696, §186 (NEW). 2003, c. 452, §X2 (AFF). 2003, c. 452, §K10 (RPR).

§1594. FAILURE TO PRESERVE LIFE OF LIVE BORN PERSON

Whenever an abortion procedure results in a live birth, failure to take all reasonable steps, in keeping with good medical practice, to preserve the life and health of the live born person shall subject the responsible party or parties to Maine law governing homicide, manslaughter and civil liability for wrongful death and medical malpractice. [1977, c. 696, §186 (NEW).]

SECTION HISTORY
1977, c. 696, §186 (NEW).

§1595. LIVE BORN AND LIVE BIRTH, DEFINED

"Live born" and "live birth," as used in this chapter, shall mean a product of conception after complete expulsion or extraction from its mother, irrespective of the duration of pregnancy, which breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached. Each product of such a birth is considered live born and fully recognized as a human person under Maine law. [1977, c. 696, §186 (NEW).]

SECTION HISTORY
1977, c. 696, §186 (NEW).

§1596. ABORTION AND MISCARRIAGE DATA

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

A. "Abortion" means the intentional interruption of a pregnancy by the application of external agents, whether chemical or physical, or the ingestion of chemical agents with an intention other than to produce a live birth or to remove a dead fetus, regardless of the length of gestation. [1989, c. 274, §1 (RPR).]

B. "Miscarriage" means an interruption of a pregnancy other than as provided in paragraph A of a fetus of less than 20 weeks gestation. [1989, c. 274, §1 (RPR).]

[1989, c. 274, §1 (RPR) .]

2. **Abortion reports.** A report of each abortion performed shall be made to the Department of Health and Human Services on forms prescribed by the department. These report forms shall not identify the patient by name or otherwise and shall contain only the information requested on the United States Standard Report of Induced Termination of Pregnancy, published by the National Center for Health Statistics, dated January 1978, or any more recent revision of a standard report form.

The form containing that information and data shall be prepared and signed by the attending physician and transmitted to the department not later than 10 days following the end of the month in which the abortion is performed.

A physician who reports data on an abortion pursuant to this section shall be immune from any criminal liability for that abortion under section 1598.

[1989, c. 274, §1 (RPR); 2003, c. 689, Pt. B, §6 (REV) .]

3. **Miscarriage reports.** A report of each miscarriage shall be made by the physician in attendance at or after the occurrence of the miscarriage to the Department of Health and Human Services on forms prescribed by the department. These report forms shall contain all of the applicable information required on the certificate of fetal death in current use.

The report form shall be prepared and signed by the attending physician and transmitted to the department not later than 10 days following the end of the month in which the miscarriage occurs.

[1989, c. 274, §1 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

The identity of any patient or physician reporting pursuant to this section is confidential and the department shall take the steps which are necessary to insure the confidentiality of the identity of patients or physicians reporting pursuant to this section. [1989, c. 274, §1 (RPR).]

SECTION HISTORY
1977, c. 696, §186 (NEW). 1979, c. 363, §§1-4 (AMD). 1989, c. 274, §1 (RPR). 2003, c. 689, §B6 (REV).

§1597. PARENTAL NOTIFICATION OF MINOR'S DECISION TO HAVE AN ABORTION

(REPEALED)

SECTION HISTORY
1979, c. 413, (NEW). 1993, c. 61, §1 (RP).

§1597-A. CONSENT TO A MINOR'S DECISION TO HAVE AN ABORTION

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

A. "Abortion" means the intentional interruption of a pregnancy by the application of external agents, whether chemical or physical, or the ingestion of chemical agents with an intention other than to produce a live birth or to remove a dead fetus. [1989, c. 573, §2 (NEW).]

B. "Counselor" means a person who is:

(1) A psychiatrist;

(2) A psychologist licensed under Title 32, chapter 56;

(3) A social worker licensed under Title 32, chapter 83;

(4) An ordained member of the clergy;

(5) A physician's assistant registered by the Board of Licensure in Medicine, Title 32, chapter 48;

(6) A nurse practitioner registered by the Board of Licensure in Medicine, Title 32, chapter 48;

(7) A certified guidance counselor;

(8) A registered professional nurse licensed under Title 32, chapter 31; or

(9) A practical nurse licensed under Title 32, chapter 31. [1993, c. 600, Pt. B, §21 (AMD).]

C. "Minor" means a person who is less than 18 years of age. [1989, c. 573, §2 (NEW).]

[1993, c. 600, Pt. B, §21 (AMD) .]

2. **Prohibitions; exceptions.** Except as otherwise provided by law, no person may knowingly perform an abortion upon a pregnant minor unless:

A. The attending physician has received and will make part of the medical record the informed written consent of the minor and one parent, guardian or adult family member; [1989, c. 573, §2 (NEW).]

B. The attending physician has secured the informed written consent of the minor as prescribed in subsection 3 and the minor, under all the surrounding circumstances, is mentally and physically competent to give consent; [1989, c. 573, §2 (NEW).]

C. The minor has received the information and counseling required under subsection 4, has secured written verification of receiving the information and counseling and the attending physician has received and will make part of the medical record the informed written consent of the minor and the written verification of receiving information and counseling required under subsection 4; or [1989, c. 573, §2 (NEW).]

D. The Probate Court or District Court issues an order under subsection 6 on petition of the minor or the next friend of the minor for purposes of filing a petition for the minor, granting:

(1) To the minor majority rights for the sole purpose of consenting to the abortion and the attending physician has received the informed written consent of the minor; or

(2) To the minor consent to the abortion, when the court has given its informed written consent and the minor is having the abortion willingly, in compliance with subsection 7. [1989, c. 573, §2 (NEW).]

[1989, c. 573, §2 (NEW) .]

3. **Informed consent; disallowance of recovery.** No physician may perform an abortion upon a minor unless, prior to performing the abortion, the attending physician received the informed written consent of the minor.

A. To ensure that the consent for an abortion is informed consent, the attending physician shall:

(1) Inform the minor in a manner which, in the physician's professional judgment, is not misleading and which will be understood by the patient, of at least the following:

(a) According to the physician's best judgment the minor is pregnant;

(b) The number of weeks of duration of the pregnancy; and

(c) The particular risks associated with the minor's pregnancy, the abortion technique that may be performed and the risks involved for both;

(2) Provide the information and counseling described in subsection 4 or refer the minor to a counselor who will provide the information and counseling described in subsection 4; and

(3) Determines whether the minor is, under all the surrounding circumstances, mentally and physically competent to give consent. [1989, c. 573, §2 (NEW).]

B. No recovery may be allowed against any physician upon the grounds that the abortion was rendered without the informed consent of the minor when:

(1) The physician, in obtaining the minor's consent, acted in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities; or

(2) The physician has received and acted in good faith on the informed written consent to the abortion given by the minor to a counselor. [1989, c. 573, §2 (NEW).]

[1989, c. 573, §2 (NEW) .]

4. **Information and counseling for minors.** The provision of information and counseling by any physician or counselor for any pregnant minor for decision making regarding pregnancy shall be in accordance with this subsection.

A. Any physician or counselor providing pregnancy information and counseling under this subsection shall, in a manner that will be understood by the minor:

(1) Explain that the information being given to the minor is being given objectively and is not intended to coerce, persuade or induce the minor to choose either to have an abortion or to carry the pregnancy to term;

(2) Explain that the minor may withdraw a decision to have an abortion at any time before the abortion is performed or may reconsider a decision not to have an abortion at any time within the time period during which an abortion may legally be performed;

(3) Clearly and fully explore with the minor the alternative choices available for managing the pregnancy, including:

(a) Carrying the pregnancy to term and keeping the child;

(b) Carrying the pregnancy to term and placing the child with a relative or with another family through foster care or adoption;

(c) The elements of prenatal and postnatal care; and

(d) Having an abortion;

(4) Explain that public and private agencies are available to provide birth control information and that a list of these agencies and the services available from each will be provided if the minor requests;

(5) Discuss the possibility of involving the minor's parents, guardian or other adult family members in the minor's decision making concerning the pregnancy and explore whether the minor believes that involvement would be in the minor's best interests; and

(6) Provide adequate opportunity for the minor to ask any questions concerning the pregnancy, abortion, child care and adoption, and provide the information the minor seeks or, if the person cannot provide the information, indicate where the minor can receive the information. [1989, c. 573, §2 (NEW).]

B. After the person provides the information and counseling to a minor as required by this subsection, that person shall have the minor sign and date a form stating that:

(1) The minor has received information on prenatal care and alternatives to abortion and that there are agencies that will provide assistance;

(2) The minor has received an explanation that the minor may withdraw an abortion decision or reconsider a decision to carry a pregnancy to term;

(3) The alternatives available for managing the pregnancy have been clearly and fully explored with the minor;

(4) The minor has received an explanation about agencies available to provide birth control information;

(5) The minor has discussed with the person providing the information and counseling the possibility of involving the minor's parents, guardian or other adult family members in the minor's decision making about the pregnancy;

(6) The reasons for not involving the minor's parents, guardian or other adult family members are put in writing on the form by the minor or the person providing the information and counseling; and

(7) The minor has been given an adequate opportunity to ask questions.

The person providing the information and counseling shall also sign and date the form, and include that person's address and telephone number. The person shall keep a copy for that person's files and shall give the form to the minor or, if the minor requests and if the person providing the information is not the attending physician, transmit the form to the minor's attending physician. [1989, c. 573, §2 (NEW).]

[1989, c. 573, §2 (NEW) .]

5. **Presumption of validity of informed written consent; rebuttal.** An informed consent which is evidenced in writing containing information and statements provided in subsection 4 and which is signed by the minor shall be presumed to be a valid informed consent. This presumption may be subject to rebuttal only upon proof that the informed consent was obtained through fraud, deception or misrepresentation of material fact.

[1989, c. 573, §2 (NEW) .]

6. **Court order concerning consent to abortion.** The court may issue an order for the purpose of consenting to the abortion by the minor under the following circumstances and procedures.

A. The minor or next friend of the minor for the purposes of filing a petition may make an application to the Probate Court or District Court which shall assist the minor or next friend in preparing the petition. The minor or the next friend of the minor shall file a petition setting forth:

(1) The initials of the minor;

(2) The age of the minor;

(3) That the minor has been fully informed of the risks and consequences of the abortion;

(4) That the minor is of sound mind and has sufficient intellectual capacity to consent to the abortion;

(5) That, if the court does not grant the minor majority rights for the purpose of consent to the abortion, the court should find that the abortion is in the best interest of the minor and give judicial consent to the abortion;

(7) That, if the minor does not have private counsel, that the court may appoint counsel.

The minor or the next friend shall sign the petition. [1989, c. 573, §2 (NEW).]

B. The petition is a confidential record and the court files on the petition shall be impounded. [1989, c. 573, §2 (NEW).]

C. A hearing on the merits of the petition shall be held as soon as possible within 5 days of the filing of the petition. If any party is unable to afford counsel, the court shall appoint counsel at least 24 hours before the time of the hearing. At the hearing, the court shall hear evidence relating to:

(1) The emotional development, maturity, intellect and understanding of the minor;

(2) The nature, possible consequences and alternatives to the abortion; and

(3) Any other evidence that the court may find useful in determining whether the minor should be granted majority rights for the purpose of consenting to the abortion or whether the abortion is in the best interest of the minor.

The hearing on the petition shall be held as soon as possible within 5 days of the filing of the petition. The court shall conduct the hearing in private with only the minor, interested parties as determined by the court and necessary court officers or personnel present. The record of the hearing is not a public record. [1989, c. 573, §2 (NEW).]

D. In the decree, the court shall for good cause:

(1) Grant the petition for majority rights for the sole purpose of consenting to the abortion;

(2) Find the abortion to be in the best interest of the minor and give judicial consent to the abortion, setting forth the grounds for the finding; or

(3) Deny the petition only if the court finds that the minor is not mature enough to make her own decision and that the abortion is not in her best interest. [1989, c. 573, §2 (NEW).]

E. If the petition is allowed, the informed consent of the minor, pursuant to a court grant of majority rights or the judicial consent, shall bar an action by the parent or guardian of the minor on the grounds of battery of the minor by those performing the abortion. The immunity granted shall only extend to the performance of the abortion and any necessary accompanying services which are performed in a competent manner. [1989, c. 573, §2 (NEW).]

F. The minor may appeal an order issued in accordance with this section to the Superior Court. The notice of appeal shall be filed within 24 hours from the date of issuance of the order. Any record on appeal shall be completed and the appeal shall be perfected within 5 days from the filing of notice to appeal. The Supreme Judicial Court shall, by court rule, provide for expedited appellate review of cases appealed under this section. [1989, c. 573, §2 (NEW).]

[1989, c. 573, §2 (NEW) .]

7. **Abortion performed against the minor's will.** No abortion may be performed on any minor against her will, except that an abortion may be performed against the will of a minor pursuant to a court order described in subsection 6 that the abortion is necessary to preserve the life of the minor.

[1989, c. 573, §2 (NEW) .]

8. **Violations; penalties.** The following penalties apply to violations of this section.

A. A person may not knowingly perform or aid in the performance of an abortion in violation of this section. A person who violates this paragraph commits a Class D crime. [2003, c. 452, Pt. K, §11 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. An attending physician or counselor may not knowingly fail to perform any action required by this section. A person who violates this paragraph commits a civil violation for which a fine of not more than $1,000 may be adjudged for each violation. [2003, c. 452, Pt. K, §11 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. K, §11 (RPR); 2003, c. 452, Pt. X, §2 (AFF) .]

9. **Nonseverability.** In the event that any portion of this section is held invalid, it is the intent of the Legislature that this entire section shall be invalid.

[1989, c. 573, §2 (NEW) .]

SECTION HISTORY
1989, c. 573, §2 (NEW). 1993, c. 600, §B21 (AMD). 2003, c. 452, §K11 (AMD). 2003, c. 452, §X2 (AFF).

§1598. ABORTIONS

1. **Policy.** It is the public policy of the State that the State not restrict a woman's exercise of her private decision to terminate a pregnancy before viability except as provided in section 1597-A. After viability an abortion may be performed only when it is necessary to preserve the life or health of the mother. It is also the public policy of the State that all abortions may be performed only by a physician.

[1993, c. 61, §2 (AMD) .]

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

A. "Abortion" means the intentional interruption of a pregnancy by the application of external agents, whether chemical or physical or by the ingestion of chemical agents with an intention other than to produce a live birth or to remove a dead fetus. [1979, c. 405, §2 (NEW).]

B. "Viability" means the state of fetal development when the life of the fetus may be continued indefinitely outside the womb by natural or artificial life-supportive systems. [1979, c. 405, §2 (NEW).]

[1979, c. 405, §2 (NEW) .]

3. **Persons who may perform abortions; penalties.**

A. Only a person licensed under Title 32, chapter 36 or chapter 48, to practice medicine in Maine as a medical or osteopathic physician, may perform an abortion on another person. [1979, c. 405, §2 (NEW).]

B. Any person not so licensed who knowingly performs an abortion on another person or any person who knowingly assists a nonlicensed person to perform an abortion on another person is guilty of a Class C crime. [1979, c. 405, §2 (NEW).]

[1979, c. 405, §2 (NEW) .]

4. **Abortions after viability; criminal liability.** A person who performs an abortion after viability is guilty of a Class D crime if:

A. He knowingly disregarded the viability of the fetus; and [1979, c. 405, §2 (NEW).]

B. He knew that the abortion was not necessary for the preservation of the life or health of the mother. [1979, c. 405, §2 (NEW).]

[1979, c. 405, §2 (NEW) .]

SECTION HISTORY
1979, c. 360, (NEW). 1979, c. 405, §2 (NEW). 1979, c. 663, §133 (RAL). 1993, c. 61, §2 (AMD).

§1599. INFORMED CONSENT TO ABORTION

(REPEALED)

SECTION HISTORY
1979, c. 663, §133 (RAL). 1993, c. 61, §3 (RP).

§1599-A. INFORMED CONSENT TO ABORTION

1. **Consent by the woman.** A physician may not perform an abortion unless, prior to the performance, the attending physician certifies in writing that the woman gave her informed written consent, freely and without coercion.

[1993, c. 61, §4 (NEW) .]

2. **Informed consent.** To ensure that the consent for an abortion is truly informed consent, the attending physician shall inform the woman, in a manner that in the physician's professional judgment is not misleading and that will be understood by the patient, of at least the following:

A. According to the physician's best judgment she is pregnant; [1993, c. 61, §4 (NEW).]

B. The number of weeks elapsed from the probable time of the conception; [1993, c. 61, §4 (NEW).]

C. The particular risks associated with her own pregnancy and the abortion technique to be performed; and [1993, c. 61, §4 (NEW).]

D. At the woman's request, alternatives to abortion such as childbirth and adoption and information concerning public and private agencies that will provide the woman with economic and other assistance to carry the fetus to term, including, if the woman so requests, a list of these agencies and the services available from each. [1993, c. 61, §4 (NEW).]

[1993, c. 61, §4 (NEW) .]

SECTION HISTORY
1993, c. 61, §4 (NEW).

Chapter 265: MASS GATHERINGS

§1601. PERMIT REQUIRED

1. **Hazard.** The Legislature finds that mass outdoor gatherings frequently create a hazard to the public health, safety and peace. Accordingly, it is deemed to be appropriate and in the interest of the public welfare to regulate the conduct of such gatherings in order to protect the public health and safety.

[1977, c. 347, §2 (RPR) .]

2. **Mass outdoor gatherings.** For the purposes of this chapter, a mass outdoor gathering shall be deemed to mean any gathering held outdoors with the intent to attract the continued attendance of 2,000 or more persons for 12 or more hours.

[1977, c. 347, §2 (RPR) .]

3. **Permit required.** No person, corporation, partnership, association or group of any kind shall sponsor, promote or conduct a mass outdoor gathering until a permit has been obtained from the Commissioner of Health and Human Services.

[1977, c. 347, §2 (RPR); 2003, c. 689, Pt. B, §7 (REV) .]

SECTION HISTORY
1971, c. 341, (NEW). 1975, c. 293, §4 (AMD). 1977, c. 347, §2 (RPR). 2003, c. 689, §B7 (REV).

§1602. PERMIT ISSUANCE

1. **Written application.** The Commissioner of Health and Human Services shall issue a permit for a mass outdoor gathering upon receipt of a written application therefor unless, after the consideration of the factors listed in subsection 2, it appears to the commissioner within a reasonable certainty that the gathering will present a grave and imminent danger to the public health or to the public safety.

[1977, c. 347, §3 (NEW); 2003, c. 689, Pt. B, §7 (REV) .]

2. **Commissioner's determination.** In determining whether there exists a reasonable certainty that the gathering will present a grave and imminent danger to the public health or safety, the commissioner shall consider the nature of the gathering and the availability of:

A. An adequate and satisfactory water supply and facilities; [1977, c. 347, §3 (NEW).]

B. Adequate refuse storage and disposal facilities; [1977, c. 347, §3 (NEW).]

C. Sleeping areas and facilities; [1977, c. 347, §3 (NEW).]

D. Wholesome and sanitary food service; [1977, c. 347, §3 (NEW).]

E. Adequate medical supplies and care; [1977, c. 347, §3 (NEW).]

F. Adequate fire protection; [1977, c. 347, §3 (NEW).]

G. Adequate police protection; [1977, c. 347, §3 (NEW).]

H. Adequate traffic control; and [1977, c. 347, §3 (NEW).]

I. Any other matters as may affect the security of the public health or safety. [1977, c. 347, §3 (NEW).]

[1977, c. 347, §3 (NEW) .]

3. **Plans; cooperation.** In its review of applications for permits for the holding or promoting of a mass outdoor gathering, the department may require such plans, specifications and reports as it shall deem necessary for a proper review. In its review of such applications, as well as in carrying out its other duties and functions in connection with such a gathering, the department may request, and shall receive from all public officers, departments and agencies of the State and its political subdivisions such cooperation and assistance as may be necessary and proper. No permit may be issued by the department until the commissioner or his representative has discussed the application with the municipal officers of the municipality in which the event is intended to be held.

[1981, c. 703, Pt. A, §11 (AMD) .]

4. **Permit denied; appeal.** An applicant who has been aggrieved by the department's decision to deny a permit under this chapter may file within 30 days of the notice of the denial a complaint with the District Court, as provided in Title 5, chapter 375. A hearing before the District Court for reconsideration of the denial may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

[2011, c. 559, Pt. A, §24 (AMD) .]

5. **Municipal ordinances and regulations.** The requirements of this chapter and of the regulations adopted under this chapter shall be considered minimum requirements. Nothing shall preclude a municipality from enforcing any ordinance or regulation which is more stringent than the requirements of this chapter or of the regulations adopted under this chapter.

[1977, c. 347, §3 (NEW) .]

SECTION HISTORY
1971, c. 341, (NEW). 1975, c. 293, §4 (AMD). 1977, c. 347, §3 (RPR). 1981, c. 703, §A11 (AMD). 1987, c. 402, §A139 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2003, c. 673, §AA1 (AMD). 2003, c. 689, §B7 (REV). 2011, c. 559, Pt. A, §24 (AMD).

§1603. PERMIT CONDITIONS

(REPEALED)

SECTION HISTORY
1971, c. 341, (NEW). 1977, c. 347, §4 (RP).

§1604. PERMIT, BOND

The Department of Health and Human Services may also require, prior to the issuance of a permit, that the applicant furnish to the department a bond of a surety company qualified to do business in this State in such an amount as the department shall determine, but in no event more than $5,000, to ensure the public peace, safety and compensation of damage to property, public or private. This requirement for a bond does not preclude the applicant or any other persons from obtaining personal liability insurance for a mass outdoor gathering. Cash or negotiable securities of equivalent value may be furnished in lieu of the bond. The bond must guarantee cleanup by the applicant of the area used for the mass outdoor gathering, compliance by the applicant with any applicable state or local law or regulation and payment by the applicant of all proper claims against the applicant for damage to real or personal property in the municipality for which the permit is issued and arising out of facts done or omitted to be done by the applicant, the applicant's agents or employees. Any person having such a claim may bring an action upon the bond in the Superior Court of the county in which the municipality is located within one year of the occurrence of the act complained of. In furnishing such a bond, the applicant is deemed to have appointed the surety company as agent for the service of process upon the applicant or if cash or securities are supplied in lieu of a bond, the applicant shall in writing appoint an agent for the service of process, irrevocably, for the term within which action may be brought before any permit is issued. [2003, c. 673, Pt. AA, §2 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY
1971, c. 341, (NEW). 1975, c. 293, §4 (AMD). 1977, c. 347, §5 (AMD). 2003, c. 673, §AA2 (AMD). 2003, c. 689, §B6 (REV).

§1605. APPLICATION AND PERMIT FEE

The fee for reviewing an application is $100 and must accompany the application, and the fee for a permit is a maximum of $750 and must be submitted promptly when requested by the department. Travel costs may also be charged to the applicant for department inspectors providing health inspection and oversight during the event. Rules, which are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A, must be established providing a fee schedule and related requirements. All funds received under this chapter must be deposited as General Fund undedicated revenue. [2003, c. 673, Pt. AA, §3 (AMD).]

SECTION HISTORY
1971, c. 341, (NEW). 1977, c. 347, §6 (AMD). 2003, c. 673, §AA3 (AMD).

§1606. PENALTY

Any person violating any provision of this chapter, or any rule and regulation issued pursuant thereto, shall be punished by a fine of not more than $5,000 or by imprisonment for not more than 11 months, or by both. [1971, c. 341, (NEW).]

SECTION HISTORY
1971, c. 341, (NEW).

§1607. APPLICATION

This chapter does not apply to fairs licensed, defined and regulated under Title 7, chapter 4, or military activities. It does not apply to persons, associations, corporations, trusts or partnerships licensed under Title 8, chapters 11 and 18. [2015, c. 148, §4 (AMD).]

SECTION HISTORY
1971, c. 341, (NEW). 1977, c. 347, §7 (AMD). 1987, c. 395, §A88 (AMD). 2005, c. 563, §15 (AMD). 2013, c. 595, Pt. U, §8 (AMD). 2015, c. 148, §4 (AMD).

Chapter 265-A: SMOKING IN RETAIL STORES

§1621. DEFINITIONS

(REPEALED)

SECTION HISTORY
1985, c. 737, §A50 (NEW). 1993, c. 342, §9 (AFF). 1993, c. 342, §7 (RP).

§1622. SMOKING TO BE PROHIBITED IN RETAIL STORES

(REPEALED)

SECTION HISTORY
1985, c. 737, §A50 (NEW). 1993, c. 342, §9 (AFF). 1993, c. 342, §7 (RP).

§1623. RESPONSIBILITY OF PROPRIETORS, EMPLOYERS

(REPEALED)

SECTION HISTORY

1985, c. 737, §A50 (NEW). 1993, c. 342, §9 (AFF). 1993, c. 342, §7 (RP).

§1624. CIVIL VIOLATION

(REPEALED)

SECTION HISTORY
1985, c. 737, §A50 (NEW). 1993, c. 342, §9 (AFF). 1993, c. 342, §7 (RP).

Chapter 265-B: VENDING MACHINE SALES OF CIGARETTES

§1628. VENDING MACHINE SALES OF CIGARETTES LIMITED TO SUPERVISED AREAS

(REPEALED)

SECTION HISTORY
1987, c. 127, (NEW). 1989, c. 445, §9 (AMD). 1993, c. 406, §1 (AMD). 1995, c. 470, §19 (AFF). 1995, c. 470, §13 (RP).

Chapter 265-C: SALE OF UNPACKAGED CIGARETTES

§1629. SALE OF UNPACKAGED CIGARETTES

(REPEALED)

SECTION HISTORY
1989, c. 445, §10 (NEW). 1995, c. 470, §19 (AFF). 1995, c. 470, §14 (RP).

Chapter 266: SWIMMING POOLS

§1631. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1983, c. 436, (NEW).]

1. **Fence.** "Fence" means a good quality fence or wall not less than 4 feet in height above ground surface and of a character to exclude children. The fence shall be so constructed as not to have openings, holes or gaps larger than 4 square inches, except for fences constructed of vertical posts or louvers, in which case, the openings shall not be greater than 4 inches in width with no horizontal members between the top and bottom plates. Doors and gates are excluded from the minimum dimension requirements.

[1983, c. 436, (NEW) .]

2. **Swimming pool.** "Swimming pool" means an outdoor artificial receptacle or other container, whether in or above the ground, used or intended to be used to contain water for swimming or bathing and designed for a water depth of 24 inches or more.

[1987, c. 22, (AMD) .]

SECTION HISTORY
1983, c. 436, (NEW). 1987, c. 22, (AMD).

§1632. ENCLOSURE OF SWIMMING POOL REQUIRED

A fence shall be erected and maintained around every swimming pool, except that portable above-ground swimming pools with sidewalls of at least 24 inches in height are exempted. A dwelling house or accessory building may be used as part of this enclosure. All gates or doors opening through this enclosure shall be capable of being securely fastened at all times when not in actual use. [1983, c. 436, (NEW).]

SECTION HISTORY
1983, c. 436, (NEW).

§1633. PENALTY

Any person who does not comply with this chapter within 30 days, after receiving written notice that he is in violation of its provisions, commits a civil violation for which a forfeiture of not more than $500 may be adjudged. Each day a violation continues shall be a separate violation. [1983, c. 436, (NEW).]

SECTION HISTORY
1983, c. 436, (NEW).

§1634. MUNICIPAL ORDINANCES

Nothing in this chapter may be construed as a preemption by the State. Municipalities may adopt and enforce swimming pool enclosure ordinances, or enforce existing ordinances, that are either less restrictive or more restrictive than this chapter, or that concern matters not dealt with by this chapter. [1983, c. 436, (NEW).]

SECTION HISTORY
1983, c. 436, (NEW).

§1635. USE OF SAFETY EQUIPMENT IN PUBLIC POOLS

1. **Use of safety equipment by persons who suffer from physical disability or condition.** No person may prohibit the use of a life jacket or similar device in a public swimming pool by any person who suffers, as evidenced by a signed statement of a licensed physician, from any physical disability or condition which necessitates the use of a life jacket or similar device.

[1987, c. 194, (NEW) .]

2. **Public swimming pool defined.** For the purposes of this section, a public swimming pool is any swimming pool which caters to, offers its facilities or services to or solicits or accepts patronage from the general public.

[1987, c. 194, (NEW) .]

SECTION HISTORY
1987, c. 194, (NEW).

Chapter 266-A: INFORMATION AND REFERRAL SERVICES

§1641. PARKINSON'S SYNDROME

The Department of Human Services shall establish, maintain and operate an information and referral service for Parkinson's Syndrome to assist in promoting the general health and welfare of Maine's citizens, including, but not limited to, the following specific purposes: [1985, c. 737, Pt. A, §51 (NEW).]

1. **Information.** To provide educational materials to the medical community and other interested individuals relating to the nature and treatment of Parkinson's Syndrome; and

[1985, c. 737, Pt. A, §51 (NEW) .]

2. **Referral.** To maintain a referral service to make available, upon request, the names, addresses and phone numbers, when known, of:

A. Physicians who have an interest or expertise in Parkinson's Syndrome; and [1985, c. 737, Pt. A, §51 (NEW).]

B. Local or statewide support groups for Parkinson's Syndrome victims or their families and friends. [1985, c. 737, Pt. A, §51 (NEW).]

[1985, c. 737, Pt. A, §51 (NEW) .]

SECTION HISTORY
1985, c. 737, §A51 (NEW).

§1642. DOWN SYNDROME

The department shall establish, maintain and operate an information service for Down syndrome. For the purposes of this section, "Down syndrome" means a chromosomal condition caused by an error in cell division that results in the presence of an extra whole or partial copy of chromosome 21. [2015, c. 269, §1 (NEW).]

1. **Expectant or new parent; others.** A hospital, physician, health care provider or certified nurse midwife who renders prenatal care or postnatal care or a genetic counselor who renders prenatal or postnatal genetic counseling shall, upon receipt of a positive test result from a prenatal or postnatal test for Down syndrome, offer the expectant or new parent information provided by the department under subsection 2. The department shall also make such information available to any other person who has received a positive test result from a prenatal or postnatal test for Down syndrome.

[2015, c. 269, §1 (NEW) .]

2. **Information provided.** The department shall make available to a person who renders prenatal care, postnatal care or genetic counseling to expectant or new parents who receive a prenatal or postnatal diagnosis of Down syndrome the following:

A. Up-to-date evidence-based written information about Down syndrome that includes physical, developmental, educational and psychosocial outcomes, life expectancy, clinical course and intellectual and functional development and treatment options. The information must have been reviewed by established medical experts in the field and national Down syndrome organizations; and [2015, c. 269, §1 (NEW).]

B. Contact information regarding support programs and services, including information hotlines specific to Down syndrome, resource centers and clearinghouses, national, statewide and local Down syndrome organizations and other educational and support programs. [2015, c. 269, §1 (NEW).]

[2015, c. 269, §1 (NEW) .]

3. **Accessibility of information.** Information provided under this section must be culturally and linguistically appropriate for a person receiving a positive prenatal diagnosis and for the family of a child receiving a postnatal diagnosis of Down syndrome.

[2015, c. 269, §1 (NEW) .]

SECTION HISTORY
2015, c. 269, §1 (NEW).

Chapter 266-B: LYME DISEASE AND OTHER TICK-BORNE ILLNESSES

§1645. LYME DISEASE AND OTHER TICK-BORNE ILLNESSES; ANNUAL REPORT

1. **Report contents.** The Maine Center for Disease Control and Prevention shall, on an ongoing basis, monitor, review and evaluate Lyme disease and other tick-borne illnesses in this State and shall submit an annual report in accordance with this subsection and subsection 2. The report must include at a minimum and to the extent information is available:

A. The incidence of Lyme disease and other tick-borne illnesses in this State; [2007, c. 561, §1 (NEW).]

B. The diagnosis and treatment guidelines for Lyme disease recommended by the Maine Center for Disease Control and Prevention and the United States Department of Health and Human Services, Centers for Disease Control and Prevention; [2009, c. 494, §2 (AMD).]

C. A summary or bibliography of peer-reviewed medical literature and studies related to the diagnosis, medical management and treatment of Lyme disease and other tick-borne illnesses, including, but not limited to, the recognition of chronic Lyme disease and the use of long-term antibiotic treatment; [2009, c. 494, §3 (AMD).]

D. The education, training and guidance provided by the Maine Center for Disease Control and Prevention to health care professionals on the current methods of diagnosing and treating Lyme disease and other tick-borne illnesses; [2007, c. 561, §1 (NEW).]

E. The education and public awareness activities conducted by the Maine Center for Disease Control and Prevention for the prevention of Lyme disease and other tick-borne illnesses; and [2007, c. 561, §1 (NEW).]

F. A summary of the laws of other states enacted during the last year related to the diagnosis, treatment and insurance coverage for Lyme disease and other tick-borne illnesses based on resources made available by the federal Centers for Disease Control and Prevention or other organizations. [2007, c. 561, §1 (NEW).]

[2009, c. 494, §§2, 3 (AMD) .]

2. **Annual report.** Beginning February 1, 2009 and annually by February 1st thereafter, the Maine Center for Disease Control and Prevention shall submit a 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 health insurance matters. In addition to the information required under subsection 1, the report may include recommendations for legislation to address public health programs for the prevention and treatment of Lyme disease and other tick-borne illnesses in this State.

[2007, c. 561, §1 (NEW) .]

3. **Publicly accessible website.** The Maine Center for Disease Control and Prevention shall maintain a publicly accessible website to provide public awareness and education on Lyme disease and other tick-borne illnesses. The website must provide information on the prevention, diagnosis and treatment of Lyme disease and other tick-borne illnesses for use by health care providers and the public, including, but not limited to, links to resources made available and recommended by the United States Department of Health and Human Services.

[2009, c. 494, §4 (NEW) .]

SECTION HISTORY
2007, c. 561, §1 (NEW). 2009, c. 494, §§2-4 (AMD).

§1646. LYME DISEASE TESTING INFORMATION DISCLOSURE

1. **Definition.** For the purposes of this section, "health care provider" means a physician, hospital or person that is licensed or otherwise authorized in this State to provide health care services.

[2013, c. 340, §1 (NEW) .]

2. **Lyme disease testing information disclosure.** Every health care provider that orders a laboratory test for the presence of Lyme disease shall provide the patient with a copy of the results of the test.

[2013, c. 340, §1 (NEW) .]

SECTION HISTORY
2013, c. 340, §1 (NEW).

Chapter 267: EXPOSURE TO DIETHYLSTILBESTROL

§1651. IDENTIFICATION OF EXPOSED PERSONS

For the purpose of identifying persons who have been exposed to the potential hazards and afflictions of diethylstilbestrol and for the purpose of educating the public concerning the symptoms and prevention of associated malignancies, the Commissioner of Health and Human Services shall establish, promote and maintain a public information campaign on diethylstilbestrol. This campaign shall be conducted throughout the State and shall include, but not be limited to, a concerted effort at reaching those persons or the offspring of persons who have been exposed to diethylstilbestrol in order to encourage them to seek medical care for the prevention or treatment of any malignant condition. [1979, c. 415, §1 (NEW); 2003, c. 689, Pt. B, §7 (REV).]

SECTION HISTORY
1979, c. 415, §1 (NEW). 2003, c. 689, §B7 (REV).

§1652. PROVIDERS OF SCREENING PROGRAMS

The Commissioner of Health and Human Services shall actively seek providers of health care to participate in regional programs which provide public information and screening for diethylstilbestrol exposed persons. In determining regional screening program providers, the commissioner shall consider the provider's compliance with state and federally mandated standards, the location in relation to the population to be served and the capacity of the provider to properly conduct these programs. [1979, c. 415, §1 (NEW); 2003, c. 689, Pt. B, §7 (REV).]

SECTION HISTORY
1979, c. 415, §1 (NEW). 2003, c. 689, §B7 (REV).

§1653. REGISTRY

The Bureau of Health, within the Department of Health and Human Services, shall establish and maintain a registry limited to women who took diethylstilbestrol during pregnancy, and their offspring who were exposed to diethylstilbestrol prenatally, solely for the purpose of follow-up care and treatment of long-term problems associated with diethylstilbestrol exposure. Enrollment in the registry shall be upon a voluntary basis. [1979, c. 415, §1 (NEW); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY
1979, c. 415, §1 (NEW). 2003, c. 689, §B6 (REV).

§1654. ASSISTANCE

The commissioner may request and shall receive from any department, division, board, bureau, commission or agency of the State, or of any political subdivision thereof, such assistance and data as will enable him to properly carry out his activities hereunder and effectuate the purposes set forth in this chapter. The commissioner may also enter into any contract for services which he deems necessary with a private agency or concern upon such terms and conditions as he deems appropriate. [1979, c. 415, §1 (NEW).]

SECTION HISTORY
1979, c. 415, §1 (NEW).

§1655. REPORT

The department shall make an annual report to the joint standing committee of the Legislature having jurisdiction over human resources matters of its findings and recommendations concerning the effectiveness, impact and benefits derived from the special programs as provided for in this chapter. This report must be delivered on or before February 1st and must contain evaluations of these special programs and recommendations in final draft form of any legislation determined necessary and proper. [1993, c. 685, Pt. B, §3 (AMD).]

SECTION HISTORY
1979, c. 415, §1 (NEW). 1993, c. 685, §B3 (AMD).

Chapter 269: RAPE CRISIS CENTERS

§1661. LEGISLATIVE INTENT

The Legislature finds that rape and sexual assault are crimes of violence that are both underreported and increasing in incidence; that victims of rape need support services and counseling that are currently unavailable from traditional medical or legal institutions; that the recent formation of local and regional rape

crisis centers has provided rape and sexual assault victims with vital counseling and intervention services; and that the volunteer efforts of these and future rape crisis centers shall be supported and enhanced on a statewide basis, if possible. The Legislature declares that it is consistent with public policy to fund counseling and preventive educational programs by rape crisis centers. [1983, c. 826, §1 (NEW).]

SECTION HISTORY
1983, c. 826, §1 (NEW).

§1662. FUNDS

1. **Purposes.** The Department of Health and Human Services may receive and disburse funds made available to it for financial support grants or contracts to rape crisis centers for the following purposes:

A. Direct crisis intervention counseling of rape and sexual assault victims; [1983, c. 826, §1 (NEW).]

B. Programs to support a sexual assault victim's interaction with medical, psychological and legal professionals; [1983, c. 826, §1 (NEW).]

C. Programs to advocate and work with the sexual assault victim throughout the court process, but not to provide legal services; and [1983, c. 826, §1 (NEW).]

D. Programs to educate and train the public on rape and sexual assault prevention. [1983, c. 826, §1 (NEW).]

[1983, c. 826, §1 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

2. **Geographic coverage.** Insofar as practicable, the department shall make funds available to all areas of the State.

[1983, c. 826, §1 (NEW) .]

3. **Local match.** Any rape crisis center which applies for funds under this chapter shall demonstrate a match of either private donations, local funding or in-kind resources in accordance with the Department of Health and Human Services' policies.

[1983, c. 826, §1 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

SECTION HISTORY
1983, c. 826, §1 (NEW). 2003, c. 689, §B6 (REV).

§1663. RULES

The Commissioner of Health and Human Services is authorized and directed to adopt rules to implement this chapter to reflect widely accepted and current services that are presently provided. The commissioner shall consult with organizations who counsel rape victims, the Maine Coalition Against Sexual Assault, and other appropriate parties and shall make allocations based on these recommendations. [1999, c. 127, Pt. B, §7 (AMD); 2003, c. 689, Pt. B, §7 (REV).]

SECTION HISTORY
1983, c. 826, §1 (NEW). 1999, c. 127, §B7 (AMD). 2003, c. 689, §B7 (REV).

§1664. LAPSE

Funds made available to the department for the purposes of this chapter, whether from state, federal or private sources, shall not lapse, but shall be carried forward to the next fiscal year to be expended for the same purposes. [1983, c. 826, §1 (NEW).]

SECTION HISTORY
1983, c. 826, §1 (NEW).

Chapter 269-A: SMOKING IN RETAIL STORES

§1681. DEFINITIONS

(REPEALED)

SECTION HISTORY
1985, c. 115, (NEW). 1985, c. 171, §§1,2 (NEW). 1985, c. 351, (NEW). 1985, c. 737, §§A52,53 (RP). 1987, c. 8, §1 (RP).

§1682. REST ROOM FACILITIES REQUIRED

(REPEALED)

SECTION HISTORY
1985, c. 115, (NEW). 1985, c. 171, §§1,2 (NEW). 1985, c. 737, §§A52,53 (RP). 1987, c. 8, §1 (RP). 1987, c. 86, §1 (RPR). 1987, c. 769, §A71 (RP).

§1682-A. EATING ESTABLISHMENTS THAT PERMIT CONSUMPTION OF ALCOHOLIC BEVERAGES

(REPEALED)

SECTION HISTORY
1987, c. 86, §2 (NEW). 1987, c. 769, §A72 (RP).

§1683. RULES

(REPEALED)

SECTION HISTORY
1985, c. 115, (NEW). 1985, c. 171, §§1,2 (NEW). 1985, c. 737, §§A52,53 (RP). 1987, c. 8, §1 (RP).

§1684. ENFORCEMENT

(REPEALED)

SECTION HISTORY
1985, c. 115, (NEW). 1985, c. 171, §§1,2 (NEW). 1985, c. 737, §§A52,53 (RP). 1987, c. 8, §1 (RP).

Chapter 270: SHOPPING CENTERS AND RETAIL ESTABLISHMENTS

§1671. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1985, c. 737, Pt. A, §53 (RPR).]

1. **Shopping center.** "Shopping center" means any building or facility containing 6 or more separate retail establishments that are planned, developed, owned or managed as a unit, with an off-street public parking area of not less than 2 acres.

[2009, c. 152, §1 (AMD) .]

2. **Customer.** "Customer" means an individual who is lawfully on the premises of a retail establishment.

[2009, c. 152, §1 (NEW) .]

3. **Eligible medical condition.** "Eligible medical condition" means Crohn's disease, ulcerative colitis or any other inflammatory bowel disease, irritable bowel syndrome, a condition requiring the use of an ostomy device or any other medical condition that requires immediate access to a toilet facility.

[2009, c. 152, §1 (NEW) .]

4. **Retail establishment.** "Retail establishment" means a place of business open to the general public for the sale of goods or services.

[2009, c. 152, §1 (NEW) .]

SECTION HISTORY
1985, c. 102, (NEW). 1985, c. 737, §A53 (RPR). 2009, c. 152, §1 (AMD).

§1672. PUBLIC REST ROOM FACILITIES REQUIRED

In any building or facility constructed specifically as a shopping center after September 19, 1985, there shall be installed a minimum of 2 toilets for the use of the public. There shall be at least one separate toilet for each sex and the toilets provided shall be clearly marked, maintained in a sanitary condition and in good repair. Lavatory facilities shall be located within or immediately adjacent to all toilet rooms or vestibules. There shall be no charge for their use. [1985, c. 737, Pt. A, §53 (RPR).]

SECTION HISTORY
1985, c. 102, (NEW). 1985, c. 737, §A53 (RPR).

§1672-A. SMOKING RESTRICTED

(REPEALED)

SECTION HISTORY
1989, c. 314, (NEW). RR 1991, c. 1, §28 (COR). 1993, c. 342, §9 (AFF). 1993, c. 342, §8 (RP).

§1672-B. RETAIL ESTABLISHMENTS; ACCESS TO EMPLOYEE TOILET FACILITIES

1. **Access for customers with eligible medical conditions.** A retail establishment that has a toilet facility for its employees shall allow a customer to use that facility during normal business hours if:

A. The customer requesting the use of the employee toilet facility suffers from an eligible medical condition; [2009, c. 152, §2 (NEW).]

B. Three or more employees of the retail establishment are working at the time the customer requests the use of the employee toilet facility; [2009, c. 152, §2 (NEW).]

C. Allowing the customer to use the toilet facility would not impose an undue burden on the retail establishment; [2009, c. 152, §2 (NEW).]

D. The retail establishment does not normally make a toilet facility available to the public; [2009, c. 152, §2 (NEW).]

E. The employee toilet facility is not located in an area where providing access would create an obvious health or safety risk to the customer or an obvious security risk to the retail establishment; and [2009, c. 152, §2 (NEW).]

F. A public toilet facility is not immediately accessible to the customer. [2009, c. 152, §2 (NEW).]

[2009, c. 152, §2 (NEW) .]

2. **Liability.** A retail establishment or an owner or employee of a retail establishment is not civilly liable for any act or omission in allowing a customer to use an employee toilet facility that is not a public toilet facility pursuant to subsection 1 unless:

A. The retail establishment or owner or employee of the retail establishment is willfully or grossly negligent; [2009, c. 152, §2 (NEW).]

B. The act or omission occurs in an area of the retail establishment that is not accessible to the public; and [2009, c. 152, §2 (NEW).]

C. The act or omission results in an injury to or death of the customer or an individual other than an employee accompanying the customer. [2009, c. 152, §2 (NEW).]

[2009, c. 152, §2 (NEW) .]

3. **Modifications not required.** A retail establishment is not required to make any physical change to an employee toilet facility under this section.

[2009, c. 152, §2 (NEW) .]

4. **Application.** This section may not be construed to limit the rights, remedies and procedures afforded to individuals pursuant to the Maine Human Rights Act. The civil penalties in section 1674 may not be assessed for any violation of this section.

[2009, c. 152, §2 (NEW) .]

SECTION HISTORY
2009, c. 152, §2 (NEW).

§1673. RULES

The Department of Health and Human Services may adopt, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, rules to administer this chapter and thereby protect the public health. [1985, c. 737, Pt. A, §53 (RPR); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY
1985, c. 102, (NEW). 1985, c. 737, §A53 (RPR). 2003, c. 689, §B6 (REV).

§1674. ENFORCEMENT

This chapter shall be enforced by the Division of Health Engineering. Anyone violating this chapter or rules under this chapter commits a civil violation for which a forfeiture of not more than $200 may be adjudged. Each date of violation shall be considered a separate offense. [1985, c. 737, Pt. A, §53 (RPR).]

SECTION HISTORY
1985, c. 102, (NEW). 1985, c. 737, §A53 (RPR).

Chapter 270: INFORMATION AND REFERRAL SERVICES

§1681. DEFINITIONS

(REPEALED)

SECTION HISTORY
1985, c. 115, (NEW). 1985, c. 171, §§1,2 (NEW). 1985, c. 351, (NEW). 1985, c. 737, §§A52,53 (RP). 1987, c. 8, §1 (RP).

Chapter 270-A: PUBLIC REST ROOM FACILITIES IN EATING PLACES

§1681. DEFINITIONS

(REPEALED)

SECTION HISTORY
1985, c. 115, (NEW). 1985, c. 171, §§1,2 (NEW). 1985, c. 351, (NEW). 1985, c. 737, §§A52,53 (RP). 1987, c. 8, §1 (RP).

§1682. REST ROOM FACILITIES REQUIRED

(REPEALED)

SECTION HISTORY
1985, c. 115, (NEW). 1985, c. 171, §§1,2 (NEW). 1985, c. 737, §§A52,53 (RP). 1987, c. 8, §1 (RP). 1987, c. 86, §1 (RPR). 1987, c. 769, §A71 (RP).

§1682-A. EATING ESTABLISHMENTS THAT PERMIT CONSUMPTION OF ALCOHOLIC BEVERAGES

(REPEALED)

SECTION HISTORY
1987, c. 86, §2 (NEW). 1987, c. 769, §A72 (RP).

§1683. RULES

(REPEALED)

SECTION HISTORY
1985, c. 115, (NEW). 1985, c. 171, §§1,2 (NEW). 1985, c. 737, §§A52,53 (RP). 1987, c. 8, §1 (RP).

§1684. ENFORCEMENT

(REPEALED)

SECTION HISTORY
1985, c. 115, (NEW). 1985, c. 171, §§1,2 (NEW). 1985, c. 737, §§A52,53 (RP). 1987, c. 8, §1 (RP).

Chapter 270-B: PUBLIC REST ROOM FACILITIES IN EATING PLACES

§1685. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 8, §2 (NEW).]

1. **Eating establishment.** "Eating establishment" means an eating establishment licensed by the Department of Health and Human Services under chapter 562 which prepares and serves food to the public for consumption inside the premises. "Eating establishment" does not include catering establishments, establishments dispensing food solely from vending machines, pushcarts and mobile eating places, roadside stands, retail frozen dairy product establishments or any other such places where customers do not consume food inside the building where the food is prepared and served.

[1987, c. 8, §2 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

SECTION HISTORY
1987, c. 8, §2 (NEW). 2003, c. 689, §B6 (REV).

§1686. TOILET FACILITIES REQUIRED

An eating establishment must provide at least one toilet facility for the use of its customers. Toilet facilities that require access through the food preparation area or the use of which would in any way cause the establishment to be in violation of any state law or rule may not be considered as fulfilling this requirement. The location of the toilets must be clearly marked, and the toilets must be maintained in a sanitary condition and in good repair and their location must be identifiable from the eating area. There may not be a charge for their use. Lavatory facilities must be located within or immediately adjacent to all toilet rooms or vestibules. [2013, c. 264, §2 (AMD).]

Upon appeal, the Division of Health Engineering may exempt from the requirements of this chapter eating establishments of 13 to 25 seats which are not licensed for on-premise consumption of alcoholic beverages and which were in existence prior to September 30, 1985, and which: [1987, c. 769, Pt. A, §73 (NEW).]

1. **Shopping malls.** Are part of an enclosed mall which provides customer toilet facilities which are part of the public portion of the mall and not part of a business within the mall;

[1987, c. 769, Pt. A, §73 (NEW) .]

2. **Other locations.** Have submitted evidence of an agreement with a 2nd party that customers of the eating establishment may use toilet facilities which are on the premises owned or rented by the 2nd party in cases where such use would not create a substantial inconvenience to the customer of the eating establishment;

[1987, c. 769, Pt. A, §73 (NEW) .]

3. **Construction costs.** Are housed in buildings of unique construction which makes installation of a toilet facility cost prohibitive; or

[1987, c. 769, Pt. A, §73 (NEW) .]

4. **Space loss.** Would lose 1/4 or more of their existing seating space if required to provide a toilet facility of a minimum size of 3 feet by 6 feet.

[1987, c. 769, Pt. A, §73 (NEW) .]

Any eating establishment which does not have a toilet facility available shall post a sign to that effect which may be seen upon entry to the eating establishment. [1987, c. 769, Pt. A, §73 (NEW).]

SECTION HISTORY
1987, c. 8, §2 (NEW). 1987, c. 769, §A73 (RPR). 2013, c. 264, §2 (AMD).

§1686-A. EATING ESTABLISHMENTS THAT PERMIT CONSUMPTION OF ALCOHOLIC BEVERAGES

Any eating establishment regardless of the number of seats that permits on-premises consumption of alcoholic beverages is bound by section 1686, regarding the provision of a toilet facility. An eating establishment that has a seating capacity of 40 or fewer persons is required to have at least one toilet facility but may not be required to have more than one toilet facility. [2011, c. 242, §1 (AMD).]

SECTION HISTORY
1987, c. 769, §A74 (NEW). 2011, c. 242, §1 (AMD).

§1687. RULES

The Department of Health and Human Services may adopt, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, rules to administer this chapter and thereby protect the public health. [1987, c. 8, §2 (NEW); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY
1987, c. 8, §2 (NEW). 2003, c. 689, §B6 (REV).

§1688. ENFORCEMENT

This chapter shall be enforced by the Division of Health Engineering. Anyone violating this chapter or rules under this chapter commits a civil violation for which a forfeiture of not more than $200 may be adjudged. Each day of violation shall be considered a separate offense. [1987, c. 8, §2 (NEW).]

SECTION HISTORY
1987, c. 8, §2 (NEW).

Chapter 270-C: MAINE WATER WELL PROGRAM

§1689. PROGRAM ESTABLISHED

The Maine Water Well Program, known in this chapter as "the program," is established to provide the public with the highest quality drinking water possible by ensuring that water wells are drilled, constructed, altered or abandoned in a manner that protects groundwater from contamination. [2001, c. 209, Pt. A, §3 (AMD).]

SECTION HISTORY
1991, c. 455, §A2 (NEW). 2001, c. 209, §A3 (AMD).

§1689-A. ADMINISTRATIVE AUTHORITY

The Maine Water Well Commission, as established in Title 5, section 12004-G, subsection 13-B, shall administer the program. The commission has the powers and duties set forth in Title 32, chapter 69-C. [2001, c. 209, Pt. A, §3 (AMD).]

SECTION HISTORY
1991, c. 455, §A2 (NEW). 2001, c. 209, §A3 (AMD).

§1689-B. ENFORCEMENT

This chapter is enforced by the Department of Health and Human Services, Division of Health Engineering. [1991, c. 455, Pt. A, §2 (NEW); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY
1991, c. 455, §A2 (NEW). 2003, c. 689, §B6 (REV).

Chapter 271: HEALTH PROGRAMS

Subchapter 1: ENVIRONMENTAL HEALTH PROGRAMS

§1691. FINDINGS AND DECLARATION OF PURPOSE

The Legislature finds that adequate measures must be taken to ensure that any threats to the health of the people of the State posed by natural phenomena or the introduction of potentially toxic substances into the environment are identified, appropriately considered and responded to by those responsible for protecting the public's health and environment. [1981, c. 508, §1 (NEW).]

The purpose of this chapter is to create an Environmental Health Program within the Department of Health and Human Services, Bureau of Health, which would provide the department with the capability it requires to discharge its responsibilities satisfactorily, and to advise other departments and boards charged with similar or related responsibilities regarding the potential health implications of their actions. [1981, c. 508, §1 (NEW); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY
1981, c. 508, §1 (NEW). 2003, c. 689, §B6 (REV).

§1692. ENVIRONMENTAL HEALTH PROGRAM

The department shall create an Environmental Health Program within the Division of Disease Control of the Bureau of Health, Department of Health and Human Services. This program shall be staffed by individuals with training and experience in environmental medicine, epidemiology, toxicology, statistics and related fields. [1981, c. 508, §1 (NEW); 2003, c. 689, Pt. B, §6 (REV).]

The Environmental Health Program shall: [1981, c. 508, §1 (NEW).]

1. **Develop and monitor health status.** Develop indicators of health problems in the State, monitor the health status of the people of the State and establish and maintain the necessary data banks for broad surveillance of human health and disease in Maine;

[1981, c. 508, §1 (NEW) .]

2. **Identify health problems.** Identify significant health problems in the State, including those which may be related to environmental factors;

[1981, c. 508, §1 (NEW) .]

3. **Investigate.** Conduct and contract for investigations as necessary to determine whether particular problems are related to environmental factors;

[1981, c. 508, §1 (NEW) .]

4. **Advise state agencies.** Advise the Commissioner of Health and Human Services, as well as other state agencies and boards, such as the Departments of Conservation, Environmental Protection and Agriculture, Food and Rural Resources, regarding the potential health implications of their actions, the nature and extent of identified problems and the steps which can be taken to address them; and

[1981, c. 508, §1 (NEW); 2003, c. 689, Pt. B, §7 (REV) .]

5. **Public information.** Provide the public with information, and advise them as to preventive and corrective actions in the area of environmental health.

[1981, c. 508, §1 (NEW) .]

SECTION HISTORY
1981, c. 508, §1 (NEW). 2003, c. 689, §§B6,7 (REV).

§1692-A. DEFINITIONS

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [1983, c. 835, §1 (NEW).]

1. **Bureau.** "Bureau" means the Bureau of Health.

[1983, c. 835, §1 (NEW) .]

2. **Director.** "Director" means the Director of the Bureau of Health or his designee.

[1983, c. 835, §1 (NEW) .]

SECTION HISTORY
1983, c. 835, §1 (NEW).

§1692-B. INVESTIGATIONS

1. **Access to reports and records.** The Department of Health and Human Services must be given access to all confidential reports and records filed by physicians, hospitals or other private or public sector organizations, with all departments, agencies, commissions or boards of the State for the purpose of conducting investigations or evaluating the completeness or quality of data submitted to the department's disease surveillance programs. The department shall follow the data confidentiality requirements of the departments, agencies, commissions or boards of the State providing this information.

Upon notification by the Department of Health and Human Services, physicians or hospitals shall provide to the department any further information requested for the purpose of conducting investigations or evaluating the completeness or quality of data submitted to the department's disease surveillance programs.

[1989, c. 844, §2 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

2. **Limited immunity.** A physician, hospital, or employee of a physician or hospital is not liable for any civil damages as a result of the department's use of information gathered under this section. This immunity is limited to legitimate activities pursued in good faith under this section.

[1989, c. 844, §2 (NEW) .]

3. **Adoption of rules.** The department shall adopt rules governing the conditions under which and purposes for which the department may use identifying information under this section. The rules must ensure that:

A. Identifying information is used only to gain access to medical records and other medical information pertaining to an investigation designed to accomplish public health research of substantial public importance; [1989, c. 844, §2 (NEW).]

B. Medical information about an identified patient is not sought from any person without the consent of that patient except when the information sought pertains solely to verification or comparison of health data that the department is otherwise authorized by law to collect and the department finds that confidentiality can be adequately protected without patient consent; [1989, c. 844, §2 (NEW).]

C. Those persons conducting the investigation do not disclose medical information about an identified patient to any other person except a health care practitioner responsible for treating the patient; [1989, c. 844, §2 (NEW).]

D. Those persons gaining access to medical information about an identified patient use that information to the minimum extent necessary to accomplish the purposes of the investigation; [1989, c. 844, §2 (NEW).]

E. The protocol for any investigation is designed to preserve the confidentiality of all medical information that can be associated with identified patients, to specify the manner in which contact is made with patients, and to maintain public confidence in the protection of confidential information; [1989, c. 844, §2 (NEW).]

F. An advisory body, independent from the department, is established and charged with responsibility for approving the protocol of the investigation, overseeing the conduct of the investigation to assure consistency with the protocol and the department's rules, and assessing both the scientific validity of the investigation and its effects upon patients; [1989, c. 844, §2 (NEW).]

G. The department does not seek information under this section if the proposed identification of or contact with patients or health care practitioners would diminish the confidentiality of medical information or the public's confidence in the protection of that information in a manner that outweighs the expected benefit to the public of the proposed investigation; and [1989, c. 844, §2 (NEW).]

H. Whenever a physician or hospital furnishes patient information requested by the department in accordance with this section, the department reimburses the physician or hospital for the reasonable costs incurred in providing the information. [1989, c. 844, §2 (NEW).]

[1989, c. 844, §2 (NEW) .]

SECTION HISTORY
1989, c. 844, §2 (NEW). 2003, c. 689, §B6 (REV).

§1693. ENVIRONMENTAL HEALTH ADVISORY COMMITTEE

(REPEALED)

SECTION HISTORY
1981, c. 508, §1 (NEW). 1983, c. 812, §121 (AMD). 1989, c. 503, §B84 (AMD). 1991, c. 622, §S26 (RP).

§1693-A. SCIENTIFIC ADVISORY PANEL

(REPEALED)

SECTION HISTORY
1983, c. 835, §1 (NEW). 1983, c. 862, §§69,70 (AMD). 1989, c. 503, §§B85,B86 (AMD). 1991, c. 622, §S27 (RP).

§1694. CONTRACTS WITH EDUCATIONAL, RESEARCH AND ELEEMOSYNARY INSTITUTIONS

The Environmental Health Program shall, to the maximum extent feasible, and within the amounts appropriated for these purposes, contract with educational, research and eleemosynary institutions within the State for research and investigation activities which can be carried out more economically, expeditiously or conveniently by those nonstate institutions. [1981, c. 508, §1 (NEW).]

SECTION HISTORY
1981, c. 508, §1 (NEW).

§1695. ACCEPTANCE OF FUNDS

The department is authorized to accept any public or private funds which may be available for carrying out the purposes of this chapter. [1981, c. 508, §1 (NEW).]

SECTION HISTORY
1981, c. 508, §1 (NEW).

§1696. HAZARDOUS AIR POLLUTANTS

1. **Findings and declaration of purpose.** The Legislature finds that:

A. Pure scientific considerations must govern the review and evaluation of potential health risks associated with chemical pollutants; [1983, c. 835, §1 (NEW).]

B. Scientific review and evaluation of potential health risks associated with potential hazardous air pollutants is an integral component of a successful hazardous air pollutant control program; and [1983, c. 835, §1 (NEW).]

C. The scientific review and evaluation is the responsibility of the Department of Health and Human Services which is charged with the protection of the public health and welfare and has the professional expertise to assess potential public health risks from chemical hazards. [1983, c. 835, §1 (NEW); 2003, c. 689, Pt. B, §6 (REV).]

[1983, c. 835, §1 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

2. **Duties.** The Department of Health and Human Services, through the Environmental Health Program in the Bureau of Health, with the advice of and peer review by the Scientific Advisory Panel, shall:

A. Collect and consider the health data for substances or classes of substances which are under consideration for regulation as hazardous air pollutants by the Board of Environmental Protection; [1983, c. 835, §1 (NEW).]

B. Establish a protocol for the health risk review and evaluation of potentially hazardous air pollutants for the following parameters: Carcinogenicity; in vivo and in vitro mutagenicity; teratogenicity; reproductive effects; neurotoxicity; acute and chronic reversible and irreversible effects; pharmacokinetics and pharmacodynamics; high-risk groups; bioaccumulation; and atmospheric fate; [1983, c. 835, §1 (NEW).]

C. Report the health consequences of exposure to various ambient air concentrations indicating a range of risk levels for cancer-causing substances and the health consequences of exposure to various ambient air concentrations of noncancer-causing substances, after considering the adequacy of the data base, animal to human extrapolation, high-risk groups and any other health-based considerations; and [1983, c. 835, §1 (NEW).]

D. Report whether exposure to the substance should be considered for regulation by the Board of Environmental Protection to protect public health. [1983, c. 835, §1 (NEW).]

[1983, c. 835, §1 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

3. **Requests for review.** Requests for review shall be as follows.

A. The bureau shall review or evaluate the potential health risks associated with potentially hazardous air pollutants at the request of:

(1) The director;

(2) The chairman of the Science Advisory Panel;

(3) Four or more members of the Science Advisory Panel; or

(4) The Commissioner of Environmental Protection following notice to the director of the bureau. [1983, c. 835, §1 (NEW).]

B. Requests from parties other than those listed in this subsection shall be reviewed by the Director of the Bureau of Health and, if justified, shall be pursued. The director may assess any reasonable costs to the party making those requests. [1983, c. 835, §1 (NEW).]

[1983, c. 835, §1 (NEW) .]

4. **Reporting.** The director shall compile all available information and prepare a report for each substance, class of substances or pollutants evaluated and submit this report to the commissioner, director or chairman of the group that requested the health risk review and evaluation.

[1983, c. 835, §1 (NEW) .]

SECTION HISTORY
1983, c. 835, §1 (NEW). 2003, c. 689, §B6 (REV).

Subchapter 2: COMMUNITY HEALTH INVESTIGATION AND INFORMATION

§1696-A. FINDINGS AND INTENT

(REPEALED)

SECTION HISTORY
1985, c. 494, §2 (NEW). 2015, c. 250, Pt. C, §1 (RP).

§1696-B. SHORT TITLE

(REPEALED)

SECTION HISTORY
1985, c. 494, §2 (NEW). 2015, c. 250, Pt. C, §1 (RP).

§1696-C. COMMUNITY HEALTH INFORMATION PROJECT

(REPEALED)

SECTION HISTORY
1985, c. 494, §2 (NEW). 2015, c. 250, Pt. C, §1 (RP).

§1696-D. RESPONSE TO REQUESTS

(REPEALED)

SECTION HISTORY
1985, c. 494, §2 (NEW). 1999, c. 57, §B3 (AMD). 2015, c. 250, Pt. C, §1 (RP).

§1696-E. COOPERATION WITH STATE AGENCIES

(REPEALED)

SECTION HISTORY
1985, c. 494, §2 (NEW). 2015, c. 250, Pt. C, §1 (RP).

§1696-F. PROVISION OF INFORMATION; TRADE SECRETS

(REPEALED)

SECTION HISTORY
1985, c. 494, §2 (NEW). 1999, c. 57, §B4 (AMD). 2015, c. 250, Pt. C, §1 (RP).

Subchapter 3: EMERGENCY RESPONSE PLANNING

§1696-G. FINDINGS; PURPOSE

(REPEALED)

SECTION HISTORY
1987, c. 763, §2 (NEW). 1989, c. 464, §2 (RP).

§1696-H. STATE EMERGENCY RESPONSE COMMISSION

(REPEALED)

SECTION HISTORY
1987, c. 763, §2 (NEW). 1989, c. 464, §2 (RP). 1989, c. 503, §B87 (AMD). 1999, c. 790, §A24 (RP).

Subchapter 4: HEALTH ADVISORIES

§1696-I. NONCOMMERCIAL FISHING AND PUBLIC HEALTH

The Director of the Bureau of Health shall assess regularly whether any health threats exist for persons consuming freshwater and anadromous fish caught in state waters by noncommercial anglers. The assessment must be based on appropriate technical and scientific data and public health analyses and must include, but is not limited to, the risk of carcinogenic, mutagenic, teratogenic and reproductive effects and infectious disease. In preparing the assessment, the director shall consult with the Commissioner of Marine Resources, the Commissioner of Environmental Protection and the Commissioner of Inland Fisheries and Wildlife. [1993, c. 280, §1 (NEW).]

If, in the professional judgment of the Director of the Bureau of Health, conditions exist in which consumption of fish caught in state waters poses a threat to public health, the director shall prepare an advisory of the public health threat. The advisory must be in a form suitable for posting in places frequented by noncommercial anglers. The director has final authority regarding the content of the advisory, including the exact language used in the advisory. The Commissioner of Inland Fisheries and Wildlife is responsible for printing and posting verbatim copies of the advisory and for incorporating the verbatim health advisory in the abstract of fish and wildlife laws. [2007, c. 539, Pt. E, §5 (AMD).]

SECTION HISTORY
1993, c. 280, §1 (NEW). 2003, c. 414, §B35 (AMD). 2003, c. 414, §D7 (AFF). 2003, c. 614, §9 (AFF). 2007, c. 539, Pt. E, §5 (AMD).

Chapter 273: HYPERTENSION

§1697. WORK-SITE HIGH BLOOD PRESSURE PROGRAMS

The Bureau of Health shall establish work-site high blood pressure programs at work sites that have not previously been providing regular high blood pressure programs to their employees in order to screen all employees, detect and confirm those who have elevated blood pressures, refer those with elevations to physicians for diagnosis and treatment and continue contact through the year with employees to determine their progress toward blood pressure control. The bureau shall promote new work-site high blood pressure programs for workers, allocate funds for program operation and periodically evaluate program effectiveness. Any such screening program shall be voluntary for both employer and employee. [1983, c. 547, §1 (NEW).]

SECTION HISTORY
1983, c. 547, §1 (NEW).

§1698. PROVIDERS OF WORK-SITE HIGH BLOOD PRESSURE PROGRAMS

The Bureau of Health shall actively seek health care providers throughout the State to participate in identifying workers with high blood pressure and helping them control their disease through physician-prescribed treatment regimen. Standards of quality and criteria for awarding service contracts to health care providers shall be based on recommendations developed in partnership with the Maine High Blood Pressure Council, a statewide voluntary health council. The objective of these criteria will be to achieve high quality, cost-effective health programs which comply with state and federal standards. [1983, c. 547, §1 (NEW).]

SECTION HISTORY
1983, c. 547, §1 (NEW).

§1699. COMMUNITY-BASED HEART ATTACK AND STROKE PREVENTION PROGRAMS

1. **Heart attack and stroke prevention programs; establishment.** The Bureau of Health shall establish a program to develop heart attack and stroke prevention programs in communities and regions throughout the State. The community programs shall:

A. Provide public education to schools, community groups and workplaces about cardiovascular risks; [1989, c. 501, Pt. P, §25 (NEW).]

B. Provide blood pressure and cholesterol screening, referral and follow-up to the general public and workforce populations; and [1989, c. 501, Pt. P, §25 (NEW).]

C. Provide smoking cessation programs for community members wishing to quit. [1989, c. 501, Pt. P, §25 (NEW).]

[1989, c. 501, Pt. P, §25 (NEW) .]

2. **Training; funding.** The bureau shall provide training for communities in program development, conduct a statewide public awareness program about cardiovascular risks, allocate matching funds for community program operation and periodically evaluate program effectiveness.

[1989, c. 501, Pt. P, §25 (NEW) .]

3. **Rules.** The bureau shall adopt rules in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, for distribution of funds to communities no later than 90 days after the effective date of this section; awards to communities shall begin no later than 180 days after the effective date of this section. The rules shall include a requirement that funded programs follow accepted quality control standards and be periodically reviewed by organizations with experience in and knowledge of heart attack and stroke prevention.

[1989, c. 501, Pt. P, §25 (NEW) .]

SECTION HISTORY
1989, c. 501, §P25 (NEW).

Chapter 275: ASTHMA AND LUNG DISEASE

§1700. ASTHMA PREVENTION AND CONTROL PROGRAM

1. **Program established.** The Bureau of Health shall establish an asthma prevention and control program to provide leadership for and coordination of asthma prevention and intervention activities. The program may include, but is not limited to, the following:

A. Monitoring of asthma prevalence at the state and community levels; [2001, c. 555, §1 (NEW).]

B. Education and training of health professionals on the current methods of diagnosing and treating asthma; [2001, c. 555, §1 (NEW).]

C. Patient and family education on how to manage the disease; [2001, c. 555, §1 (NEW).]

D. Dissemination of information on programs shown to reduce hospitalization, emergency room visits and absenteeism due to asthma; and [2001, c. 555, §1 (NEW).]

E. Consultation to and support of community-based asthma prevention and control programs. [2001, c. 555, §1 (NEW).]

[2001, c. 555, §1 (NEW) .]

2. **Consultation.** In implementing the program established in subsection 1, the Bureau of Health shall consult with the Medicaid program administered by the department and the Department of Education. In addition, the bureau shall seek advice from other organizations and private entities concerned with the treatment and prevention of asthma.

[2001, c. 555, §1 (NEW) .]

3. **Funding.** The Bureau of Health may accept federal funds and grants for implementing the program established in subsection 1 and may contract for work with outside vendors or individuals.

[2001, c. 555, §1 (NEW) .]

SECTION HISTORY
2001, c. 555, §1 (NEW).

§1700-A. MAINE ASTHMA AND LUNG DISEASE RESEARCH FUND

There is established the Maine Asthma and Lung Disease Research Fund, an interest-bearing account, referred to in this section as "the fund." The fund receives money deposited by the Treasurer of State pursuant to Title 36, section 5290 and any other money contributed voluntarily to the fund. The fund is administered by the Bureau of Health. All money deposited in the fund and the earnings on that money remain in the fund to be used to provide research grants to develop and advance the understanding of lung disease, especially its prevention, causes, treatment and cure. Areas of research eligible for grants under this section include, but are not limited to, asthma, health effects of indoor and outdoor air pollution, emphysema and chronic obstructive pulmonary disease. Money in the fund may also be used for the necessary administrative and personnel costs associated with the management of the fund but may not be deposited in the General Fund or any other fund except as specifically provided by law. [2005, c. 672, §2 (NEW); 2005, c. 672, §§6, 8 (AFF).]

SECTION HISTORY
2005, c. 672, §2 (NEW). 2005, c. 672, §§6,8 (AFF).

Part 4: HOSPITALS AND MEDICAL CARE

Chapter 401: GENERAL PROVISIONS

§1701. PROGRAM OF HEALTH SERVICES

The department, through its Bureau of Health, is authorized to administer a program to extend and improve its services for promoting the general public health.

The department is authorized to:

1. **Apply for federal aid.** Apply for federal aid under the Public Health Service Act (Public Law No. 410, 78th Congress Second Session as heretofore or hereafter amended);

2. **Cooperate with Federal Government.** Cooperate with the Federal Government through the United States Public Health Service in matters of mutual concern pertaining to general public health, including such methods of administration as are found to be necessary for the efficient operation of the plan for the aid; and

[1981, c. 470, Pt. A, §70 (AMD) .]

3. **Reports.** Make such reports in such form and containing such information as the Surgeon General of the United States Public Health Service may require, and comply with such provisions as said Surgeon General may find necessary to assure the correctness and verification of such reports.

The Treasurer of State shall be the appropriate fiscal officer of the State to receive federal grants on account of general public health services as contemplated by Public Health Service Act, as heretofore or hereafter amended, and the State Controller shall authorize expenditures therefrom as approved by the department.

SECTION HISTORY
1981, c. 470, §A70 (AMD).

§1702. HOSPITAL SURVEYS

(REPEALED)

SECTION HISTORY
1965, c. 231, §1 (RP).

§1703. ACCEPTANCE OF FEDERAL AND OTHER FUNDS

The department shall have authority to accept any federal law now in effect or hereafter enacted which makes federal funds available for public health services of all kinds and to meet such federal requirements with respect to the administration of such funds as are required as conditions precedent to receiving federal funds. The department, subject to the approval of the Governor, shall have authority to accept funds from other sources for the same purposes. [1975, c. 771, §215 (AMD).]

SECTION HISTORY
1965, c. 231, §2 (AMD). 1975, c. 771, §215 (AMD).

§1704. ADVISORY HOSPITAL COUNCIL

(REPEALED)

SECTION HISTORY
1965, c. 231, §1 (RP).

§1705. INDIVIDUALS MAY SELECT OWN PHYSICIAN

Nothing in this Title shall be construed to empower or authorize the department or its representative to interfere in any manner with the right of any individual to select the physician or mode of treatment of his choice, providing that sanitary laws, rules and regulations are complied with.

§1706. DISTRIBUTION OF ANTITOXINS IN EMERGENCY

The department, with the approval of the Governor, may, for the purpose of aiding in national defense in case of war or in any state emergency declared by the Governor under Title 37-B, section 742, procure and distribute inside the State and sell or give away, in its discretion, antitoxins, serums, vaccines, viruses and analogous products applicable to the prevention or cure of disease. [2013, c. 462, §2 (AMD).]

SECTION HISTORY

1975, c. 771, §216 (AMD). 2013, c. 462, §2 (AMD).

§1707. RESPONSIBLE RELATIVES; DUTY OF HOSPITALS

(REPEALED)

SECTION HISTORY
1973, c. 163, (RP).

§1708. APPROPRIATIONS FOR AID OF PUBLIC AND PRIVATE HOSPITALS AND NURSING HOMES

1. **Compensation for hospitals.** Such sums of money as may be appropriated by the Legislature in aid of public and private hospitals shall be expended under the direction of the department, and the expense of administration shall be charged to the appropriation of that department for general administration. The department is authorized to compensate hospitals located in the State of New Hampshire within 15 miles from the Maine - New Hampshire state line or hospitals located in the Provinces of Quebec or New Brunswick, Canada, within 5 miles of the international boundary, for cases where the hospital care is for persons resident in the State of Maine and, in the judgment of the commissioner, adequate local hospital facilities are not available. The department may compensate hospitals at such rates as it may establish for hospital care of persons whose resources or the resources of whose responsible relatives are insufficient therefor, except as provided in subsection 2. Bills itemizing the expenses of such hospital care, when approved by the department and audited by the State Controller, shall be paid by the Treasurer of State.

[1975, c. 365, §1 (RPR) .]

2. **Compensation for nursing homes.**

[1991, c. 528, Pt. E, §18 (AFF); 1991, c. 528, Pt. E, §17 (RP); 1991, c. 528, Pt. RRR, (AFF); 1991, c. 591, Pt. E, §18 (AFF); 1991, c. 591, Pt. E, §17 (RP) .]

2-A. **Base-year revisions.**

[1991, c. 528, Pt. E, §20 (AFF); 1991, c. 528, Pt. E, §19 (RP); 1991, c. 528, Pt. RRR, (AFF); 1991, c. 591, Pt. E, §20 (AFF); 1991, c. 591, Pt. E, §19 (RP) .]

3. **Compensation for nursing homes.** A nursing home, as defined under section 1812-A, or any portion of a hospital or institution operated as a nursing home, when the State is liable for payment for care, must be reimbursed at a rate established by the Department of Health and Human Services pursuant to this subsection. The department may not establish a so-called "flat rate." This subsection applies to all funds, including federal funds, paid by any agency of the State to a nursing home for patient care. The department shall establish rules concerning reimbursement that:

A. Take into account the costs of providing care and services in conformity with applicable state and federal laws, rules, regulations and quality and safety standards; [1991, c. 528, Pt. E, §21 (NEW); 1991, c. 528, Pt. E, §22 (AFF); 1991, c. 528, Pt. RRR, (AFF); 1991, c. 591, Pt. E, §21 (NEW); 1991, c. 591, Pt. E, §22 (AFF).]

A-1. [2001, c. 666, Pt. A, §1 (RP); 2001, c. 666, Pt. E, §1 (AFF).]

B. Are reasonable and adequate to meet the costs incurred by efficiently and economically operated facilities; [1995, c. 696, Pt. A, §32 (AMD).]

C. Are consistent with federal requirements relative to limits on reimbursement under the federal Social Security Act, Title XIX; [2001, c. 666, Pt. A, §1 (AMD); 2001, c. 666, Pt. E, §1 (AFF).]

D. Ensure that any calculation of an occupancy percentage or other basis for adjusting the rate of reimbursement for nursing facility services to reduce the amount paid in response to a decrease in the number of residents in the facility or the percentage of the facility's occupied beds excludes all beds that the facility has removed from service for all or part of the relevant fiscal period in accordance with section 333. If the excluded beds are converted to residential care beds or another program for which the department provides reimbursement, nothing in this paragraph precludes the department from including those beds for purposes of any occupancy standard applicable to the residential care or other program pursuant to duly adopted rules of the department; [2013, c. 594, §1 (AMD).]

E. Contain an annual inflation adjustment that:

(1) Recognizes regional variations in labor costs and the rates of increase in labor costs determined pursuant to the principles of reimbursement and establishes at least 4 regions for purposes of annual inflation adjustments; and

(2) Uses the applicable regional inflation factor as established by a national economic research organization selected by the department to adjust costs other than labor costs or fixed costs; and [2013, c. 594, §1 (AMD).]

F. Establish a nursing facility's base year every 2 years and increase the rate of reimbursement beginning July 1, 2014 and every year thereafter. [2013, c. 594, §1 (NEW).]

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2013, c. 594, §1 (AMD) .]

4. Medicaid savings.

[2011, c. 655, Pt. T, §1 (RP) .]

SECTION HISTORY
1975, c. 293, §4 (AMD). 1975, c. 365, §1 (RPR). 1989, c. 567, (AMD). 1989, c. 886, §1 (AMD). 1991, c. 528, §§E17,19,21 (AMD). 1991, c. 528, §§E18,20,22, RRR (AFF). 1991, c. 591, §§E17,19,21 (AMD). 1991, c. 591, §§E18,20,22 (AFF). 1991, c. 622, §M8 (AMD). 1991, c. 622, §M9 (AFF). 1993, c. 410, §YY1 (AMD). 1995, c. 696, §§A32,33 (AMD). RR 2001, c. 2, §A33 (COR). 2001, c. 666, §A1 (AMD). 2001, c. 666, §E1 (AFF). 2003, c. 689, §B6 (REV). 2011, c. 655, Pt. T, §1 (AMD). 2013, c. 594, §1 (AMD).

§1709. STATE-WIDE PLAN; ADVISORY COUNCIL; DUTIES

(REPEALED)

SECTION HISTORY
1965, c. 231, §3 (NEW). 2003, c. 469, §B4 (RP).

§1710. DEFERRED REVENUE PAYMENTS

The Department of Health and Human Services may make a payment to each general hospital in the State which is certified for participation in the Medical Assistance Program under Title 19 of the Social Security Act, not to exceed the average amount paid to that hospital by the department during a 30-day period

in the next preceding fiscal year. Such payment shall constitute a deferred revenue obligation for the hospital. Any unliquidated balance of such obligation shall be repaid to the department upon demand. [1975, c. 293, §4 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY
1973, c. 175, (NEW). 1975, c. 293, §4 (AMD). 2003, c. 689, §B6 (REV).

§1711. PATIENT ACCESS TO HOSPITAL MEDICAL RECORDS

If a patient of an institution licensed as a hospital by the State, after discharge from such institution, makes written request for copies of the patient's medical records, the copies must, if available, be made available to the patient within a reasonable time unless, in the opinion of the hospital, it would be detrimental to the health of the patient to obtain the records. If the hospital is of the opinion that release of the records to the patient would be detrimental to the health of the patient, the hospital shall advise the patient that copies of the records will be made available to the patient's authorized representative upon presentation of a proper authorization signed by the patient. The hospital may exclude from the copies of medical records released any information related to a clinical trial sponsored, authorized or regulated by the federal Food and Drug Administration. [1997, c. 793, Pt. A, §1 (AMD); 1997, c. 793, Pt. A, §10 (AFF).]

If an authorized representative for a patient requests, in writing, that a hospital provide the authorized representative with a copy of the patient's medical records and presents a proper authorization from the patient for the release of the information, copies must be provided to the authorized representative within a reasonable time. [1997, c. 793, Pt. A, §1 (AMD); 1997, c. 793, Pt. A, §10 (AFF).]

A written request or authorization for release of medical records under this section satisfies the requirements of section 1711-C, subsection 3. [1997, c. 793, Pt. A, §1 (NEW); 1997, c. 793, Pt. A, §10 (AFF).]

A patient or, if the patient is a minor who has not consented to health care treatment in accordance with the laws of this State, the minor's parent, legal guardian or guardian ad litem may submit to a hospital health care information that corrects or clarifies the patient's treatment record, which must be retained with the medical record by the hospital. If the hospital adds to the medical record a statement in response to the submitted correction or clarification, the hospital shall provide a copy to the patient or, if the patient is a minor who has not consented to health care treatment in accordance with the laws of this State, the minor's parent, legal guardian or guardian ad litem. [1999, c. 512, Pt. A, §1 (AMD); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

Reasonable costs incurred by the hospital in making and providing paper copies of medical records and additions to medical records may be assessed as charges to the requesting person and the hospital may require payment prior to responding to the request. The charge for paper copies of records may not exceed $5 for the first page and 45¢ for each additional page, up to a maximum of $250 for the entire medical record. [2013, c. 158, §1 (AMD).]

If a medical record exists in a digital or electronic format, the hospital shall provide an electronic copy of the medical record if an electronic copy is requested and it is reasonably possible to provide it. The hospital may assess as charges reasonable actual costs of staff time to create or copy the medical record and the costs of necessary supplies and postage. Actual costs may not include a retrieval fee or the costs of new technology, maintenance of the electronic record system, data access or storage infrastructure. Charges assessed under this paragraph may not exceed $150. [2013, c. 158, §2 (NEW).]

Release of a patient's medical records to a person other than the patient or, if the patient is a minor who has not consented to health care treatment in accordance with the laws of this State, the minor's parent, legal guardian or guardian ad litem is governed by section 1711-C. [1999, c. 512, Pt. A, §2 (AMD); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

SECTION HISTORY

1977, c. 122, (NEW). 1997, c. 793, Pt. A, §1 (AMD). 1997, c. 793, Pt. A, §10 (AFF). 1999, c. 3, §§3, 5 (AFF). 1999, c. 512, Pt. A, §§1, 2 (AMD). 1999, c. 512, Pt. A, §6 (AFF). 1999, c. 790, Pt. A, §§58, 60 (AFF). 2003, c. 418, §1 (AMD). 2013, c. 32, §1 (AMD). 2013, c. 158, §§1, 2 (AMD).

§1711-A. FEES CHARGED FOR RECORDS

Whenever a health care practitioner defined in section 1711-B furnishes in paper form requested copies of a patient's treatment record or a medical report or an addition to a treatment record or medical report to the patient or the patient's authorized representative, the charge for the copies or the report may not exceed the reasonable costs incurred by the health care practitioner in making and providing the copies or the report. The charge for the copies or the report may not exceed $5 for the first page and 45¢ for each additional page, up to a maximum of $250 for the entire treatment record or medical report. [2013, c. 158, §3 (AMD).]

If a treatment record or medical report exists in a digital or electronic format, the health care practitioner shall provide an electronic copy of the treatment record or medical report if an electronic copy is requested and it is reasonably possible to provide it. The health care practitioner may assess as charges reasonable actual costs of staff time to create or copy the treatment record or medical report and the costs of necessary supplies and postage. Actual costs may not include a retrieval fee or the costs of new technology, maintenance of the electronic record system, data access or storage infrastructure. Charges assessed under this paragraph may not exceed $150. [2013, c. 158, §3 (NEW).]

SECTION HISTORY
1989, c. 666, (NEW). 1991, c. 142, §1 (AMD). 1997, c. 793, §A2 (AMD). 1997, c. 793, §A10 (AFF). 1999, c. 3, §§3,5 (AFF). 1999, c. 512, §A6 (AFF). 2003, c. 418, §2 (AMD). 2013, c. 32, §2 (AMD). 2013, c. 158, §3 (AMD).

§1711-B. PATIENT ACCESS TO TREATMENT RECORDS; HEALTH CARE PRACTITIONERS

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

A. "Health care practitioner" has the same meaning as in section 1711-C, subsection 1, paragraph F. [1997, c. 793, Pt. A, §3 (AMD); 1997, c. 793, Pt. A, §10 (AFF).]

B. "Treatment records" means all records relating to a patient's diagnosis, treatment and care, including x rays, performed by a health care practitioner. [1997, c. 793, Pt. A, §3 (AMD); 1997, c. 793, Pt. A, §10 (AFF).]

[1997, c. 793, Pt. A, §3 (AMD); 1997, c. 793, Pt. A, §10 (AFF); 1999, c. 512, Pt. A, §6 (AFF) .]

2. **Access.** Upon written authorization executed in accordance with section 1711-C, subsection 3, a health care practitioner shall release copies of all treatment records of a patient or a narrative containing all relevant information in the treatment records to the patient. The health care practitioner may exclude from the copies of treatment records released any personal notes that are not directly related to the patient's past or future treatment and any information related to a clinical trial sponsored, authorized or regulated by the federal Food and Drug Administration. The copies or narrative must be released to the designated person within a reasonable time.

If the practitioner believes that release of the records to the patient is detrimental to the health of the patient, the practitioner shall advise the patient that copies of the treatment records or a narrative containing all relevant information in the treatment records will be made available to the patient's authorized representative upon presentation of a written authorization signed by the patient. The copies or narrative must be released to the authorized representative within a reasonable time.

Except as provided in subsection 3, release of a patient's treatment records to a person other than the patient is governed by section 1711-C.

[1997, c. 793, Pt. A, §4 (AMD); 1997, c. 793, Pt. A, §10 (AFF) .]

3. **Person receiving the records.** Except as otherwise provided in this section, the copies or narrative specified in subsection 2 must be released to:

A. The person who is the subject of the treatment record, if that person is 18 years of age or older and mentally competent; [1991, c. 142, §2 (NEW).]

B. The parent, guardian ad litem or legal guardian of the person who is the subject of the record if the person is a minor, or the legal guardian if the person who is the subject of the record is mentally incompetent; [1997, c. 793, Pt. A, §5 (AMD); 1997, c. 793, Pt. A, §10 (AFF).]

C. The designee of a durable health care power of attorney executed by the person who is the subject of the record, at such time as the power of attorney is in effect; [2015, c. 370, §1 (AMD).]

D. The agent, guardian or surrogate pursuant to the Uniform Health-care Decisions Act; or [2015, c. 370, §2 (AMD).]

E. The lay caregiver designated pursuant to section 1711-G by the person who is the subject of the record. [2015, c. 370, §3 (NEW).]

[2015, c. 370, §§1-3 (AMD) .]

3-A. **Corrections and clarifications of treatment records.** A patient or, if the patient is a minor who has not consented to health care treatment in accordance with the laws of this State, the minor's parent, legal guardian or guardian ad litem may submit to a health care practitioner health care information that corrects or clarifies the patient's treatment record, which must be retained with the treatment record by the health care practitioner. If the health care practitioner adds to the treatment record a statement in response to the submitted correction or clarification, the health care practitioner shall provide a copy to the patient or, if the patient is a minor who has not consented to health care treatment in accordance with the laws of this State, the minor's parent, legal guardian or guardian ad litem.

[1999, c. 512, Pt. A, §3 (AMD); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF) .]

4. **Minors.** This section does not affect the right of minors to have their treatment records treated confidentially pursuant to the provisions of, chapter 260.

[1995, c. 694, Pt. D, §28 (AMD); 1995, c. 694, Pt. E, §2 (AFF) .]

5. **HIV test.** Release of information regarding the HIV infection status of a patient is governed by Title 5, section 19203-D.

[1999, c. 512, Pt. A, §4 (AMD); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF) .]

6. **Hospital records.** Release of treatment records in a hospital is governed by the provisions of section 1711.

[1993, c. 2, §11 (COR) .]

7. **Retention of records.** This section does not alter the existing law or ethical obligations of a health care practitioner with respect to retaining treatment records.

[1991, c. 142, §2 (NEW) .]

8. **Violation.** A person who willfully violates this section commits a civil violation for which a forfeiture of not more than $25 may be adjudged. Each day that the treatment records or narrative is not released after the reasonable time specified in subsection 2 constitutes a separate violation, up to a maximum forfeiture of $100.

[1991, c. 142, §2 (NEW) .]

SECTION HISTORY
1991, c. 142, §2 (NEW). RR 1993, c. 2, §11 (COR). 1995, c. 694, Pt. D, §28 (AMD). 1995, c. 694, Pt. E, §2 (AFF). 1997, c. 793, Pt. A, §§3-7 (AMD). 1997, c. 793, Pt. A, §10 (AFF). 1997, c. 793, Pt. B, §5 (AMD). 1997, c. 793, Pt. B, §6 (AFF). 1999, c. 3, §§3-5 (AFF). 1999, c. 512, Pt. A, §§3, 4 (AMD). 1999, c. 512, Pt. A, §6 (AFF). 1999, c. 512, Pt. B, §5 (AFF). 1999, c. 790, Pt. A, §§58, 60 (AFF). 2015, c. 370, §§1-3 (AMD).

§1711-C. CONFIDENTIALITY OF HEALTH CARE INFORMATION

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

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

A. "Authorized representative of an individual" or "authorized representative" means an individual's legal guardian; agent pursuant to Title 18-A, section 5-802; agent pursuant to Title 18-A, Article 5, Part 9; or other authorized representative or, after death, that person's personal representative or a person identified in subsection 3-B. For a minor who has not consented to health care treatment in accordance with the provisions of state law, "authorized representative" means the minor's parent, legal guardian or guardian ad litem. [2009, c. 292, §3 (AMD); 2009, c. 292, §6 (AFF).]

A-1. "Authorization to disclose" means authorization to disclose health care information in accordance with subsection 3, 3-A or 3-B. [1999, c. 512, Pt. A, §5 (NEW); 1999, c. 512, Pt. A, §7 (AFF).]

B. "Disclosure" means the release, transfer of or provision of access to health care information in any manner obtained as a result of a professional health care relationship between the individual and the health care practitioner or facility to a person or entity other than the individual. [1999, c. 512, Pt. A, §5 (AMD); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

C. "Health care" means preventative, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, treatment, procedures or counseling, including appropriate assistance with disease or symptom management and maintenance, that affects an individual's physical, mental or behavioral condition, including individual cells or their components or genetic information, or the structure or function of the human body or any part of the human body. Health care includes prescribing, dispensing or furnishing to an individual drugs, biologicals, medical devices or health care equipment and supplies;

providing hospice services to an individual; and the banking of blood, sperm, organs or any other tissue. [1999, c. 512, Pt. A, §5 (AMD); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

D. "Health care facility" or "facility" means a facility, institution or entity licensed pursuant to this Title that offers health care to persons in this State, including a home health care provider, hospice program and a pharmacy licensed pursuant to Title 32. For the purposes of this section, "health care facility" does not include a state mental health institute, the Elizabeth Levinson Center, the Aroostook Residential Center or Freeport Towne Square. [1997, c. 793, Pt. A, §8 (NEW); 1997, c. 793, Pt. A, §10 (AFF).]

E. "Health care information" means information that directly identifies the individual and that relates to an individual's physical, mental or behavioral condition, personal or family medical history or medical treatment or the health care provided to that individual. "Health care information" does not include information that protects the anonymity of the individual by means of encryption or encoding of individual identifiers or information pertaining to or derived from federally sponsored, authorized or regulated research governed by 21 Code of Federal Regulations, Parts 50 and 56 and 45 Code of Federal Regulations, Part 46, to the extent that such information is used in a manner that protects the identification of individuals. The Board of Directors of the Maine Health Data Organization shall adopt rules to define health care information that directly identifies an individual. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

"Health care information" does not include information that is created or received by a member of the clergy or other person using spiritual means alone for healing as provided in Title 32, sections 2103 and 3270. [1999, c. 512, Pt. A, §5 (AMD); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

F. "Health care practitioner" means a person licensed by this State to provide or otherwise lawfully providing health care or a partnership or corporation made up of those persons or an officer, employee, agent or contractor of that person acting in the course and scope of employment, agency or contract related to or supportive of the provision of health care to individuals. [1999, c. 512, Pt. A, §5 (AMD); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

G. "Individual" means a natural person who is the subject of the health care information under consideration and, in the context of disclosure of health care information, includes the individual's authorized representative. [1997, c. 793, Pt. A, §8 (NEW); 1997, c. 793, Pt. A, §10 (AFF).]

H. "Third party" or "3rd party" means a person other than the individual to whom the health care information relates. [1997, c. 793, Pt. A, §8 (NEW); 1997, c. 793, Pt. A, §10 (AFF).]

[2009, c. 292, §3 (AMD); 2009, c. 292, §6 (AFF) .]

2. Confidentiality of health information; disclosure. An individual's health care information is confidential and may not be disclosed other than to the individual by the health care practitioner or facility except as provided in subsection 3, 3-A, 3-B, 6 or 11. Nothing in this section prohibits a health care practitioner or health care facility from adhering to applicable ethical or professional standards provided that these standards do not decrease the protection of confidentiality granted by this section.

[1999, c. 512, Pt. A, §5 (AMD); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF) .]

3. **Written authorization to disclose.** A health care practitioner or facility may disclose health care information pursuant to a written authorization signed by an individual for the specific purpose stated in the authorization. A written authorization to disclose health care information must be retained with the individual's health care information. A written authorization to disclose is valid whether it is in an original, facsimile or electronic form. A written authorization to disclose must contain the following elements:

A. The name and signature of the individual and the date of signature. If the authorization is in electronic form, a unique identifier of the individual and the date the individual authenticated the electronic authorization must be stated in place of the individual's signature and date of signature; [1997, c. 793, Pt. A, §8 (NEW); 1997, c. 793, Pt. A, §10 (AFF).]

B. The types of persons authorized to disclose health care information and the nature of the health care information to be disclosed; [1997, c. 793, Pt. A, §8 (NEW); 1997, c. 793, Pt. A, §10 (AFF).]

C. The identity or description of the 3rd party to whom the information is to be disclosed; [1997, c. 793, Pt. A, §8 (NEW); 1997, c. 793, Pt. A, §10 (AFF).]

D. The specific purpose or purposes of the disclosure and whether any subsequent disclosures may be made pursuant to the same authorization. An authorization to disclose health care information related to substance abuse treatment or care subject to the requirements of 42 United States Code, Section 290dd-2 (Supplement 1998) is governed by the provisions of that law; [1999, c. 512, Pt. A, §5 (AMD); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

E. The duration of the authorization; [1997, c. 793, Pt. A, §8 (NEW); 1997, c. 793, Pt. A, §10 (AFF).]

F. A statement that the individual may refuse authorization to disclose all or some health care information but that refusal may result in improper diagnosis or treatment, denial of coverage or a claim for health benefits or other insurance or other adverse consequences; [1997, c. 793, Pt. A, §8 (NEW); 1997, c. 793, Pt. A, §10 (AFF).]

G. A statement that the authorization may be revoked at any time by the individual by executing a written revocation, subject to the right of any person who acted in reliance on the authorization prior to receiving notice of revocation, instructions on how to revoke an authorization and a statement that revocation may be the basis for denial of health benefits or other insurance coverage or benefits; and [1997, c. 793, Pt. A, §8 (NEW); 1997, c. 793, Pt. A, §10 (AFF).]

H. A statement that the individual is entitled to a copy of the authorization form. [1997, c. 793, Pt. A, §8 (NEW); 1997, c. 793, Pt. A, §10 (AFF).]

[1999, c. 512, Pt. A, §5 (AMD); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF) .]

3-A. **Oral authorization to disclose.** When it is not practical to obtain written authorization under subsection 3 from an individual or person acting pursuant to subsection 3-B or when a person chooses to give oral authorization to disclose, a health care practitioner or facility may disclose health care information pursuant to oral authorization. A health care practitioner or facility shall record with the individual's health care information receipt of oral authorization to disclose, including the name of the authorizing person, the date, the information and purposes for which disclosure is authorized and the identity or description of the 3rd party to whom the information is to be disclosed.

[1999, c. 512, Pt. A, §5 (NEW); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF) .]

3-B. **Authorization to disclose provided by a 3rd party.** When an individual or an authorized representative is unable to provide authorization to disclose under subsection 3 or 3-A, a health care practitioner or facility may disclose health care information pursuant to authorization to disclose that

meets the requirements of subsection 3 or 3-A given by a 3rd party listed in this subsection. A health care practitioner or facility may determine not to obtain authorization from a person listed in this subsection when the practitioner or facility determines it would not be in the best interest of the individual to do so. In making this decision, the health care practitioner or facility shall respect the safety of the individual and shall consider any indicators, suspicion or substantiation of abuse. Persons who may authorize disclosure under this subsection include:

A. The spouse of the individual; [1999, c. 512, Pt. A, §5 (NEW); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

B. A parent of the individual; [1999, c. 512, Pt. A, §5 (NEW); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

C. An adult who is a child, grandchild or sibling of the individual; [1999, c. 512, Pt. A, §5 (NEW); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

D. An adult who is an aunt, uncle, niece or nephew of the individual, related by blood or adoption; [1999, c. 512, Pt. A, §5 (NEW); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

E. An adult related to the individual, by blood or adoption, who is familiar with the individual's personal values; and [1999, c. 512, Pt. A, §5 (NEW); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

F. An adult who has exhibited special concern for the individual and who is familiar with the individual's personal values. [1999, c. 512, Pt. A, §5 (NEW); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

[1999, c. 512, Pt. A, §5 (NEW); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF) .]

4. **Duration of authorization to disclose.** An authorization to disclose may not extend longer than 30 months, except that the duration of an authorization for the purposes of insurance coverage under Title 24, 24-A or 39-A is governed by the provisions of Title 24, 24-A or 39-A, respectively.

[1999, c. 512, Pt. A, §5 (AMD); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF) .]

5. **Revocation of authorization to disclose.** A person who may authorize disclosure may revoke authorization to disclose at any time, subject to the rights of any person who acted in reliance on the authorization prior to receiving notice of revocation. A written revocation of authorization must be signed and dated. If the revocation is in electronic form, a unique identifier of the individual and the date the individual authenticated the electronic authorization must be stated in place of the individual's signature and date of signature. A health care practitioner or facility shall record receipt of oral revocation of authorization, including the name of the person revoking authorization and the date. A revocation of authorization must be retained with the authorization and the individual's health care information.

[1999, c. 512, Pt. A, §5 (AMD); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF) .]

6. **Disclosure without authorization to disclose.** A health care practitioner or facility may disclose, or when required by law must disclose, health care information without authorization to disclose under the circumstances stated in this subsection or as provided in subsection 11. Disclosure may be made without authorization as follows:

A. To another health care practitioner or facility for diagnosis, treatment or care of individuals or to complete the responsibilities of a health care practitioner or facility that provided diagnosis, treatment or care of individuals, as provided in this paragraph.

(1) For a disclosure within the office, practice or organizational affiliate of the health care practitioner or facility, no authorization is required.

(2) For a disclosure outside of the office, practice or organizational affiliate of the health care practitioner or facility, authorization is not required, except that in nonemergency circumstances authorization is required for health care information derived from mental health services provided by:

(a) A clinical nurse specialist licensed under the provisions of Title 32, chapter 31;

(b) A psychologist licensed under the provisions of Title 32, chapter 56;

(c) A social worker licensed under the provisions of Title 32, chapter 83;

(d) A counseling professional licensed under the provisions of Title 32, chapter 119; or

(e) A physician specializing in psychiatry licensed under the provisions of Title 32, chapter 36 or 48.

This subparagraph does not prohibit the disclosure of health care information between a licensed pharmacist and a health care practitioner or facility providing mental health services for the purpose of dispensing medication to an individual.

This subparagraph does not prohibit the disclosure without authorization of health care information covered under this section to a state-designated statewide health information exchange that satisfies the requirement in subsection 18, paragraph C of providing a general opt-out provision to an individual at all times and that provides and maintains an individual protection mechanism by which an individual may choose to opt in to allow the state-designated statewide health information exchange to disclose that individual's health care information covered under Title 34-B, section 1207.

This subparagraph does not prohibit the disclosure without authorization of health care information covered under this paragraph to a health care practitioner or health care facility, or to a payor or person engaged in payment for health care, for purposes of care management or coordination of care. Disclosure of psychotherapy notes is governed by 45 Code of Federal Regulations, Section 164.508(a)(2). A person who has made a disclosure under this subparagraph shall make a reasonable effort to notify the individual or the authorized representative of the individual of the disclosure; [2013, c. 326, §1 (AMD).]

B. To an agent, employee, independent contractor or successor in interest of the health care practitioner or facility including a state-designated statewide health information exchange that makes health care information available electronically to health care practitioners and facilities or to a member of a quality assurance, utilization review or peer review team to the extent necessary to carry out the usual and customary activities relating to the delivery of health care and for the practitioner's or facility's lawful purposes in diagnosing, treating or caring for individuals, including billing and collection, risk management, quality assurance, utilization review and peer review. Disclosure for a purpose listed in this paragraph is not a disclosure for the purpose of marketing or sales; [2011, c. 347, §7 (AMD).]

C. To a family or household member unless expressly prohibited by the individual or a person acting pursuant to subsection 3-B; [1999, c. 512, Pt. A, §5 (AMD); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

D. To appropriate persons when a health care practitioner or facility that is providing or has provided diagnosis, treatment or care to the individual in good faith believes that disclosure is made to avert a serious threat to health or safety and meets the conditions, as applicable, described in 45 Code of

Federal Regulations, Section 164.512(j) (2012). A disclosure pursuant to this paragraph must protect the confidentiality of the health care information consistent with sound professional judgment; [2013, c. 289, §1 (AMD).]

E. To federal, state or local governmental entities in order to protect the public health and welfare when reporting is required or authorized by law, to report a suspected crime against the health care practitioner or facility or to report information that the health care facility's officials or health care practitioner in good faith believes constitutes evidence of criminal conduct that occurred on the premises of the health care facility or health care practitioner; [2011, c. 572, §1 (AMD).]

E-1. To federal, state or local governmental entities if the health care practitioner or facility that is providing diagnosis, treatment or care to an individual has determined in the exercise of sound professional judgment that the following requirements, as applicable, are satisfied:

(1) With regard to a disclosure for public health activities, for law enforcement purposes or that pertains to victims of abuse, neglect or domestic violence, the provisions of 45 Code of Federal Regulations, Section 164.512(b), (c) or (f) (2012) must be met; and

(2) With regard to a disclosure that pertains to a victim of domestic violence or a victim of sexual assault, the provisions of 45 Code of Federal Regulations, Section 164.512(c)(1)(iii)(A) (2012) and Section 164.512(c)(1)(iii)(B) (2012) must be met. [2013, c. 289, §2 (NEW).]

E-2. To federal, state or local governmental entities if the health care practitioner or facility that is providing diagnosis, treatment or care to an individual has determined in the exercise of sound professional judgment that the disclosure is required by section 1727; [2015, c. 1, §17 (COR).]

F. [1999, c. 512, Pt. A, §7 (AFF); 1999, c. 512, Pt. A, §5 (RP); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

F-1. As directed by order of a court or as authorized or required by statute; [1999, c. 512, Pt. A, §5 (NEW); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

F-2. To a governmental entity pursuant to a lawful subpoena requesting health care information to which the governmental entity is entitled according to statute or rules of court; [1999, c. 512, Pt. A, §5 (NEW); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

F-3. (TEXT EFFECTIVE ON CONTINGENCY: See PL 2013, c. 528, §12) To the Maine Health Data Organization as required by and for use in accordance with chapter 1683. Health care information, including protected health information, as defined in 45 Code of Federal Regulations, Section 160.103 (2013), submitted to the Maine Health Data Organization must be protected by means of encryption; [2013, c. 528, §1 (NEW); 2013, c. 528, §12 (AFF).]

G. To a person when necessary to conduct scientific research approved by an institutional review board or by the board of a nonprofit health research organization or when necessary for a clinical trial sponsored, authorized or regulated by the federal Food and Drug Administration. A person conducting research or a clinical trial may not identify any individual patient in any report arising from the research or clinical trial. For the purposes of this paragraph, "institutional review board" means any board, committee or other group formally designated by a health care facility and authorized under federal law to review, approve or conduct periodic review of research programs. Health care information disclosed pursuant to this paragraph that identifies an individual must be returned to the health care practitioner or facility from which it was obtained or must be destroyed when it is no longer required for the research or clinical trial. Disclosure for a purpose listed in this paragraph is not a disclosure for the purpose of marketing or sales; [1999, c. 512, Pt. A, §5 (AMD); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

H. To a person engaged in the assessment, evaluation or investigation of the provision of or payment for health care or the practices of a health care practitioner or facility or to an agent, employee or contractor of such a person, pursuant to statutory or professional standards or requirements. Disclosure for a purpose listed in this paragraph is not a disclosure for the purpose of marketing or sales; [1997, c. 793, Pt. A, §8 (NEW); 1997, c. 793, Pt. A, §10 (AFF).]

I. To a person engaged in the regulation, accreditation, licensure or certification of a health care practitioner or facility or to an agent, employee or contractor of such a person, pursuant to standards or requirements for regulation, accreditation, licensure or certification; [1997, c. 793, Pt. A, §8 (NEW); 1997, c. 793, Pt. A, §10 (AFF).]

J. To a person engaged in the review of the provision of health care by a health care practitioner or facility or payment for such health care under Title 24, 24-A or 39-A or under a public program for the payment of health care or professional liability insurance for a health care practitioner or facility or to an agent, employee or contractor of such a person; [1999, c. 512, Pt. A, §5 (AMD); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

K. To attorneys for the health care practitioner or facility that is disclosing the health care information or to a person as required in the context of legal proceedings or in disclosure to a court or governmental entity, as determined by the practitioner or facility to be required for the practitioner's or facility's own legal representation; [1999, c. 512, Pt. A, §5 (AMD); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

L. To a person outside the office of the health care practitioner or facility engaged in payment activities, including but not limited to submission to payors for the purposes of billing, payment, claims management, medical data processing, determination of coverage or adjudication of health benefit or subrogation claims, review of health care services with respect to coverage or justification of charges or other administrative services. Payment activities also include but are not limited to:

(1) Activities necessary to determine responsibility for coverage;

(2) Activities undertaken to obtain payment for health care provided to an individual; and

(3) Quality assessment and utilization review activities, including precertification and preauthorization of services and operations or services audits relating to diagnosis, treatment or care rendered to individuals by the health care practitioner or facility and covered by a health plan or other payor; [1999, c. 512, Pt. A, §5 (NEW); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

M. To schools, educational institutions, youth camps licensed under section 2495, correctional facilities, health care practitioners and facilities, providers of emergency services or a branch of federal or state military forces, information regarding immunization of an individual; [2009, c. 211, Pt. B, §17 (AMD).]

N. To a person when disclosure is needed to set or confirm the date and time of an appointment or test or to make arrangements for the individual to receive those services; [1999, c. 512, Pt. A, §5 (NEW); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

O. To a person when disclosure is needed to obtain or convey information about prescription medication or supplies or to provide medication or supplies under a prescription; [1999, c. 512, Pt. A, §5 (NEW); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

P. To a person representing emergency services, health care and relief agencies, corrections facilities or a branch of federal or state military forces, of brief confirmation of general health status; [1999, c. 512, Pt. A, §5 (NEW); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

Q. To a member of the clergy, of information about the presence of an individual in a health care facility, including the person's room number, place of residence and religious affiliation unless expressly prohibited by the individual or a person acting pursuant to subsection 3-B; [1999, c. 512, Pt. A, §5 (NEW); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

R. To a member of the media who asks a health care facility about an individual by name, of brief confirmation of general health status unless expressly prohibited by the individual or a person acting pursuant to subsection 3-B; [2015, c. 370, §4 (AMD).]

S. To a member of the public who asks a health care facility about an individual by name, of the room number of the individual and brief confirmation of general health status unless expressly prohibited by the individual or a person acting pursuant to subsection 3-B; and [2015, c. 370, §4 (AMD).]

T. To a lay caregiver designated by an individual pursuant to section 1711-G. [2015, c. 370, §5 (NEW).]

[2015, c. 1, §17 (COR); 2015, c. 370, §§4, 5 (AMD) .]

7. **Confidentiality policies.** A health care practitioner, facility or state-designated statewide health information exchange shall develop and implement policies, standards and procedures to protect the confidentiality, security and integrity of health care information to ensure that information is not negligently, inappropriately or unlawfully disclosed. The policies of health care facilities must provide that an individual being admitted for inpatient care be given notice of the right of the individual to control the disclosure of health care information. The policies must provide that routine admission forms include clear written notice of the individual's ability to direct that that individual's name be removed from the directory listing of persons cared for at the facility and notice that removal may result in the inability of the facility to direct visitors and telephone calls to the individual.

[2011, c. 373, §1 (AMD) .]

8. **Prohibited disclosure.** A health care practitioner, facility or state-designated statewide health information exchange may not disclose health care information for the purpose of marketing or sales without written or oral authorization for the disclosure.

[2011, c. 373, §2 (AMD) .]

9. **Disclosures of corrections or clarifications to health care information.** A health care practitioner or facility shall provide to a 3rd party a copy of an addition submitted by an individual to the individual's health care information if:

A. The health care practitioner or facility provided a copy of the original health care record to the 3rd party on or after February 1, 2000; [1999, c. 512, Pt. A, §5 (AMD); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

B. The correction or clarification was submitted by the individual pursuant to section 1711 or 1711-B and relates to diagnosis, treatment or care; [1999, c. 512, Pt. A, §5 (AMD); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

C. The individual requests that a copy be sent to the 3rd party and provides an authorization that meets the requirements of subsection 3, 3-A or 3-B; and [1999, c. 512, Pt. A, §5 (AMD); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

D. If requested by the health care practitioner or facility, the individual pays to the health care practitioner or facility all reasonable costs requested by that practitioner or facility. [1997, c. 793, Pt. A, §8 (NEW); 1997, c. 793, Pt. A, §10 (AFF).]

[1999, c. 512, Pt. A, §5 (AMD); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF) .]

10. **Requirements for disclosures.** Except as otherwise provided by law, disclosures of health care information pursuant to this section are subject to the professional judgment of the health care practitioner and to the following requirements.

A. A health care practitioner or facility that discloses health care information pursuant to subsection 3, 3-A or 3-B may not disclose information in excess of the information requested in the authorization. [1999, c. 512, Pt. A, §5 (AMD); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

B. A health care practitioner or facility that discloses health care information pursuant to subsections 3, 3-A, 3-B or 6 may not disclose information in excess of the information reasonably required for the purpose for which it is disclosed. [1999, c. 512, Pt. A, §5 (AMD); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

C. If a health care practitioner or facility believes that release of health care information to the individual would be detrimental to the health of the individual, the health care practitioner or facility shall advise the individual and make copies of the records available to the individual's authorized representative upon receipt of a written authorization. [1997, c. 793, Pt. A, §8 (NEW); 1997, c. 793, Pt. A, §10 (AFF).]

D. If a health care practitioner or facility discloses partial or incomplete health care information, as compared to the request or directive to disclose under subsection 3, 3-A, 3-B or 6, the disclosure must expressly indicate that the information disclosed is partial or incomplete. [1999, c. 512, Pt. A, §5 (AMD); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

[1999, c. 512, Pt. A, §5 (AMD); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF) .]

11. **Health care information subject to other laws, rules and regulations.** Health care information that is subject to the provisions of 42 United States Code, Section 290dd-2 (Supplement 1998); chapters 710-B and 711; Title 5, section 200-E; Title 5, chapter 501; Title 24 or 24-A; Title 34-B, section 1207; Title 39-A; or other provisions of state or federal law, rule or regulation is governed solely by those provisions.

[2009, c. 387, §2 (AMD) .]

12. **Minors.** If a minor has consented to health care in accordance with the laws of this State, authorization to disclose health care information pursuant to this section must be given by the minor unless otherwise provided by law.

[1997, c. 793, Pt. A, §8 (NEW); 1997, c. 793, Pt. A, §10 (AFF) .]

13. **Enforcement.** This section may be enforced within 2 years of the date a disclosure in violation of this section was or should reasonably have been discovered.

A. When the Attorney General has reason to believe that a person has intentionally violated a provision of this section, the Attorney General may bring an action to enjoin unlawful disclosure of health care information. [1997, c. 793, Pt. A, §8 (NEW); 1997, c. 793, Pt. A, §10 (AFF).]

B. An individual who is aggrieved by conduct in violation of this section may bring a civil action against a person who has intentionally unlawfully disclosed health care information in the Superior Court in the county in which the individual resides or the disclosure occurred. The action may seek to enjoin unlawful disclosure and may seek costs and a forfeiture or penalty under paragraph C. An applicant for injunctive relief under this paragraph may not be required to give security as a condition of the issuance of the injunction. [1999, c. 512, Pt. A, §5 (AMD); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

C. A person who intentionally violates this section is subject to a civil penalty not to exceed $5,000, payable to the State, plus costs. If a court finds that intentional violations of this section have occurred after due notice of the violating conduct with sufficient frequency to constitute a general business practice, the person is subject to a civil penalty not to exceed $10,000 for health care practitioners and $50,000 for health care facilities, payable to the State. A civil penalty under this subsection is recoverable in a civil action. [1999, c. 512, Pt. A, §5 (AMD); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

D. Nothing in this section may be construed to prohibit a person aggrieved by conduct in violation of this section from pursuing all available common law remedies, including but not limited to an action based on negligence. [1999, c. 512, Pt. A, §5 (NEW); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF).]

[1999, c. 512, Pt. A, §5 (AMD); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF) .]

14. **Waiver prohibited.** Any agreement to waive the provisions of this section is against public policy and void.

[1997, c. 793, Pt. A, §8 (NEW); 1997, c. 793, Pt. A, §10 (AFF) .]

15. **Immunity.** A cause of action in the nature of defamation, invasion of privacy or negligence does not arise against any person for disclosing health care information in accordance with this section. This section provides no immunity for disclosing information with malice or willful intent to injure any person.

[1999, c. 512, Pt. A, §5 (AMD); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF) .]

16. **Application.** This section applies to all requests, directives and authorizations to disclose health care information executed on or after February 1, 2000. An authorization to disclose health care information executed prior to February 1, 2000 that does not meet the standards of this section is deemed to comply with the requirements of this section until the next health care encounter between the individual and the health care practitioner or facility.

[1999, c. 512, Pt. A, §5 (AMD); 1999, c. 512, Pt. A, §7 (AFF); 1999, c. 790, Pt. A, §§58, 60 (AFF) .]

17. **Repeal.**

[2001, c. 346, §1 (RP) .]

18. **Participation in a state-designated statewide health information exchange.** The following provisions apply to participation in a state-designated statewide health information exchange.

A. A health care practitioner may not deny a patient health care treatment and a health insurer may not deny a patient a health insurance benefit based solely on the provider's or patient's decision not to participate in a state-designated statewide health information exchange. Except when otherwise

required by federal law, a payor of health care benefits may not require participation in a state-designated statewide health information exchange as a condition of participating in the payor's provider network. [2011, c. 691, Pt. A, §20 (RPR).]

B. Recovery for professional negligence is not allowed against any health care practitioner or health care facility on the grounds of a health care practitioner's or a health care facility's nonparticipation in a state-designated statewide health information exchange arising out of or in connection with the provision of or failure to provide health care services. In any civil action for professional negligence or in any proceeding related to such a civil action or in any arbitration, proof of a health care practitioner's, a health care facility's or a patient's participation or nonparticipation in a state-designated statewide health information exchange is inadmissible as evidence of liability or nonliability arising out of or in connection with the provision of or failure to provide health care services. This paragraph does not prohibit recovery or the admission of evidence of reliance on information in a state-designated statewide electronic health information exchange when there was participation by both the patient and the patient's health care practitioner. [2011, c. 691, Pt. A, §20 (RPR).]

C. A state-designated statewide health information exchange to which health care information is disclosed under this section shall provide an individual protection mechanism by which an individual may opt out from participation to prohibit the state-designated statewide health information exchange from disclosing the individual's health care information to a health care practitioner or health care facility. [2011, c. 691, Pt. A, §20 (RPR).]

D. At point of initial contact, a health care practitioner, health care facility or other entity participating in a state-designated statewide health information exchange shall provide to each patient, on a separate form, at minimum:

(1) Information about the state-designated statewide health information exchange, including a description of benefits and risks of participation in the state-designated statewide health information exchange;

(2) A description of how and where to obtain more information about or contact the state-designated statewide health information exchange;

(3) An opportunity for the patient to decline participation in the state-designated statewide health information exchange; and

(4) A declaration that a health care practitioner, health care facility or other entity may not deny a patient health care treatment based solely on the provider's or patient's decision not to participate in a state-designated statewide health information exchange.

The state-designated statewide health information exchange shall develop the form for use under this paragraph, with input from consumers and providers. The form must be approved by the office of the state coordinator for health information technology within the Governor's office of health policy and finance. [2011, c. 691, Pt. A, §20 (RPR).]

E. A health care practitioner, health care facility or other entity participating in a state-designated statewide health information exchange shall communicate to the exchange the decision of each patient who has declined participation and shall do so within a reasonable time frame, but not more than 2 business days following the receipt of a signed form, as described in paragraph D, from the patient, or shall establish a mechanism by which the patient may decline participation in the state-designated statewide health information exchange at no cost to the patient. [2011, c. 691, Pt. A, §20 (RPR).]

F. A state-designated statewide health information exchange shall process the request of a patient who has decided not to participate in the state-designated statewide health information exchange within 2 business days of receiving the patient's decision to decline, unless additional time is needed to verify the identity of the patient. A signed authorization from the patient is required before a patient is newly entered or reentered into the system if the patient chooses to begin participation at a later date.

Except as otherwise required by applicable law, regulation or rule or state or federal contract, or when the state-designated statewide health information exchange is acting as the agent of a health care practitioner, health care facility or other entity, the state-designated statewide health information exchange shall remove health information of individuals who have declined participation in the exchange. In no event may health information retained in the state-designated statewide health information exchange as set forth in this paragraph be made available to health care practitioners, health care facilities or other entities except as otherwise required by applicable law, regulation or rule or state or federal contract, or when the health care practitioner, health care facility or other entity is the originator of the information. [2011, c. 691, Pt. A, §20 (RPR).]

G. A state-designated statewide health information exchange shall establish a secure website accessible to patients. This website must:

(1) Permit a patient to request a report of who has accessed that patient's records and when the access occurred. This report must be delivered to the patient within 2 business days upon verification of the patient's identity by the state-designated statewide health information exchange;

(2) Provide a mechanism for a patient to decline participation in the state-designated statewide health information exchange; and

(3) Provide a mechanism for the patient to consent to participation in the state-designated statewide health information exchange if the patient had previously declined participation. [2011, c. 691, Pt. A, §20 (RPR).]

H. A state-designated statewide health information exchange shall establish for patients an alternate procedure to that provided for in paragraph F that does not require Internet access. A health care practitioner, health care facility or other entity participating in the state-designated statewide health information exchange shall provide information about this alternate procedure to all patients. The information must be included on the form identified in paragraph D. [2011, c. 691, Pt. A, §20 (RPR).]

I. A state-designated statewide health information exchange shall maintain records regarding all disclosures of health care information by and through the state-designated statewide health information exchange, including the requesting party and the dates and times of the requests and disclosures. [2011, c. 691, Pt. A, §20 (RPR).]

J. A state-designated statewide health information exchange may not charge a patient or an authorized representative of a patient any fee for access or communication as provided in this subsection. [2011, c. 691, Pt. A, §20 (RPR).]

K. Notwithstanding any provision of this subsection to the contrary, a health care practitioner, health care facility or other entity shall provide the form and communication required by paragraphs D and F to all existing patients following the effective date of this subsection. [2011, c. 691, Pt. A, §20 (RPR).]

L. A state-designated statewide health information exchange shall meet or exceed all applicable federal laws and regulations pertaining to privacy, security and breach notification regarding personally identifiable protected health information, as defined in 45 Code of Federal Regulations, Part 160. If a breach occurs, the state-designated statewide health information exchange shall arrange with its participants for notification of each individual whose protected health information has been, or is reasonably believed by the exchange to have been, breached. For purposes of this paragraph, "breach" has the same meaning as in 45 Code of Federal Regulations, Part 164, as amended. [2011, c. 691, Pt. A, §20 (RPR).]

M. The state-designated statewide health information exchange shall develop a quality management plan, including auditing mechanisms, in consultation with the office of the state coordinator for health information technology within the department, who shall review the plan and results. [2011, c. 691, Pt. A, §20 (RPR).]

[2011, c. 691, Pt. A, §20 (RPR) .]

20. **Exemption from freedom of access laws.** Except as provided in this section, the names and other identifying information of individuals in a state-designated statewide health information exchange are confidential and are exempt from the provisions of Title 1, chapter 13.

[2011, c. 373, §4 (NEW) .]

SECTION HISTORY
RR 1997, c. 2, §44 (COR). 1997, c. 793, §A8 (NEW). 1997, c. 793, §A10 (AFF). 1999, c. 3, §§1,2 (AMD). 1999, c. 3, §§3,5 (AFF). 1999, c. 512, §A5 (AMD). 1999, c. 512, §A6, 7 (AFF). 1999, c. 790, §§A58,60 (AFF). RR 2001, c. 1, §26 (COR). 2001, c. 346, §1 (AMD). 2009, c. 211, Pt. B, §17 (AMD). 2009, c. 292, §3 (AMD). 2009, c. 292, §6 (AFF). 2009, c. 387, §§1, 2 (AMD). 2011, c. 347, §§6-8 (AMD). 2011, c. 373, §§1-4 (AMD). 2011, c. 572, §1 (AMD). 2011, c. 691, Pt. A, §20 (AMD). 2013, c. 289, §§1, 2 (AMD). 2013, c. 326, §1 (AMD). 2013, c. 528, §1 (AMD). 2013, c. 528, §12 (AFF). RR 2015, c. 1, §17 (COR). 2015, c. 218, §1 (AMD). 2015, c. 370, §§4, 5 (AMD).

§1711-D. DESIGNATION OF VISITORS IN HOSPITAL SETTINGS

1. **Designation of visitors.** A patient in a hospital licensed pursuant to chapter 405 may designate persons to be considered as immediate family members for the purpose of granting visitation rights. The following provisions apply to the designation of visitors under this section.

A. The patient must be 18 years of age or older or a minor who is authorized by law to consent to health care. [2001, c. 378, §1 (NEW).]

B. The patient must be a patient in a critical care unit that restricts visitors to immediate family members, or emergency room that restricts visitors to immediate family members. [2001, c. 378, §1 (NEW).]

C. The patient may designate visitors under this section by communicating the designation to a health care provider at the hospital orally or in writing. The patient may designate visitors, change the designation or revoke the designation at any time. [2001, c. 378, §1 (NEW).]

D. A hospital shall provide to patients in the hospital a process by which to designate visitors under this section and shall note in the patient's medical record the names of designated visitors, the date of the designation and any changes in the designation. [2001, c. 378, §1 (NEW).]

E. Except as provided in subsection 2, a hospital may not deny visitation to the patient by a designated visitor during hospital visiting hours. [2001, c. 378, §1 (NEW).]

[2001, c. 378, §1 (NEW) .]

2. **Exceptions.** A hospital may deny visitation with a patient to any visitor designated under this section if:

A. The hospital denies all visitors; [2001, c. 378, §1 (NEW).]

B. The hospital determines that the presence of the visitor might endanger the health or safety of the patient or interfere with the primary operations of the hospital; or [2001, c. 378, §1 (NEW).]

C. The patient has communicated orally or in writing the choice not to visit with the visitor. [2001, c. 378, §1 (NEW).]

[2001, c. 378, §1 (NEW) .]

3. **Rulemaking.** By March 1, 2002, the department shall adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[2001, c. 378, §1 (NEW) .]

SECTION HISTORY
2001, c. 378, §1 (NEW).

§1711-E. CONFIDENTIALITY OF PRESCRIPTION DRUG INFORMATION

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

A. "Carrier" has the same meaning as in Title 24-A, section 4301-A, subsection 3. [2005, c. 589, §1 (NEW).]

A-1. "Administrator" has the same meaning as in Title 24-A, section 1901, subsection 1. [2007, c. 460, §1 (NEW).]

A-2. "Detailing" means one-to-one contact with a prescriber or employees or agents of a prescriber for the purpose of increasing or reinforcing the prescribing of a certain drug by the prescriber. [2007, c. 460, §1 (NEW).]

B. "Electronic transmission intermediary" means an entity that provides the infrastructure that connects the computer systems or other electronic devices used by and between health care practitioners, prescribers, pharmacies, health care facilities, pharmacy benefit managers, carriers and administrators and agents and contractors of those persons and entities in order to facilitate the secure transmission of an individual's prescription drug order, refill, authorization request, claim, payment or other prescription drug information. [2007, c. 460, §1 (AMD).]

C. "Health care facility" has the same meanings as in section 1711-C, subsection 1, paragraph D. [2005, c. 589, §1 (NEW).]

D. "Health care practitioner" has the same meanings as in section 1711-C, subsection 1, paragraph F. [2005, c. 589, §1 (NEW).]

E. "Health plan" means a health plan providing prescription drug coverage as authorized under the federal Medicare Prescription Drug, Improvement and Modernization Act of 2003, Public Law 108-173. [2005, c. 589, §1 (NEW).]

F. "Individual" means a natural person who is the subject of prescription drug information. [2005, c. 589, §1 (NEW).]

F-1. "Marketing" means any of the following activities undertaken or materials or products made available to prescribers or to their employees or agents related to the transfer of prescription drugs from the producer or seller to the consumer or buyer:

(1) Advertising, publicizing, promoting or selling a prescription drug;

(2) Activities undertaken for the purpose of influencing the market share of a prescription drug or the prescribing patterns of a prescriber, a detailing visit or a personal appearance;

(3) Activities undertaken to evaluate or improve the effectiveness of a professional detailing sales force; or

(4) A brochure, media advertisement or announcement, poster or free sample of a prescription drug.

"Marketing" does not include pharmacy reimbursement, formulary compliance, pharmacy file transfers in response to a patient request or as a result of the sale or purchase of a pharmacy, patient care management, utilization review by a health care provider or agent of a health care provider or the patient's health plan or an agent of the patient's health plan, and health care research. [2007, c. 460, §1 (NEW).]

F-2. "Pharmacy" means a mail order prescription pharmacy as defined in Title 32, section 13702-A, subsection 17 or a pharmacy as defined in Title 32, section 13702-A, subsection 24. [2007, c. 695, Pt. C, §6 (AMD).]

G. "Pharmacy benefits manager" has the same meaning as in Title 24-A, section 1913, subsection 1, paragraph A. [2011, c. 443, §1 (AMD).]

G-1. "Prescriber" means a person who is licensed, registered or otherwise authorized in the appropriate jurisdiction to prescribe and administer drugs in the course of professional practice. [2007, c. 460, §1 (NEW).]

H. "Prescription drug information" means information concerning prescription drugs as defined in Title 32, section 13702-A, subsection 30 and includes prescription drug orders as defined in Title 32, section 13702-A, subsection 31. [2007, c. 695, Pt. C, §7 (AMD).]

I. "Prescription drug information intermediary" means a person or entity that communicates, facilitates or participates in the exchange of prescription drug information regarding an individual or a prescriber. "Prescription drug information intermediary" includes, but is not limited to, a pharmacy benefits manager, a health plan, an administrator and an electronic transmission intermediary and any person or entity employed by or contracted to provide services to that entity. [2007, c. 460, §1 (AMD).]

[2011, c. 443, §1 (AMD) .]

1-A. **Findings.**

[2011, c. 494, §1 (RP) .]

1-B. **Purposes.**

[2011, c. 494, §2 (RP) .]

2. **Confidentiality of prescription drug information that identifies the individual.** A carrier or prescription drug information intermediary may not license, use, sell, transfer or exchange for value, for any marketing purpose, prescription drug information that identifies directly or indirectly the individual who is prescribed the prescription drug.

[2011, c. 494, §3 (AMD) .]

2-A. **Confidentiality of prescription drug information that identifies the prescriber.**

[2011, c. 494, §4 (RP) .]

3. **Enforcement.** A violation of subsection 2 is a violation of the Maine Unfair Trade Practices Act.

[2011, c. 494, §5 (AMD) .]

4. **Confidentiality protection procedures.**

[2011, c. 494, §6 (RP) .]

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

[2011, c. 90, Pt. J, §10 (AMD) .]

SECTION HISTORY

2005, c. 589, §1 (NEW). 2007, c. 460, §1 (AMD). 2007, c. 695, Pt. C, §§6, 7 (AMD). 2011, c. 90, Pt. J, §10 (AMD). 2011, c. 443, §1 (AMD). 2011, c. 461, §1 (AMD). 2011, c. 494, §§1-6 (AMD).

§1711-F. TRANSFER OF MEMBER HEALTH CARE INFORMATION BY MAINECARE PROGRAM FOR PURPOSE OF DIAGNOSIS, TREATMENT OR CARE

The MaineCare program established under chapter 855 may transfer member health care information to a health care practitioner or health care facility for the purpose of diagnosis, treatment or care of the member through an electronic health information exchange in accordance with this section. [2009, c. 387, §3 (NEW).]

1. **Definitions.** For the purposes of this section, "health care facility" has the same meaning as in section 1711-C, subsection 1, paragraph D and "health care practitioner" has the same meaning as in section 1711-C, subsection 1, paragraph F.

[2009, c. 387, §3 (NEW) .]

2. **Individual protection mechanism.** The department shall provide an individual protection mechanism for MaineCare members by which an individual may prohibit a health information exchange from disclosing the individual's health care information to a health care practitioner or health care facility.

[2009, c. 387, §3 (NEW) .]

3. **Health care information subject to other laws, rules and regulations.** Health care information that is subject to the provisions of 42 United States Code, Section 290dd-2 (Supplement 1998); chapters 710-B and 711; Title 5, section 200-E; Title 5, chapter 501; Title 24 or 24-A; Title 34-B, section 1207; Title 39-A; or other confidentiality provisions of state or federal law, rule or regulation is governed solely by those provisions.

[2009, c. 387, §3 (NEW) .]

SECTION HISTORY
2009, c. 387, §3 (NEW).

§1711-G. DESIGNATED LAY CAREGIVERS

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

A. "Aftercare" means any assistance to a patient, after the patient's discharge, that is directly related to the content of the patient's hospital discharge plan and that is provided by a lay caregiver designated pursuant to subsection 2, including assistance with basic or instrumental activities of daily living, performance of medical and nursing tasks, assistance in administering medication and operation of medical equipment. [2015, c. 370, §6 (NEW).]

B. "Discharge" means a patient's exit or release from a hospital to the patient's residence or another health care setting following any medical care or treatment at the hospital or observation at the hospital for a period that includes midnight of at least one calendar day. [2015, c. 370, §6 (NEW).]

C. "Residence" means a dwelling that a person considers to be the person's home. "Residence" does not include a rehabilitation facility, hospital, nursing home, assisted living facility, group home or any other health care facility licensed by the State. [2015, c. 370, §6 (NEW).]

[2015, c. 370, §6 (NEW) .]

2. **Designation of lay caregiver.** In accordance with this subsection, a hospital licensed under chapter 405, but not a private mental hospital as described in chapter 404, shall allow for the designation of a lay caregiver to provide aftercare to a patient.

A. For a patient with capacity to make health-care decisions, as described in Title 18-A, Article 5, Part 8, the hospital shall provide the patient with at least one opportunity to designate a lay caregiver following the patient's admission to the hospital, or observation at the hospital for a period that includes midnight of at least one calendar day, and prior to the patient's discharge. [2015, c. 370, §6 (NEW).]

B. For a patient without capacity to make health-care decisions, as described in Title 18-A, Article 5, Part 8, the hospital shall provide the patient's legal guardian, agent or surrogate who is reasonably available and acting pursuant to Title 18-A, Article 5, Part 8 with at least one opportunity to designate a lay caregiver following the patient's admission to the hospital, or observation at the hospital for a period that includes midnight of at least one calendar day, and prior to the patient's discharge. [2015, c. 370, §6 (NEW).]

C. The hospital shall document the designation of a lay caregiver under this subsection in the patient's medical record, including the lay caregiver's name, relationship to the patient, telephone number, address and any other contact information as provided. If the patient or the patient's legal guardian, agent or surrogate who is reasonably available and acting pursuant to Title 18-A, Article 5, Part 8 declines to designate a lay caregiver, the hospital shall document that decision in the patient's medical record and that documentation constitutes compliance by the hospital with the requirements of this section. A designated lay caregiver may be removed or changed by the patient or the patient's legal guardian, agent or surrogate at any time, so long as the change or removal is documented by the hospital in the patient's medical record. [2015, c. 370, §6 (NEW).]

D. Designation of a lay caregiver under this subsection by the patient or the patient's legal guardian, agent or surrogate who is reasonably available and acting pursuant to Title 18-A, Article 5, Part 8 is optional. A designated lay caregiver is not obligated under this section to perform any aftercare tasks for the patient. [2015, c. 370, §6 (NEW).]

[2015, c. 370, §6 (NEW) .]

3. **Written consent.** If a lay caregiver is designated under subsection 2, the hospital shall request that the patient or the patient's legal guardian, agent or surrogate who is reasonably available and acting pursuant to Title 18-A, Article 5, Part 8 provide written consent to release medical information regarding the scope of care to the patient's designated lay caregiver to carry out the purposes of this section. Written consent under this subsection must be provided pursuant to the hospital's established procedures for releasing personal health information and in compliance with state and federal law.

[2015, c. 370, §6 (NEW) .]

4. **Notice to designated lay caregiver.** For a patient unable to effectively communicate with a lay caregiver designated under subsection 2, and for whom written consent is received under subsection 3, a hospital shall make reasonable efforts to notify the designated lay caregiver prior to the patient's discharge or transfer to another hospital licensed under chapter 405. The hospital may not withhold, delay or otherwise fail to deliver medical care to the patient or an appropriate discharge or transfer of the patient because the hospital is unable to notify the designated lay caregiver in accordance with this subsection prior to the patient's discharge or transfer. A hospital shall document in the patient's medical record its attempt to notify the designated lay caregiver under this subsection.

[2015, c. 370, §6 (NEW) .]

5. **Discharge plan.** If written consent is received under subsection 3, a hospital shall make reasonable efforts to communicate with a lay caregiver designated under subsection 2 regarding the development of a patient's discharge plan to help prepare the designated lay caregiver for the patient's aftercare needs at the patient's residence in accordance with the hospital's discharge policy.

[2015, c. 370, §6 (NEW) .]

6. **Instruction to designated lay caregiver.** If written consent is received under subsection 3, prior to a patient's discharge, the hospital shall make reasonable efforts to instruct the patient's lay caregiver designated under subsection 2, in a culturally competent manner, on how to meet the patient's aftercare needs and shall provide a meaningful opportunity for the designated lay caregiver to ask questions about the patient's discharge plan.

[2015, c. 370, §6 (NEW) .]

7. **Noninterference with health care directives.** The provisions of this section may not be construed to interfere with the rights of an agent of a patient operating under a valid health care directive under Title 18-A, Article 5, Part 8.

[2015, c. 370, §6 (NEW) .]

8. **Rules.** The department may adopt rules to carry out the purposes of this section, including defining the content and scope of any instruction given under subsection 5 or 6. In the development of any rules pursuant to this subsection, the department shall consult with representatives of hospitals, consumers and organizations that represent seniors. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

[2015, c. 370, §6 (NEW) .]

SECTION HISTORY
2015, c. 370, §6 (NEW).

§1712. ITEMIZED BILLS

Each hospital licensed by the State under chapter 405 shall inform all patients, or their legal guardians, in writing, at the time of the patient's discharge, that it will provide an itemized bill upon their request. [1983, c. 166, (NEW).]

The request may be made by the patient or his legal guardian at discharge or at any time within 7 years after discharge. [1983, c. 166, (NEW).]

The hospital shall provide an itemized bill to the person making the request within 30 days of the request. [1983, c. 166, (NEW).]

Notwithstanding this section, effective July 1, 1985, each hospital shall itemize on the hospital bill of each patient the cost of nursing services provided to that patient. [1983, c. 166, (NEW).]

SECTION HISTORY
1983, c. 166, (NEW).

§1713. TRANSITIONAL HOSPITAL REIMBURSEMENT

(REPEALED)

SECTION HISTORY
1983, c. 824, §X2 (NEW). 2007, c. 466, Pt. A, §41 (RP).

§1714. DEBTS OWED THE DEPARTMENT BY PROVIDERS

(REPEALED)

SECTION HISTORY
1989, c. 34, (NEW). 1991, c. 9, §G3 (RP).

§1714-A. DEBTS OWED THE DEPARTMENT BY PROVIDERS

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

A. "Boarding home" means any facility that meets the definition of former section 7901-A, subsection 4 or the definition of residential care facility in section 7852, subsection 14. [2001, c. 596, Pt. B, §3 (AMD); 2001, c. 596, Pt. B, §25 (AFF).]

B. "Debt" means any amount of money that is owed to the department as a result of:

(1) Overpayments that have been determined by a department audit pursuant to the applicable principles of reimbursement, overpayments as reported by a provider in an unaudited cost report or overpayments that have been discovered in any other manner;

(2) The department's authority to recapture depreciation;

(3) The assessment of fines and sanctions;

(4) Projected overpayments reported in an interim cost report. If an interim report is not filed at least 30 days prior to the transfer, "debt" also includes 5% of Medicaid reimbursement or cost reimbursement for the last fiscal year or $50,000, whichever is less; or

(5) A final reconciliation decision and order by the former Maine Health Care Finance Commission. [2007, c. 466, Pt. A, §42 (AMD).]

C. "Former provider" means the person reimbursed by the department for the provision of health care services at a nursing home, boarding home, hospital or other provider of health care services prior to its transfer. [2011, c. 687, §5 (AMD).]

D. "Hospital" means any facility licensed pursuant to sections 1811 and 1817. [1991, c. 9, Pt. G, §4 (NEW).]

E. "Interim cost report" means a cost report that covers the current fiscal year and any prior periods not covered by a previously filed cost report. Cost incurred in the 90 days prior to the transfer need not be covered in the interim cost report. [1991, c. 9, Pt. G, §4 (NEW).]

F. "Nursing home" means any facility that meets the definition of section 1812-A, including an intermediate care facility for persons with intellectual disabilities. [2011, c. 542, Pt. A, §27 (AMD).]

G. "Person" means any natural person, partnership, association, corporation or other entity including any county, local or other governmental unit. [1991, c. 9, Pt. G, §4 (NEW).]

H. "Provider" means a person reimbursed by the department for the provision of health care services. [1991, c. 9, Pt. G, §4 (NEW).]

I. "Transfer" means any change in the ownership or control of a nursing home, boarding home, 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. [2011, c. 687, §6 (AMD).]

J. "Transferee" means any person to whom a nursing home, boarding home, hospital or other provider of health care services is transferred. [2011, c. 687, §6 (AMD).]

[2011, c. 542, Pt. A, §27 (AMD); 2011, c. 687, §§5, 6 (AMD) .]

2. **Establishment of debt.** A debt is established by the department when it notifies a provider of debt that the provider owes the department pursuant to a decision and order that constitutes final agency action. A debt is collectible by the department 31 days after exhaustion of all administrative appeals and any judicial review available under Title 5, chapter 375.

[2003, c. 419, §4 (AMD) .]

3. **Notice of debt.** Any notice of debt issued to a provider by the department must include the following:

A. A statement of the debt accrued; [1991, c. 9, Pt. G, §4 (NEW).]

B. A statement of the time period during which the debt accrued; [1991, c. 9, Pt. G, §4 (NEW).]

C. The basis for the debt; [1991, c. 9, Pt. G, §4 (NEW).]

D. The debtor's right to request a fair hearing within 30 days of receipt of the notice; and [1991, c. 9, Pt. G, §4 (NEW).]

E. A statement that after a debt is established, the department may proceed to collect that debt through administrative offset, lien and foreclosure, or other collection action. [1991, c. 9, Pt. G, §4 (NEW).]

[1991, c. 568, §1 (AMD) .]

4. **Successor liability.** Liability of transferees is governed by this subsection.

A. When a nursing home, boarding home, 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. [2011, c. 687, §7 (AMD).]

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, 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. [2011, c. 687, §7 (AMD).]

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. [2011, c. 687, §8 (AMD).]

D. If a transferee becomes liable for a debt pursuant to this subsection, the transferee shall succeed to any defenses to the debt that could have been exercised by the former provider. [1991, c. 9, Pt. G, §4 (NEW).]

E. Nothing in this subsection may limit the liability of the former provider to the department for any debts whether or not they are identified at the time of sale. In addition, a transferee has a cause of action against a former provider to the extent that debts of the former provider are paid by the transferee, unless the transferee has waived the right to sue the former provider for those debts. [1991, c. 568, §2 (AMD).]

F. The commissioner may waive all or part of a transferee's liability under this subsection if the commissioner finds that a waiver of liability is in the public interest. [1991, c. 568, §3 (NEW).]

[2011, c. 687, §§7, 8 (AMD) .]

5. **Department may offset.** The department may offset against current reimbursement owed to a provider or any entity related by ownership or control to that provider any debt it is owed by that provider after the debt becomes collectible. The department shall adopt rules that implement this subsection and define the ownership or control relationships that are subject to an offset under this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2003, c. 419, §5 (AMD) .]

6. **Liens.** Collection by lien is as follows.

A. After a debt is collectible, the amount stated in the notice of debt or overpayment is a lien in favor of the department against all real or personal property of the provider or any entity related by ownership or control to the provider. [1991, c. 568, §4 (NEW).]

B. The lien attaches to all real and personal property of the responsible party when the department files in the registry of deeds of any county, or with any office appropriate for a notice with respect to personal property, a certificate that states the name of the responsible party, that party's address, the amount of debt accrued, the date of the underlying audit or decision and the name and address of the authorized agent of the department who issues the lien. [1991, c. 568, §4 (NEW).]

C. When a lien has been filed and the person having notice of the lien possesses any property that may be subject to the lien, that property may not be paid over, released, sold, transferred, encumbered or conveyed unless:

(1) A release or waiver signed by the commissioner has been delivered to the person in possession of the property; or

(2) A court has ordered the release of the lien. A court may order a release only when alternative security has been provided for the debt owed the department. [1991, c. 568, §4 (NEW).]

D. The commissioner may hold title to real or personal property for the purpose of foreclosure on filed liens. Foreclosure must proceed as follows.

(1) Actions to foreclose liens on real property filed under this subsection may be brought in the county where the lien is filed pursuant to the procedures of Title 14, chapter 713, subchapter VI. For purposes of foreclosure by civil action as described in Title 14, chapter 713, subchapter VI, a lien filed in accordance with this subsection constitutes a mortgage claim of the department on any real property owned by the debtor. Failure to pay the debt owed the department constitutes a breach of condition in the mortgage.

(2) Actions to foreclose liens on personal property filed under this subsection may be brought, pursuant to Title 14, chapter 509, subchapter III, in the county where the lien is filed. [1991, c. 568, §4 (NEW).]

[1991, c. 568, §4 (NEW) .]

7. **Other collection actions.** In addition to the other remedies provided in this section, the department may seek collection of any debt established under subsection 2 pursuant to Title 14, chapter 502, Title 36, chapter 7 and Title 36, section 5276-A.

A business entity, including a sole proprietorship, is considered out of business for the purposes of the department's recovering indebtedness if, after reasonable investigation, the department or its legal counsel has certified in writing that the business entity is no longer conducting operations and that there is no realistic expectation of collecting any significant money from the entity based upon one or more of the following conditions:

A. The business entity has ceased offering retail or wholesale goods and services to the public; [2003, c. 673, Pt. YYY, §1 (NEW).]

B. Upon reasonable investigation, nonexempt assets of the business entity of substantial value can not be identified or are otherwise unavailable for attachment and recovery; [2003, c. 673, Pt. YYY, §1 (NEW).]

C. The business entity's physical location or locations of business are closed to the public; [2003, c. 673, Pt. YYY, §1 (NEW).]

D. The business entity's corporate status is no longer in good standing; [2003, c. 673, Pt. YYY, §1 (NEW).]

E. The business entity has admitted that it has insufficient assets to satisfy the debt; [2007, c. 2, §8 (COR).]

F. After reasonable investigation, the department or its counsel can not locate the business entity or identify the debtor's nonexempt assets; and [2003, c. 673, Pt. YYY, §1 (NEW).]

G. The business entity has transferred substantially all of its business assets to a 3rd party and there are no recoverable assets as a result of the transfer. [2003, c. 673, Pt. YYY, §1 (NEW).]

Certification by the department that a business entity is out of business under this subsection does not preclude further collection and recovery procedures by the department, whether to formally adjudicate the indebtedness or to proceed with collection and recovery if the department becomes aware of facts that merit further recovery efforts.

[2007, c. 2, §8 (COR) .]

8. **Rulemaking.** The department may adopt or amend any rule as necessary to implement this section.

[1991, c. 568, §4 (NEW) .]

9. **Cost-of-care overpayments.** On or before June 30, 2015, the department shall collect the total amount of debt arising from cost-of-care overpayments that exceeds by $4,000,000 the amount of that debt that had been budgeted for fiscal year 2014-15 as of April 15, 2014. To the extent necessary to meet this requirement, the department may establish payment terms, modify as otherwise permitted by law existing payment agreements to accelerate payment terms and offset current payments in accordance with subsection 5. If 7 days' notice and opportunity to comment are provided, the department may adopt rules

on an emergency basis to modify its implementation of subsection 5 on an emergency basis for purposes of collecting cost-of-care overpayments without making the emergency findings otherwise required by Title 5, section 8054, subsection 2.

[2013, c. 594, §2 (NEW) .]

SECTION HISTORY
1991, c. 9, §G4 (NEW). 1991, c. 568, §§1-4 (AMD). 2001, c. 596, §§B3,4 (AMD). 2001, c. 596, §B25 (AFF). 2003, c. 419, §§4,5 (AMD). 2003, c. 673, §YYY1 (AMD). RR 2007, c. 2, §8 (COR). 2007, c. 466, Pt. A, §42 (AMD). 2007, c. 539, Pt. OO, §1 (AMD). 2011, c. 542, Pt. A, §27 (AMD). 2011, c. 687, §§5-8 (AMD). 2013, c. 594, §2 (AMD).

§1714-B. CRITICAL ACCESS HOSPITAL REIMBURSEMENT

(REPEALED)

SECTION HISTORY
2005, c. 12, §ZZZ1 (NEW). 2005, c. 342, §1 (AMD). 2005, c. 342, §2 (AFF). 2005, c. 519, §PP1 (AMD). 2009, c. 213, Pt. CC, §1 (AMD). MRSA T. 22, §1714-B (RP).

§1714-C. CRITICAL ACCESS HOSPITAL STAFF ENHANCEMENT REIMBURSEMENT

Beginning April 1, 2011, the department shall reimburse critical access hospitals from the total allocated from hospital tax revenues under Title 36, chapter 377 at least $1,000,000 in state and federal funds to be distributed annually among critical access hospitals for staff enhancement payments. [2011, c. 548, §8 (AMD).]

SECTION HISTORY
2009, c. 213, Pt. CC, §2 (NEW). 2011, c. 548, §8 (AMD).

§1714-D. CRITICAL ACCESS HOSPITAL REIMBURSEMENT

Beginning April 1, 2012, the department shall reimburse licensed critical access hospitals at 109% of MaineCare allowable costs for both inpatient and outpatient services provided to patients covered by the MaineCare program. Of the total allocated from hospital tax revenues under Title 36, chapter 375, $1,000,000 in state and federal funds must be distributed annually among critical access hospitals for staff enhancement payments. [2011, c. 657, Pt. H, §1 (NEW); 2011, c. 657, Pt. H, §5 (AFF).]

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

(As enacted by PL 2011, c. 687, §9 is REALLOCATED TO TITLE 22, SECTION 1714-E)

SECTION HISTORY
RR 2011, c. 2, §25 (RAL). 2011, c. 657, Pt. H, §1 (NEW). 2011, c. 657, Pt. H, §5 (AFF). 2011, c. 687, §9 (NEW).

§1714-E. CREDIBLE ALLEGATIONS OF FRAUD; PROVIDER PAYMENT SUSPENSIONS

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT REPEALED ON CONTINGENCY: See T. 22, §1714-E, sub-§7)
(REALLOCATED FROM TITLE 22, SECTION 1714-D)

(WHOLE SECTION TEXT EFFECTIVE UNTIL CONTINGENCY: See T. 22, §1714-E, sub-§7)

If the department determines that there is a credible allegation of fraud by a provider under the MaineCare program, the following procedures apply. [2011, c. 2, §25 (RAL).]

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, Public Law 111-148 and 42 Code of Federal Regulations, Part 455.

[2015, c. 329, Pt. A, §5 (AMD) .]

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

[2011, c. 2, §25 (RAL) .]

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.

[2011, c. 2, §25 (RAL) .]

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.

[2011, c. 2, §25 (RAL) .]

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.

[2011, c. 2, §25 (RAL) .]

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.

[2011, c. 2, §25 (RAL) .]

7. **Repeal.** This section is repealed if Section 6402(h)(2) of the federal Patient Protection and Affordable Care Act, Public Law 111-148 and 42 Code of Federal Regulations, Part 455 are invalidated by the United States Supreme Court. The department shall notify the Secretary of State, the Secretary of the Senate, the Clerk of the House of Representatives and the Revisor of Statutes if the section of law and the regulation are invalidated.

[2015, c. 494, Pt. C, §1 (AMD) .]

SECTION HISTORY

RR 2011, c. 2, §25 (RAL). 2015, c. 329, Pt. A, §5 (AMD). 2015, c. 494, Pt. C, §1 (AMD).

§1715. ACCESS REQUIREMENTS APPLICABLE TO CERTAIN HEALTH CARE PROVIDERS

1. **Access requirements.** Any person, including, but not limited to an affiliated interest as defined in section 396-L, that is subject to the requirements of this subsection, shall provide the services listed in paragraph C to individuals who are eligible for charity care in accordance with a charity care policy adopted by the affiliate or provider that is consistent with rules applicable to hospitals under section 1716. A person is subject to this subsection if that person:

A. Is either a direct provider of major ambulatory service, as defined in section 382, subsection 8-A, or is or has been required to obtain a certificate of need under section 329 or former section 304 or 304-A; [2001, c. 2, Pt. A, §34 (COR).]

B. Provides outpatient services as defined in section 382, subsection 9-A; and [1989, c. 919, §15 (NEW); 1989, c. 919, §18 (AFF).]

C. Provides one or more of the following services:

(1) Imaging services, including, but not limited to, magnetic resonance imaging, computerized tomography, mammography and radiology. For purposes of this section, imaging services do not include:

(a) Screening procedures that are not related to the diagnosis or treatment of a specific condition; or

(b) Services when:

(i) The services are owned by a community health center, a physician or group of physicians;

(ii) The services are offered solely to the patients of that center, physician or group of physicians; and

(iii) Referrals for the purpose of performing those services are not accepted from other physicians;

(2) Laboratory services performed by a hospital or by a medical laboratory licensed in accordance with the Maine Medical Laboratory Commission, or licensed by an equivalent out-of-state licensing authority, excluding those licensed laboratories owned by community health centers, a physician or group of physicians where the laboratory services are offered solely to the patients of that center, physician or group of physicians;

(3) Cardiac diagnostic services, including, but not limited to, cardiac catheterization and angiography but excluding electrocardiograms and electrocardiograph stress testing;

(4) Lithotripsy services;

(5) Services provided by free-standing ambulatory surgery facilities certified to participate in the Medicare program; or

(6) Any other service performed in an out-patient setting requiring the purchase of medical equipment costing in the aggregate $500,000 or more and for which the charge per unit of service is $250 or more. [1989, c. 919, §15 (NEW); 1989, c. 919, §18 (AFF).]

[2001, c. 2, Pt. A, §34 (COR) .]

2. **Enforcement.** The requirements of subsection 1 are enforced through the following mechanisms.

A. Any person who knowingly violates any provision of this section or any valid order or rule made or adopted pursuant to section 1716, or who willfully fails, neglects or refuses to perform any of the duties imposed under this section, commits a civil violation for which a forfeiture of not less than $200 and not more than $500 per patient may be adjudged with respect to each patient denied access unless specific penalties are elsewhere provided. Any forfeiture imposed under this section may not exceed $5,000 in the case of the first judgment under this section against the provider, $7,500 in the case of a 2nd judgment against the provider or $10,000 in the case of the 3rd or subsequent judgment against the provider. The Attorney General is authorized to prosecute the civil violations. [1995, c. 653, Pt. B, §6 (AMD); 1995, c. 653, Pt. B, §8 (AFF); 1995, c. 696, Pt. A, §35 (AMD).]

B. Upon application of the Attorney General or any affected patient, the Superior Court or District Court has full jurisdiction to enforce the performance by providers of health care of all duties imposed upon them by this section and any valid rules adopted pursuant to section 1716. [1995, c. 653, Pt. B, §6 (AMD); 1995, c. 653, Pt. B, §8 (AFF); 1995, c. 696, Pt. A, §35 (AMD).]

C. In any civil action under this section, the court, in its discretion, may allow the prevailing party, other than the Attorney General, reasonable attorney's fees and costs and the Attorney General is liable for attorney's fees and costs in the same manner as a private person. [1989, c. 919, §15 (NEW); 1989, c. 919, §18 (AFF).]

D. It is an affirmative defense to any legal action brought under this section that the person subject to this section denied access to services on the grounds that the economic viability of the facility or practice would be jeopardized by compliance with this section. [1989, c. 919, §15 (NEW); 1989, c. 919, §18 (AFF).]

[1995, c. 653, Pt. B, §6 (AMD); 1995, c. 653, Pt. B, §8 (AFF); 1995, c. 696, Pt. A, §35 (AMD) .]

SECTION HISTORY
1989, c. 919, §§15,18 (NEW). 1995, c. 653, §§B5,6 (AMD). 1995, c. 653, §B8 (AFF). 1995, c. 696, §§A34,35 (AMD). RR 2001, c. 2, §A34 (COR).

§1716. CHARITY CARE GUIDELINES

The department shall adopt reasonable guidelines for policies to be adopted and implemented by hospitals with respect to the provision of health care services to patients who are determined unable to pay for the services received. The department shall adopt income guidelines that are consistent with the guidelines applicable to the Hill-Burton Program established under 42 United States Code, Section 291, et seq. (1995). The guidelines and policies must include the requirement that upon admission or, in cases of emergency admission, before discharge of a patient, hospitals must investigate the coverage of the patient by any insurance or state or federal programs of medical assistance. The guidelines must include provisions for notice to the public and the opportunity for a fair hearing regarding eligibility for charity care. [1995, c. 653, Pt. B, §7 (NEW); 1995, c. 653, Pt. B, §8 (AFF); 1995, c. 696, Pt. A, §36 (NEW).]

SECTION HISTORY
1995, c. 653, §B7 (NEW). 1995, c. 653, §B8 (AFF). 1995, c. 696, §A36 (NEW).

§1717. REGISTRATION OF PERSONAL CARE AGENCIES AND PLACEMENT AGENCIES

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

A. "Activities of daily living" means tasks that are routinely performed by an individual to maintain bodily function, including, but not limited to, mobility; transfers in position among sitting, standing and prone positions; dressing; eating; toileting; bathing; and personal hygiene assistance. [1997, c. 716, §1 (NEW).]

A-1. "Direct access" means access to the property, personally identifiable information, financial information or resources of an individual or physical access to an individual who is a Medicare or Medicaid beneficiary or other individual served by a provider subject to this chapter. [2015, c. 196, §1 (NEW); 2015, c. 299, §1 (NEW).]

A-2. "Direct access personnel" means individuals employed in positions that have direct access. [2015, c. 196, §1 (NEW); 2015, c. 299, §1 (NEW).]

A-3. "Direct care worker" means an individual who by virtue of employment generally provides to individuals direct contact assistance with personal care or activities of daily living or has direct access to provide care and services to clients, patients or residents regardless of setting. "Direct care worker" does not include a certified nursing assistant employed in that person's capacity as a certified nursing assistant. [2015, c. 196, §1 (NEW); 2015, c. 299, §1 (NEW).]

B. "Hires and employs" means recruits, selects, trains, declares competent, schedules, directs, defines the scope of the positions of, supervises or terminates individuals who provide personal care. [1997, c. 716, §1 (NEW).]

B-1. "Home care services" means assistance with activities of daily living and related tasks. [2007, c. 324, §2 (NEW).]

C. "Personal care agency" means a business entity or subsidiary of a business entity that is not otherwise licensed by the Division of Licensing and Regulatory Services and that hires and employs direct access personnel or individuals who work in direct contact with clients, patients or residents to provide assistance with activities of daily living and related tasks to individuals in the places in which they reside, either permanently or temporarily. An individual who hires and employs direct access personnel or individuals who work in direct contact with clients, patients or residents to provide care for that individual is not a personal care agency, except when permitted by rule of the department. [2015, c. 196, §2 (AMD); 2015, c. 299, §2 (AMD).]

C-1. "Placement agency" means any person or entity engaged for gain or profit in the business of securing or attempting to secure home care services work for an individual or of securing or attempting to secure a home care services worker for a consumer. "Placement agency" includes, but is not limited to, employment agencies, nurse registries and any other entity that places a home care services worker for hire by a consumer in that consumer's temporary or permanent residence for purposes of providing home care services. [2007, c. 324, §2 (NEW).]

D. [2015, c. 196, §3 (RP); 2015, c. 299, §3 (RP).]

[2015, c. 196, §§1-3 (AMD); 2015, c. 299, §§1-3 (AMD) .]

2. **Registration of personal care agencies and placement agencies.** Beginning August 1, 1998, a personal care agency not otherwise licensed by the department shall register with the department. Beginning January 1, 2008, a placement agency not otherwise licensed by the department shall register with the

department. The department shall adopt rules establishing the annual registration fee, which must be between $25 and $250. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2015, c. 494, Pt. A, §15 (RPR) .]

3. **Prohibited employment based on disqualifying offenses.** A personal care agency or a placement agency shall conduct a comprehensive background check for direct access personnel in accordance with state law and rules adopted by the department and is subject to the employment restrictions set out in section 1812-G and other applicable federal and state laws when hiring, employing or placing direct access personnel, including, but not limited to, a certified nursing assistant or a direct care worker.

A. [2015, c. 196, §5 (RP); 2015, c. 299, §5 (RP).]

B. [2015, c. 196, §5 (RP); 2015, c. 299, §5 (RP).]

C. [2015, c. 196, §5 (RP); 2015, c. 299, §5 (RP).]

[2015, c. 196, §5 (AMD); 2015, c. 299, §5 (RPR) .]

3-A. **Verification of listing on the registry.** Prior to hiring a certified nursing assistant or a direct care worker, a personal care agency or a placement agency shall check the Maine Registry of Certified Nursing Assistants and Direct Care Workers established pursuant to section 1812-G and verify that a certified nursing assistant or direct care worker listed on the registry has no disqualifying notations.

The department may adopt rules 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.

[2015, c. 196, §6 (NEW); 2015, c. 299, §6 (NEW) .]

4. **Penalties.** The following penalties apply to violations of this section.

A. A person who operates a personal care agency or placement agency without registering with the department as required by subsection 2 commits a civil violation for which a fine of not less than $500 per day of operation but not more than $10,000 may be adjudged. Each day of violation constitutes a separate offense. [2007, c. 324, §2 (AMD).]

B. A person who operates a personal care agency or placement agency in violation of the employment prohibitions in subsection 3 or 3-A commits a civil violation for which a fine of not less than $500 per day of operation in violation but not more than $10,000 per day may be adjudged, beginning on the first day that a violation occurs. Each day of violation constitutes a separate offense. [2015, c. 196, §7 (AMD); 2015, c. 299, §7 (AMD).]

[2015, c. 196, §7 (AMD); 2015, c. 299, §7 (AMD) .]

5. **Injunctive relief.** Notwithstanding any other remedies provided by law, the Office of the Attorney General may seek an injunction to require compliance with the provisions of this section.

[2007, c. 324, §2 (NEW) .]

6. **Enforcement.** The Office of the Attorney General may file a complaint with the District Court seeking civil penalties or injunctive relief or both for violations of this section.

[2007, c. 324, §2 (NEW) .]

7. **Jurisdiction.** The District Court has jurisdiction pursuant to Title 4, section 152 for violations of this section.

[2007, c. 324, §2 (NEW) .]

8. **Burden of proof.** The burden is on the department to prove, by a preponderance of the evidence, that the alleged violations of this section occurred.

[2007, c. 324, §2 (NEW) .]

9. **Right of entry.** This subsection governs the department's right of entry.

A. An application for registration of a personal care agency or placement agency constitutes permission for entry and inspection to verify compliance with applicable laws and rules. [2007, c. 324, §2 (NEW).]

B. The department has the right to enter and inspect the premises of a personal care agency or placement agency registered by the department at a reasonable time and, upon demand, has the right to inspect and copy any books, accounts, papers, records and other documents in order to determine the state of compliance with applicable laws and rules. [2007, c. 324, §2 (NEW).]

C. To inspect a personal care agency or placement agency that the department knows or believes is being operated without being registered, the department may enter only with the permission of the owner or person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court authorizing entry and inspection. [2007, c. 324, §2 (NEW).]

[2007, c. 324, §2 (NEW) .]

10. **Administrative inspection warrant.** The department and a duly designated officer or employee of the department have the right to enter upon and into the premises of an unregistered personal care agency or placement agency with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court at a reasonable time and, upon demand, have the right to inspect and copy any books, accounts, papers, records and other documents in order to determine the state of compliance with this section. The right of entry and inspection may extend to any premises and documents of a person, firm, partnership, association, corporation or other entity that the department has reason to believe is operating without being registered.

[2007, c. 324, §2 (NEW) .]

11. **Noninterference.** An owner or operator of an unregistered personal care agency or placement agency may not interfere with, impede or obstruct an investigation by the department, including but not limited to interviewing persons receiving services or persons with knowledge of the agency.

[2007, c. 324, §2 (NEW) .]

12. **Violation of injunction.** A person, firm, partnership, association, corporation or other entity that violates the terms of an injunction issued under this section shall pay to the State a fine of not less than $500 nor more than $10,000 for each violation. Each day of violation constitutes a separate offense. In any action brought by the Office of the Attorney General against a person, firm, partnership, association, corporation or other entity for violating the terms of an injunction under this section, the District Court may make the necessary orders or judgments regarding violation of the terms of the injunction.

In an action under this section, when a permanent injunction has been issued, the District Court may order the person, firm, partnership, association, corporation or other entity against which the permanent injunction is issued to pay to the General Fund the costs of the investigation of that person, firm, partnership, association, corporation or other entity by the Office of the Attorney General and the costs of suit, including attorney's fees.

[2007, c. 324, §2 (NEW) .]

13. **Suspension or revocation of registration.** A personal care agency or placement agency found to be in violation of this section may have its registration to operate as a personal care agency or placement agency suspended or revoked. The department may file a complaint with the District Court requesting suspension or revocation of a registration to operate a personal care agency or placement agency.

[2007, c. 324, §2 (NEW) .]

14. **Rules.** The department may 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.

[2007, c. 324, §2 (NEW) .]

SECTION HISTORY
1997, c. 716, §1 (NEW). 2003, c. 634, §§1,2 (AMD). 2003, c. 673, §NN1 (AMD). 2007, c. 324, §2 (AMD). 2011, c. 257, §1 (AMD). 2015, c. 196, §§1-7 (AMD). 2015, c. 299, §§1-7 (AMD). 2015, c. 494, Pt. A, §15 (AMD).

§1718. CONSUMER INFORMATION

Each hospital or ambulatory surgical center licensed under chapter 405 shall, upon request by an individual, provide the average charge for any inpatient service or outpatient procedure provided by the licensee. If a single medical encounter will involve services or procedures to be rendered by one or more 3rd-party health care entities as defined in section 1718-B, subsection 1, paragraph B, the hospital or ambulatory surgical center shall identify each 3rd-party health care entity to enable the individual to seek an estimate of the total price of services or procedures to be rendered directly by each health care entity to that individual. For emergency services, the hospital must provide the average charges for facility and physician services according to the level of emergency services provided by the hospital and based on the time and intensity of services provided. The hospital or ambulatory surgical center shall prominently display a notice informing individuals of an individual's authority to request information on the average charges described in this paragraph from the hospital or ambulatory surgical center. [2013, c. 560, §1 (AMD).]

1. **Inpatient services.**

[2009, c. 71, §3 (RP) .]

2. **Outpatient nonemergent procedures.**

[2009, c. 71, §3 (RP) .]

3. **Emergency services.**

[2009, c. 71, §3 (RP) .]

SECTION HISTORY
RR 2003, c. 1, §16 (COR). 2003, c. 469, §C15 (NEW). 2005, c. 391, §1 (AMD). 2009, c. 71, §3 (RPR). 2013, c. 560, §1 (AMD).

§1718-A. CONSUMER INFORMATION REGARDING HEALTH CARE PRACTITIONER PRICES

(REPEALED)

SECTION HISTORY
2013, c. 332, §1 (NEW). 2013, c. 332, §3 (AFF). 2013, c. 515, §1 (RP).

§1718-B. CONSUMER INFORMATION REGARDING HEALTH CARE ENTITY PRICES

This section applies to the disclosure of health care prices by a health care entity. [2013, c. 515, §2 (NEW).]

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

A. "Frequently provided health care services and procedures" means those health care services and procedures that were provided by the health care entity at least 50 times in the preceding calendar year. [2013, c. 515, §2 (NEW).]

B. "Health care entity" means a health care practitioner, as defined in section 1711-C, subsection 1, paragraph F; a group of health care practitioners; or a health care facility, as defined in section 1711-C, subsection 1, paragraph D, that charges patients for health care services and procedures. A health care entity does not include a pharmacy or a pharmacist. [2013, c. 515, §2 (NEW).]

[2013, c. 515, §2 (NEW) .]

2. **Requirements.** The following requirements apply to health care entities.

A. A health care entity shall have available to patients the prices of the health care entity's most frequently provided health care services and procedures. The prices stated must be the prices that the health care entity charges patients directly when there is no insurance coverage for the services or procedures or when reimbursement by an insurance company is denied. The prices stated must be accompanied by descriptions of the services and procedures and the applicable standard medical codes or current procedural technology codes used by the American Medical Association. [2013, c. 515, §2 (NEW).]

B. A health care entity shall inform patients about the availability of prices for the most frequently provided health care services and procedures. [2013, c. 515, §2 (NEW).]

C. A health care entity shall prominently display in a location that is readily accessible to patients information on the price transparency tools available from the publicly accessible website of the Maine Health Data Organization established pursuant to chapter 1683 to assist consumers with obtaining estimates of costs associated with health care services and procedures. [2013, c. 515, §2 (NEW).]

A health care entity that does not routinely render services directly to patients in an office setting may satisfy this subsection by providing the information on its publicly accessible website.

[2013, c. 515, §2 (NEW) .]

SECTION HISTORY
2013, c. 515, §2 (NEW).

§1718-C. ESTIMATE OF THE TOTAL PRICE OF A SINGLE MEDICAL ENCOUNTER FOR AN UNINSURED PATIENT

Upon the request of an uninsured patient, a health care entity, as defined in section 1718-B, subsection 1, paragraph B, shall provide within a reasonable time of the request an estimate of the total price of medical services to be rendered directly by that health care entity during a single medical encounter. If the health care entity is unable to provide an accurate estimate of the total price of a specific medical service because the amount of the medical service to be consumed during the medical encounter is unknown in advance, the health care entity shall provide a brief description of the basis for determining the total price of that particular medical service. If a single medical encounter will involve medical services to be rendered by one or more 3rd-party health care entities, the health care entity shall identify each 3rd-party health care entity to enable the uninsured patient to seek an estimate of the total price of medical services to be rendered directly by each health care entity to that patient. When providing an estimate as required by this section, a health care entity shall also notify the uninsured patient of any charity care policy adopted by the health care entity. [2013, c. 560, §2 (NEW).]

SECTION HISTORY
2013, c. 560, §2 (NEW).

§1719. PATIENTS' RIGHTS

This section applies to hospitals licensed pursuant to chapter 405 that are nonstate mental health institutions as defined in Title 34-B, section 3801, subsection 6 and that are not subject to the grievance procedures of the Department of Behavioral and Developmental Services. [2003, c. 649, §1 (NEW).]

1. **Adoption of rules.** The commissioner shall adopt rules for the enhancement and protection of the rights of adult patients receiving inpatient mental health services from a hospital subject to the requirements of this section. The commissioner shall hold a public hearing before adopting rules under this section and shall give notice of the public hearing pursuant to Title 5, section 8053. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2003, c. 649, §1 (NEW) .]

2. **Rights protected.** The rules adopted pursuant to subsection 1 must meet the requirements of Title 34-B, section 3003, subsection 2, paragraphs A to K and must provide for the same opportunity for hearing and type of hearing as described in rules of the Department of Behavioral and Developmental Services relating to grievances filed by adult mental health consumers.

[2003, c. 649, §1 (NEW) .]

3. **Delegation.** The department shall delegate to the Department of Behavioral and Developmental Services responsibility for hearing and resolving all grievances that are submitted in a timely manner by patients receiving inpatient mental health services in hospitals subject to the requirements of this section.

[2003, c. 649, §1 (NEW) .]

4. **Final agency action.** Final resolution of a grievance by the Department of Behavioral and Developmental Services under the rules adopted pursuant to subsection 1 is the final agency action of the department for the purposes of judicial review under Title 5, section 11001.

[2003, c. 649, §1 (NEW) .]

SECTION HISTORY
2003, c. 649, §1 (NEW).

§1720. NURSING FACILITY MEDICAL DIRECTOR REIMBURSEMENT

The department shall include in its calculation of reimbursement for services provided by a nursing facility an allowance for the cost of a medical director in a base year amount not to exceed $10,000, with that amount being subject to an annual cost-of-living adjustment. [2005, c. 242, §1 (NEW).]

SECTION HISTORY
2005, c. 242, §1 (NEW).

§1721. PROHIBITION ON PAYMENT FOR HEALTH CARE FACILITY MISTAKES OR PREVENTABLE ADVERSE EVENTS

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

A. "Health care facility" means a hospital or ambulatory surgical center licensed under chapter 405. [2007, c. 605, §1 (NEW).]

B. "Mistake or preventable adverse event" means any of the following events that is within the health care facility's control to avoid:

(1) Surgery performed on the wrong body part;

(2) Surgery performed on the wrong patient;

(3) The wrong surgical procedure performed on a patient;

(4) Unintended retention of a foreign object in a patient after surgery or another procedure;

(5) Intraoperative or immediately postoperative preventable death of a patient classified as a normal healthy patient under guidelines published by a national association of anesthesiologists;

(6) Patient death or serious disability caused by the use of contaminated drugs, devices or biologics provided by a hospital or ambulatory surgical center;

(7) Patient death or serious disability caused by the use or function of a device in patient care in which the device is used for functions other than as intended;

(8) Patient death or serious disability caused by an intravascular air embolism that occurs while being cared for in a health care facility;

(9) An infant's being discharged to the wrong person;

(10) Patient death or serious disability caused by a patient's elopement for more than 4 hours;

(11) Patient suicide or attempted suicide resulting in serious disability while being cared for in a health care facility;

(12) Patient death or serious disability caused by a medication error such as an error involving the wrong drug, wrong dose, wrong patient, wrong time, wrong rate, wrong preparation or wrong route of administration;

(13) Patient death or serious disability caused by a hemolytic reaction due to the administration of incompatible blood or blood products;

(14) Maternal death or serious disability caused by labor or delivery in a low-risk pregnancy, labor and delivery while being cared for in a health care facility;

(15) Patient death or serious disability caused by hypoglycemia, the onset of which occurs while the patient is being cared for in a health care facility;

(16) Death or serious disability caused by failure to identify and treat hyperbilirubinemia in neonates prior to discharge;

(17) Stage 3 or 4 pressure ulcers acquired after admission to a health care facility;

(18) Patient death or serious disability due to spinal manipulative therapy;

(19) Patient death or serious disability caused by an electric shock while being cared for in a health care facility;

(20) Any incident in which a line designated for oxygen or other gas to be delivered to a patient contains the wrong gas or is contaminated by toxic substances;

(21) Patient death or serious disability caused by a burn incurred from any source while being cared for in a health care facility;

(22) Patient death caused by a fall by a patient who was or should have been identified as requiring precautions due to risk of falling while being cared for in a health care facility;

(23) Patient death or serious disability caused by the use of restraints or bedrails while being cared for in a health care facility;

(24) Any instance of care ordered by or provided by someone impersonating a physician, nurse, pharmacist or other licensed health care provider;

(25) Abduction of a patient of any age;

(26) Sexual assault of a patient within a health care facility;

(27) Death or significant injury of a patient resulting from a physical assault that occurs within a health care facility; and

(28) Artificial insemination with the wrong donor sperm or donor egg. [2007, c. 605, §1 (NEW).]

[2007, c. 605, §1 (NEW) .]

2. **Prohibition.** A health care facility is prohibited from knowingly charging a patient or the patient's insurer or the patient's employer as defined in Title 39-A, section 102, subsection 12 for health care services it provided as a result of or to correct a mistake or preventable adverse event caused by that health care facility.

[2009, c. 31, §1 (AMD) .]

3. **Patient education.** A health care facility is required to inform patients of the prohibition on payment for health care facility mistakes or preventable adverse events.

§1721. Voluntary restraint

(As enacted by PL 2007, c. 629, Pt. C, §1 is REALLOCATED TO TITLE 22, SECTION 1722)

[2007, c. 605, §1 (NEW) .]

SECTION HISTORY
RR 2007, c. 2, §9 (RAL). 2007, c. 605, §1 (NEW). 2007, c. 629, Pt. C, §1 (NEW). 2009, c. 31, §1 (AMD).

§1722. VOLUNTARY RESTRAINT

(REALLOCATED FROM TITLE 22, SECTION 1721)

1. **Voluntary restraint.** To control the rate of growth of the costs of hospital services, each hospital licensed under chapter 405 may voluntarily restrain cost increases and consolidated operating margins in accordance with this section. Each hospital shall annually report to the joint standing committee of the Legislature having jurisdiction over health and human services matters regarding its efforts made pursuant to this section. The targets and methodology apply to each hospital’s fiscal year beginning on or after the effective date of this section.

A. Each hospital may voluntarily hold its consolidated operating margin to no more than 3%. For purposes of this paragraph, a hospital's consolidated operating margin is calculated by dividing its consolidated operating income by its total consolidated operating revenue. [2007, c. 2, §9 (RAL).]

B. Each hospital may voluntarily restrain its increase in its expense per casemix-adjusted inpatient and volume-adjusted outpatient discharge to no more than 110% of the forecasted increase in the hospital market basket index for the coming federal fiscal year, as published in the Federal Register, when the federal Centers for Medicare and Medicaid Services publishes the Medicare program's hospital inpatient prospective payment system rates for the coming federal fiscal year. For purposes of this paragraph, the measure of a hospital's expense per casemix-adjusted inpatient and volume-adjusted outpatient discharge is calculated by:

(1) Calculating the hospital's total hospital-only expenses;

(2) Subtracting from the hospital's total hospital-only expenses the amount of the hospital's bad debt;

(3) Subtracting from the amount reached in subparagraph (2) the hospital taxes paid to the State during the hospital's fiscal year; and

(4) Dividing the amount reached in subparagraph (3) by the product of:

(a) The number of inpatient discharges, adjusted by the all payer case mix index for the hospital; and

(b) The ratio of total gross patient service revenue to gross inpatient service revenue.

For the purposes of this paragraph, a hospital's total hospital-only expenses include any item that is listed on the hospital's Medicare cost report as a subprovider, such as a psychiatric unit or rehabilitation unit, and does not include nonhospital cost centers shown on the hospital's Medicare cost report, such as home health agencies, nursing facilities, swing beds, skilled nursing facilities and hospital-owned physician practices. For purposes of this paragraph, a hospital's bad debt is as defined and reported in the hospital's Medicare cost report and as submitted to the Maine Health Data Organization pursuant to Title 22, chapter 1683. [2007, c. 2, §9 (RAL).]

[2007, c. 2, §9 (RAL) .]

SECTION HISTORY
RR 2007, c. 2, §9 (RAL).

§1723. PROCESSING FEE

Beginning October 1, 2010, a facility or health care provider subject to the licensing, certification or registration processes of this chapter or chapter 405, 411, 412, 417 or 419 shall pay a processing fee not to exceed $10 to the department for the reissuance of a license, certificate or registration when the licensee, certificate holder or registration holder made changes that require the reissuance of a license, certificate or registration. [2009, c. 590, §1 (NEW).]

The department may adopt rules necessary to implement this section. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 590, §1 (NEW).]

§1723. Criminal background checks

(As enacted by PL 2009, c. 621, §1 is REALLOCATED TO TITLE 22, SECTION 1724)

SECTION HISTORY
RR 2009, c. 2, §49 (RAL). 2009, c. 590, §1 (NEW). 2009, c. 621, §1 (NEW).

§1724. CRIMINAL BACKGROUND CHECKS

(REALLOCATED FROM TITLE 22, SECTION 1723)

Beginning October 1, 2010, a facility or health care provider subject to the licensing or certification processes of chapter 405, 412 or 419 shall obtain, prior to hiring an individual who will work in direct contact with a consumer, criminal history record information on that individual, including, at a minimum, criminal history record information from the Department of Public Safety, State Bureau of Identification. A facility or provider subject to licensing under chapter 419 shall conduct a comprehensive background check for individuals employed in positions that have direct access to a consumer's property, personally identifiable information, financial information or resources in accordance with applicable federal and state laws. The comprehensive background check must be conducted in accordance with state law and rules adopted by the department. The facility or health care provider shall pay for the comprehensive or criminal background check required by this section as applicable. [2015, c. 196, §8 (AMD); 2015, c. 299, §8 (AMD).]

The department may adopt rules necessary to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 2, §49 (RAL).]

SECTION HISTORY
RR 2009, c. 2, §49 (RAL). 2015, c. 196, §8 (AMD). 2015, c. 299, §8 (AMD).

§1725. NEUROPSYCHOLOGICAL AND PSYCHOLOGICAL EVALUATIONS

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

A. "Neuropsychological evaluation" means a testing method through which a neuropsychologist or a psychologist can acquire data about a person's cognitive, behavioral and emotional functioning for purposes of diagnosing or confirming a diagnosis of cognitive deficit or abnormalities in the central nervous system. [2013, c. 353, §1 (NEW).]

B. "Neuropsychological or psychological test data" means raw and scaled scores, a person's responses to test questions or stimuli, a neuropsychologist's or psychologist's notes and recordings concerning the person's statements and behavior during a neuropsychological evaluation or psychological evaluation and those portions of neuropsychological or psychological test materials that include the person's responses. [2013, c. 353, §1 (NEW).]

C. "Neuropsychological or psychological test materials" means manuals, instruments, protocols, assessment devices, scoring keys, test questions and stimuli used in conducting a neuropsychological evaluation or psychological evaluation. [2013, c. 353, §1 (NEW).]

D. "Psychological evaluation" means a testing method through which a psychologist acquires data about a person's cognitive and emotional functioning for purposes of determining cognitive ability, diagnosing a mental health condition or confirming a mental health diagnosis. [2013, c. 353, §1 (NEW).]

[2013, c. 353, §1 (NEW) .]

2. **Disclosure of neuropsychological or psychological test materials and neuropsychological or psychological test data.** The disclosure of neuropsychological or psychological test materials and neuropsychological or psychological test data is governed by this subsection.

A. Except as provided in paragraph B, neuropsychological or psychological test materials and neuropsychological or psychological test data, the disclosure of which would compromise the objectivity or fairness of the evaluation methods or process, may not be disclosed to anyone, including the person who is the subject of the test, and are not subject to disclosure in any administrative, judicial or legislative proceeding. [2013, c. 353, §1 (NEW).]

B. A person who is the subject of a neuropsychological evaluation or psychological evaluation is entitled to have all records relating to that evaluation, including neuropsychological or psychological test materials and neuropsychological or psychological test data, disclosed to any neuropsychologist or psychologist who is qualified to evaluate the test results and who is designated by the person. A neuropsychologist or psychologist designated to receive records under this paragraph may not disclose the neuropsychological or psychological test materials and neuropsychological or psychological test data to another person. [2013, c. 353, §1 (NEW).]

[2013, c. 353, §1 (NEW) .]

SECTION HISTORY
2013, c. 353, §1 (NEW).

§1726. PALLIATIVE CARE AND QUALITY OF LIFE INTERDISCIPLINARY ADVISORY COUNCIL

The Palliative Care and Quality of Life Interdisciplinary Advisory Council, as established in Title 5, section 12004-I, subsection 47-I and referred to in this section as "the advisory council," is established to improve the quality and delivery of patient-centered and family-focused care in accordance with this section. [2015, c. 203, §2 (NEW).]

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

A. "Palliative care" means patient-centered and family-focused medical care that optimizes quality of life by anticipating, preventing and treating suffering caused by a medical illness or a physical injury or condition that substantially affects a patient's quality of life, including, but not limited to, addressing physical, emotional, social and spiritual needs; facilitating patient autonomy and choice of care; providing access to information; discussing the patient's goals for treatment and treatment options, including, when appropriate, hospice care; and managing pain and symptoms comprehensively. [2015, c. 203, §2 (NEW).]

B. "Serious illness" means a medical illness or physical injury or condition that substantially affects quality of life for more than a short period of time. "Serious illness" includes, but is not limited to, Alzheimer's disease and related dementias, lung disease, cancer and heart, renal or liver failure. [2015, c. 203, §2 (NEW).]

[2015, c. 203, §2 (NEW) .]

2. **Membership.** The advisory council consists of the following members:

A. Five persons with experience and expertise in palliative care in acute hospital care, long-term care, in-home care and hospice care with respect to pediatric, youth, adult and elderly populations as follows:

(1) Two persons appointed by the Governor. One person must be a physician who is certified by a national board of hospice and palliative medicine. One person must be a registered nurse or advanced practice registered nurse who is certified by a national board for certification of hospice and palliative nurses; and

(2) Three persons appointed by the executive director of the Maine Hospice Council, established in section 8611, who are health professionals with palliative care work experience or expertise in the delivery of palliative care; [2015, c. 203, §2 (NEW).]

B. Two persons appointed by the President of the Senate. One person must be a licensed pharmacist with experience working with persons with serious illnesses. One person must represent hospitals in the State; [2015, c. 203, §2 (NEW).]

C. Two persons appointed by the Speaker of the House of Representatives. One person must be a licensed social worker with experience working with persons with serious illnesses and their family members. One person must represent health insurers; [2015, c. 203, §2 (NEW).]

D. Two persons appointed by the member of the Senate who is the leader of the minority party in the Senate. Both persons must represent statewide organizations that advocate on behalf of persons with serious illnesses; [2015, c. 203, §2 (NEW).]

E. Two persons appointed by the member of the House of Representatives who is the leader of the minority party in the House. One person must be a spiritual counselor with experience working with persons with serious illnesses and their family members. One person must represent persons 55 years of age and older; and [2015, c. 203, §2 (NEW).]

F. The executive director of the Maine Hospice Council, established in section 8611, who serves as a nonvoting member. [2015, c. 203, §2 (NEW).]

[2015, c. 203, §2 (NEW) .]

3. **Terms; vacancies; expense reimbursement.** A person appointed to the advisory council serves a 3-year term, subject to termination by decision of the appointing authority. When a vacancy occurs, the appointing authority shall appoint a new member to serve for 3 years. As provided in Title 5, section 12004-I, subsection 47-I, members serve on a voluntary basis, are not eligible for payment for their service and may be reimbursed for necessary expenses.

[2015, c. 203, §2 (NEW) .]

4. **Conduct of business.** At the first meeting of the advisory council and annually thereafter, the members shall elect from the membership a chair and a vice-chair and shall determine their duties. The chair and vice-chair shall call at least 2 meetings per year and other meetings as requested by a majority of the membership or as determined by the chair and vice-chair. A majority of the membership constitutes a quorum. All meetings of the advisory council are public proceedings, are open to the public and must be held in locations that are convenient for public access and that are provided by the Maine Hospice Council, established in section 8611. As appropriate to the agenda for the meeting and in conformance with the Maine Administrative Procedure Act, all meetings must provide an opportunity for public comment.

[2015, c. 203, §2 (NEW) .]

5. **Duties.** The advisory council shall:

A. Consult with and advise the Maine Center for Disease Control and Prevention on matters related to the establishment, maintenance, operation and evaluation of palliative care initiatives in the State; [2015, c. 203, §2 (NEW).]

B. Analyze palliative care being provided in the State; [2015, c. 203, §2 (NEW).]

C. Make recommendations to improve palliative care and the quality of life of persons with serious illnesses; and [2015, c. 203, §2 (NEW).]

D. Submit a report to the joint standing committees of the Legislature having jurisdiction over appropriations and financial affairs, health and human services matters and insurance and financial services matters by January 1st each year providing the findings and recommendations of the advisory council. [2015, c. 203, §2 (NEW).]

[2015, c. 203, §2 (NEW) .]

6. **Funding.** The advisory council may accept funding that is not public funding.

(As enacted by PL 2015, c. 218, §2 is REALLOCATED TO TITLE 22, SECTION 1727)

[2015, c. 203, §2 (NEW) .]

SECTION HISTORY
RR 2015, c. 1, §18 (RAL). 2015, c. 203, §2 (NEW). 2015, c. 218, §2 (NEW).

§1727. COOPERATION WITH LAW ENFORCEMENT

(REALLOCATED FROM TITLE 22, SECTION 1726)

A hospital licensed under chapter 404 or 405 shall make a good faith effort to cooperate with law enforcement agencies as provided in this section. [2015, c. 1, §18 (RAL).]

1. **Service of protection from abuse order.** A law enforcement agency may request that a hospital provide access to a defendant who is receiving care in the hospital for the purpose of serving a protection from abuse order pursuant to Title 19-A, section 4006, subsection 6.

A. The hospital shall provide the law enforcement agency with an opportunity to serve the defendant personally with the order at a time the hospital determines is clinically appropriate with due consideration to the medical condition of the defendant. [2015, c. 1, §18 (RAL).]

B. A hospital may disclose that the defendant is a patient to facilitate service under this section regardless of patient consent. [2015, c. 1, §18 (RAL).]

[2015, c. 1, §18 (RAL) .]

2. **Notice of upcoming release.** A law enforcement agency may request that a hospital provide notice to the law enforcement agency that a person is to be released from the hospital so that the law enforcement agency may arrest the person.

A. The hospital shall provide notice that the person is to be released from the hospital if the person was transported or was caused to be transported to the hospital by the law enforcement agency. [2015, c. 1, §18 (RAL).]

B. The information contained in the notice provided by the hospital must be no more than the minimum amount necessary to satisfy the requirements of this subsection. [2015, c. 1, §18 (RAL).]

[2015, c. 1, §18 (RAL) .]

3. **Required consistency with federal requirements.** A hospital may provide access under subsection 1 and information under subsection 2 only if the request is consistent with the provisions of 45 Code of Federal Regulations, Section 164.512 (2015) and 42 Code of Federal Regulations, Part 2 (2015).

[2015, c. 1, §18 (RAL) .]

4. **Immunity; no cause of action.** A hospital, hospital agent, employee or other person who in good faith and without gross negligence provides access or information to a law enforcement agency as required by this section or cooperates in an investigation or a criminal or judicial proceeding related to the requirements of this section is immune from civil and criminal liability and professional licensure action arising out of or related to compliance with this section. This section does not create a cause of action against the hospital, hospital agent, employee or other person for failure to comply with this section.

[2015, c. 1, §18 (RAL) .]

SECTION HISTORY

RR 2015, c. 1, §18 (RAL).

Chapter 402: HOSPITAL ASSESSMENTS

§1731. DEFINITIONS

(REPEALED)

SECTION HISTORY
1991, c. 528, §Q4 (NEW). 1991, c. 528, §RRR (AFF). 1991, c. 591, §Q4 (NEW). 1991, c. 780, §R1 (RP).

§1732. GENERAL PROVISIONS

(REPEALED)

SECTION HISTORY
1991, c. 528, §Q4 (NEW). 1991, c. 528, §RRR (AFF). 1991, c. 591, §Q4 (NEW). 1991, c. 780, §R1 (RP).

§1733. HOSPITAL ASSESSMENT

(REPEALED)

SECTION HISTORY
1991, c. 528, §Q4 (NEW). 1991, c. 528, §RRR (AFF). 1991, c. 591, §Q4 (NEW). 1991, c. 780, §R1 (RP).

§1734. ESTABLISHMENT OF THE MEDICAL CARE - PAYMENTS TO PROVIDERS SPECIAL REVENUE ACCOUNT

(REPEALED)

SECTION HISTORY
1991, c. 528, §Q4 (NEW). 1991, c. 528, §RRR (AFF). 1991, c. 591, §Q4 (NEW). 1991, c. 780, §R1 (RP).

Chapter 403: TOWN HOSPITALS

§1761. MUNICIPAL HOSPITALS

A municipality may establish and maintain one or more hospitals, nursing facilities, boarding homes or any other institution, place, building or agency for the care, accommodation or hospitalization of the sick or injured or for the care of any aged or other persons requiring or receiving chronic or convalescent care. Any such facility shall be subject to all statutes and licensing requirements applicable to the particular type of facility. [1977, c. 696, §187 (REEN).]

SECTION HISTORY
1977, c. 110, §1 (RPR). 1977, c. 457, §4 (RP). 1977, c. 696, §187 (REEN).

§1762. TEMPORARY FACILITIES

Notwithstanding the provisions of section 1761, in the event of an outbreak of any disease or health problem dangerous to the public health, the municipal officers or local health officer, with the approval of the department, may establish temporary health care facilities, subject to the supervision of the department. [1977, c. 696, §187 (REEN).]

SECTION HISTORY
1977, c. 110, §2 (RPR). 1977, c. 457, §4 (RP). 1977, c. 696, §187 (REEN).

§1763. INFECTIOUS DISEASES; REGULATIONS

(REPEALED)

SECTION HISTORY
1977, c. 110, §3 (RP). 1977, c. 457, §4 (RP).

§1764. PRECAUTIONS TO PREVENT SPREAD OF DISEASE

(REPEALED)

SECTION HISTORY
1977, c. 110, §3 (RP). 1977, c. 457, §4 (RP).

§1765. VIOLATIONS

(REPEALED)

SECTION HISTORY
1977, c. 110, §3 (RP). 1977, c. 457, §4 (RP).

§1766. FORFEITURES

(REPEALED)

SECTION HISTORY
1977, c. 110, §3 (RP). 1977, c. 457, §4 (RP).

§1767. SANATORIUM OR HOSPITAL FOR INFECTIOUS DISEASES; APPROVAL REQUIRED

(REPEALED)

SECTION HISTORY
1977, c. 110, §3 (RP). 1977, c. 457, §4 (RP).

Chapter 404: PRIVATE MENTAL HOSPITALS

§1781. LICENSE; VISITATION; PENALTY

The Department of Health and Human Services may license any suitable person to establish and keep a private hospital or private house for the reception and treatment of patients who are mentally deranged. The hospital or private house shall be subject to visitation by the department or any member thereof. [1983, c. 459, §2 (NEW); 2003, c. 689, Pt. B, §6 (REV).]

Whoever establishes or keeps the private hospital or private house without a license, or after revocation or during suspension of the license, shall be fined not more than $500. [1983, c. 459, §2 (NEW).]

SECTION HISTORY
1983, c. 459, §2 (NEW). 2003, c. 689, §B6 (REV).

§1782. VISITATION

Each of the licensed hospitals or houses shall be visited at least once a year, and oftener if the Commissioner of Health and Human Services so directs, by a member of the Department of Health and Human Services, who shall carefully inspect every part of the hospital or house visited with reference to its cleanliness and sanitary conditions and who shall make a report to the department with such recommendations to improve conditions as the department deems necessary. [1983, c. 459, §2 (NEW); 2003, c. 689, Pt. B, §§6, 7 (REV).]

SECTION HISTORY
1983, c. 459, §2 (NEW). 2003, c. 689, §§B6,7 (REV).

§1783. REVOCATION OR SUSPENSION OF LICENSE AFTER HEARING

When the Department of Health and Human Services believes a license should be suspended or revoked, it shall file a statement or complaint with the Distict Court Judge, designated in the Maine Administrative Procedure Act, Title 5, chapter 375. A person aggrieved by the refusal of the department to issue a license may file a statement or complaint with the District Court Judge. [1983, c. 459, §2 (NEW); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY
1983, c. 459, §2 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2003, c. 689, §B6 (REV).

Chapter 405: LICENSING OF HOSPITALS AND INSTITUTIONS

§1811. LICENSE REQUIRED; DEFINITIONS

No person, partnership, association or corporation, nor any state, county or local governmental units, may establish, conduct or maintain in the State any hospital, sanatorium, convalescent home, rest home, nursing home, ambulatory surgical facility or other institution for the hospitalization or nursing care of human beings without first obtaining a license therefor. Hospital, sanatorium, convalescent home, rest home, nursing home, ambulatory surgical facility and other related institution, within the meaning of this chapter, means any institution, place, building or agency in which any accommodation is maintained, furnished or offered for the hospitalization of the sick or injured or care of any aged or infirm persons requiring or receiving chronic or convalescent care. Nothing in this chapter may apply to hotels or other similar places that furnish only board and room, or either, to their guests or to such homes for the aged or blind as may be subject to licensing under any other law. [1989, c. 136, §1 (AMD); 1989, c. 572, §1 (AMD); 1989, c. 878, Pt. A, §58 (RPR).]

SECTION HISTORY
1967, c. 231, §1 (AMD). 1989, c. 136, §1 (AMD). 1989, c. 572, §1 (AMD). 1989, c. 878, §A58 (RPR).

§1812. MATERNITY HOME OR HOSPITAL DEFINED

(REPEALED)

SECTION HISTORY
1967, c. 231, §2 (RP).

§1812-A. NURSING HOME DEFINED

A nursing home or nursing facility shall be defined as a facility which is operated in connection with a hospital, or in which nursing care and medical services are prescribed by or performed under the general direction of persons licensed to practice medicine or surgery in the State, for the accommodation of convalescent or other persons who are not acutely ill and not in need of hospital care, but who do require skilled nursing care and related medical services. The term "nursing home" or "nursing facility" is restricted to those facilities, the purpose of which is to provide skilled nursing care and related medical services for a period of not less than 24 hours per day to individuals admitted because of illness, disease or physical or mental infirmity and which provides a community service. [2001, c. 666, Pt. A, §2 (AMD).]

SECTION HISTORY
1965, c. 403, (NEW). 2001, c. 666, §A2 (AMD).

§1812-B. HOSPITALS AND NURSING HOMES

The administration of medication in facilities licensed under section 1811, except group home intermediate care facilities for persons with intellectual disabilities, may be delegated to unlicensed personnel when such personnel have received appropriate training and instruction and the programs of training and instruction have been approved by the State Board of Nursing. The administration of medication in group home intermediate care facilities for persons with intellectual disabilities may be performed by unlicensed personnel when these personnel have received appropriate training and instruction and the programs of training and instruction have been approved by the department. Delegation of the administration of medication does not require the personal presence of the delegating professional nurse at the place where this service is performed, unless that personal presence is necessary to assure that medications are safely administered. The board shall issue such rules concerning delegation as it considers necessary to insure the highest quality of health care to the patient. The department shall issue such rules as it considers necessary to insure the highest quality of health care to residents of group home intermediate care facilities for persons with intellectual disabilities. [2011, c. 542, Pt. A, §28 (AMD).]

SECTION HISTORY
1977, c. 497, §3 (NEW). 1983, c. 284, §2 (AMD). 2011, c. 542, Pt. A, §28 (AMD).

§1812-C. NURSING STAFF IN NURSING HOMES; REIMBURSEMENT; DELEGATION OF DUTIES; AND POLICIES

1. **Reimbursement of nursing assistants.** Nursing homes shall be entitled to receive reimbursement under the department's principles of reimbursement, in accordance with approved staffing patterns, for long-term care facilities for nursing assistants enrolled in training programs.

[1985, c. 738, §1 (NEW) .]

2. **Training program expenses.** Nursing homes shall be entitled to receive reimbursement under the department's principles of reimbursement for long-term care facilities, for all reasonable expenses associated with carrying out a certified nursing assistant educational program, consistent with the department rules governing the licensing and functioning of skilled nursing facilities and intermediate care facilities.

[1985, c. 738, §1 (NEW) .]

3. **Delegation of nursing duties.** A registered nurse in a skilled nursing facility or an intermediate care facility may delegate the following functions to nursing assistants enrolled in training programs:

A. Distributing clean linens; [1985, c. 738, §1 (NEW).]

B. Making unoccupied beds; [1985, c. 738, §1 (NEW).]

C. Distributing food trays, water and nourishments; [1985, c. 738, §1 (NEW).]

D. Escorting selected patients within the facility; [1985, c. 738, §1 (NEW).]

E. Assisting patients with clothing; [1985, c. 738, §1 (NEW).]

F. Combing hair; [1985, c. 738, §1 (NEW).]

G. Assisting with feeding; and [1985, c. 738, §1 (NEW).]

H. Other similar functions that may be safely performed by a nursing assistant enrolled in a training program, provided that the nursing assistant in training has satisfactorily demonstrated the ability to perform the delegated tasks. [1985, c. 738, §1 (NEW).]

These functions may be limited to selected residents.

[1985, c. 738, §1 (NEW) .]

4. **Consistent policies.**

[1987, c. 195, §1 (RP) .]

5. **Rules; supervision of and delegation to nursing assistants.** The Department of Health and Human Services shall revise its rules or adopt rules concerning supervision of and delegation of tasks to certified nursing assistants and nursing assistants in training. The rules shall be developed and adopted jointly by the department and the State Board of Nursing and shall be consistent with other relevant rules.

[1987, c. 195, §2 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

6. **Rules; maintenance of approved staffing pattern.** The department shall revise its rules or adopt rules to require documentation when any nursing home receives reimbursement for an approved staffing pattern which exceeds the minimum staffing level and fails to meet that approved staffing level for one year. Failure to meet the minimum staffing requirements as set forth in the Regulations Governing the Licensure of Long-Term Care Facilities shall be cause for licensure sanctions permitted under law and rules.

[1987, c. 195, §2 (NEW) .]

6-A. **Shared staffing.** The department shall permit staff in nursing facilities to be shared with facilities licensed to provide assisted living services as long as there is a clear, documented audit trail and the staffing in the nursing facilities remains adequate to meet the needs of residents. Staffing to be shared may be based on the average number of hours used per week or month within the assisted living program. In a facility licensed to provide assisted living services under section 7801 in which 2 or more staff are required to be awake and on duty during a night shift, one of the staff may be shared with a nursing facility located in the same building without prior approval from the department, subject to the following provisions.

A. Prior notice must be given to the department. [2003, c. 416, §2 (NEW).]

B. The assisted living program shall maintain its state minimum staffing ratio, and the nursing facility shall maintain its state minimum staffing ratio and its federal licensed nurse staffing requirement. [2003, c. 416, §2 (NEW).]

C. The assisted housing program and the nursing facility shall each post a notice informing the public that, although staffing is shared on the night shift, compliance with the minimum staffing requirements is maintained. [2003, c. 416, §2 (NEW).]

D. The department may suspend the facility's ability to share staffing under this subsection if the most recent survey for either level of care indicates deficiencies that are related to resident care and that arise from the sharing of staff. [2003, c. 416, §2 (NEW).]

[2003, c. 416, §2 (AMD) .]

7. **Health Occupations Training Project.**

[1987, c. 777, §6 (RP) .]

SECTION HISTORY
1985, c. 738, §1 (NEW). 1987, c. 195, §§1,2 (AMD). 1987, c. 777, §2 (AMD). 1995, c. 670, §B1 (AMD). 1995, c. 670, §D5 (AFF). 2003, c. 416, §2 (AMD). 2003, c. 689, §B6 (REV).

§1812-D. REIMBURSEMENT; GERIATRIC TRAINING PROGRAMS

(REPEALED)

SECTION HISTORY
1987, c. 830, §1 (NEW). 2003, c. 689, §B6 (REV). 2015, c. 397, §1 (RP).

§1812-E. AMBULATORY SURGICAL FACILITY

1. **Definition.** As used in this chapter, unless the context otherwise indicates, "ambulatory surgical facility" means a facility with a primary purpose of providing elective surgical care to a patient who is admitted to and discharged from the facility within the same day. In order to meet this primary purpose, a facility must at least administer anesthetic agents, maintain a sterile environment in a surgical suite and charge a facility fee separate from the professional fee. "Ambulatory surgical facility" does not include:

A. A facility that is licensed as part of a hospital; [1991, c. 752, §1 (NEW).]

B. A facility that provides services or accommodations for patients who stay overnight; [1991, c. 752, §1 (NEW).]

C. A facility existing for the primary purpose of performing terminations of pregnancies; or [1991, c. 752, §1 (NEW).]

D. The private office of a physician or dentist in individual or group practice, unless that facility or office is certified as a Medicare ambulatory surgical center. [1991, c. 752, §1 (NEW).]

[1991, c. 752, §1 (AMD) .]

2. **Standards.** The department shall establish standards for the licensure of ambulatory surgical facilities effective July 1, 1992. The standards must provide that ambulatory surgical facilities that are certified for the federal Medicare and Medicaid programs meet the requirements for state licensure.

[1991, c. 752, §1 (AMD) .]

3. **Annual inspection.** The department shall inspect annually ambulatory surgical facilities, except that state inspections need not be performed during a year when a Medicare inspection is performed.

[1991, c. 752, §1 (NEW) .]

SECTION HISTORY
1989, c. 572, §2 (NEW). 1991, c. 752, §1 (AMD).

§1812-F. NURSING HOMES; STAFFING FOR SOCIAL SERVICES AND PATIENT ACTIVITIES

1. **Minimum hours.** The department shall approve at least the following number of hours for the following services in nursing homes.

A. The department shall approve at least 1/2 hour per patient per week for social services. [1991, c. 327, (NEW).]

B. The department shall approve at least 20 hours per week in nursing homes of up to 30 beds, at least 30 hours per week in nursing homes of 31 to 60 beds and at least 40 hours per week in nursing homes of 61 beds or more for patient activities. [1991, c. 327, (NEW).]

[1991, c. 327, (NEW) .]

2. **Transfer of hours.** The department shall approve the transfer of previously approved nonnursing hours to social service or patient activity hours if the transfer does not increase the nursing home's per diem rate.

[1991, c. 327, (NEW) .]

SECTION HISTORY
RR 1991, c. 2, §76 (COR). 1991, c. 327, (NEW). 1991, c. 421, §1 (NEW).

§1812-G. MAINE REGISTRY OF CERTIFIED NURSING ASSISTANTS AND DIRECT CARE WORKERS

1. **Established.** The Maine Registry of Certified Nursing Assistants and Direct Care Workers is established in compliance with federal and state requirements. The Department of Health and Human Services shall maintain the registry and make it accessible through a public website portal.

[2015, c. 196, §9 (AMD) .]

1-A. **Definitions.**

[2015, c. 196, §9 (RP) .]

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

A. "Abuse" means the infliction of injury, unreasonable confinement, intimidation or cruel punishment that causes or is likely to cause physical harm or pain or mental anguish; sexual abuse or sexual exploitation; or the intentional, knowing or reckless deprivation of essential needs. "Abuse" includes acts and omissions. [2015, c. 196, §9 (NEW).]

B. "Certified nursing assistant" means an individual who has successfully completed an approved nursing assistant training program, holds a certificate of training and meets the eligibility requirements established by the State Board of Nursing for listing on the registry. [2015, c. 196, §9 (NEW).]

C. "Direct access" means access to the property, personally identifiable information, financial information or resources of an individual or physical access to an individual who is a Medicare or Medicaid beneficiary or other individual served by a provider subject to this chapter. [2015, c. 196, §9 (NEW).]

D. "Direct care worker" means an individual who by virtue of employment generally provides to individuals direct contact assistance with personal care or activities of daily living or has direct access to provide care and services to clients, patients or residents regardless of setting. "Direct care worker" does not include a certified nursing assistant employed in that person's capacity as a certified nursing assistant. [2015, c. 196, §9 (NEW).]

E. "Disqualifying offense" means a substantiation for abuse, neglect or exploitation, or a criminal conviction identified in rules adopted by the department that prohibits employment as a certified nursing assistant or a direct care worker in accordance with subsection 2-C. [2015, c. 196, §9 (NEW).]

F. "Employer" means a person or licensed, certified or registered provider or other entity that employs direct access workers, including certified nursing assistants and direct care workers, to provide direct contact services in home, community or other health care or direct access settings. An individual who employs an unlicensed person to provide care for that individual is not an employer for the purposes of this section, except when required by rules adopted by the department. [2015, c. 196, §9 (NEW).]

G. "Health care or direct access setting" means a setting in which individuals receive services that require direct access by a certified nursing assistant or a direct care worker or other employee in providing care and related services. [2015, c. 196, §9 (NEW).]

H. "Misappropriation of property" means the deliberate misplacement, exploitation or wrongful, temporary or permanent use of a client's, patient's or resident's belongings or money without that person's consent. [2015, c. 196, §9 (NEW).]

I. "Neglect" means a threat to a person's health or welfare by failure to provide goods or services necessary to avoid physical or mental injury or impairment or the threat of injury or impairment. [2015, c. 196, §9 (NEW).]

J. "Nondisqualifying criminal conviction" means a criminal conviction identified in rules adopted by the department pursuant to subsection 18 that is included as a notation on the registry but does not prohibit employment as a certified nursing assistant or a direct care worker. [2015, c. 196, §9 (NEW).]

K. "Registered direct care worker" means an individual listed on the registry for training, education or compliance purposes in accordance with rules adopted pursuant to this chapter. "Registered direct care worker" does not include a certified nursing assistant employed in the capacity of a certified nursing assistant or a direct care worker listed on the registry with notations for disqualifying offenses. [2015, c. 196, §9 (NEW).]

L. "Registry" means the Maine Registry of Certified Nursing Assistants and Direct Care Workers established in subsection 1, which identifies individuals qualified and eligible for employment as a certified nursing assistant or a registered direct care worker and individuals who are not eligible for employment as a certified nursing assistant or direct care worker due to notations for disqualifying offenses. [2015, c. 196, §9 (NEW).]

M. "Substantiated finding" means an administrative determination made by the department after investigation of a complaint against a certified nursing assistant or a direct care worker of abuse, neglect or misappropriation of property of a client, patient or resident. [2015, c. 196, §9 (NEW).]

N. "Unsubstantiated finding" means an administrative determination made by the department after investigation of a complaint against a certified nursing assistant or a direct care worker that no evidence of abuse, neglect or misappropriation of property of a client, patient or resident was found to support a substantiated finding. [2015, c. 196, §9 (NEW).]

[2015, c. 196, §9 (NEW) .]

2. **Contents.**

[2015, c. 196, §9 (RP) .]

2-A. **Registry listing.** All active certified nursing assistants employed in the State must be listed on the registry. The registry must contain a listing of certified nursing assistants and direct care workers that are ineligible for employment based on notations for disqualifying offenses. Direct care workers registered for training, education or compliance purposes may apply for registration and listing on the registry. Direct care workers who may be listed on the registry include but are not limited to the following:

A. Behavior specialists; [2015, c. 196, §9 (NEW).]

B. Behavioral health professionals; [2015, c. 196, §9 (NEW).]

C. Certified residential care aides; [2015, c. 196, §9 (NEW).]

D. Certified residential medication aides; [2015, c. 196, §9 (NEW).]

E. Direct support professionals; [2015, c. 196, §9 (NEW).]

F. Mental health rehabilitation technicians; [2015, c. 196, §9 (NEW).]

G. Mental health support specialists; [2015, c. 196, §9 (NEW).]

H. Other qualified mental health professionals; [2015, c. 196, §9 (NEW).]

I. Personal care or support specialists; [2015, c. 196, §9 (NEW).]

J. Registered medical assistants; [2015, c. 196, §9 (NEW).]

K. Residential care specialists; [2015, c. 196, §9 (NEW).]

L. Community health workers; and [2015, c. 196, §9 (NEW).]

M. Other direct care workers described in rules adopted by the department pursuant to subsection 18. [2015, c. 196, §9 (NEW).]

[2015, c. 196, §9 (NEW) .]

2-B. **Individual information.** The registry must include information for each listed certified nursing assistant and direct care worker as required by rules adopted by the department pursuant to subsection 18.

[2015, c. 196, §9 (NEW) .]

2-C. **Registry notations.** The registry must include for a certified nursing assistant and direct care worker listed on the registry a notation of:

A. Disqualifying criminal convictions; [2015, c. 196, §9 (NEW).]

B. Nondisqualifying criminal convictions, except that a notation is not required on the registry for Class D and Class E criminal convictions over 10 years old that did not involve as a victim of the act a patient, client or resident; [2015, c. 196, §9 (NEW).]

C. Substantiated findings, including but not limited to the following information:

(1) Documentation of an investigation of a certified nursing assistant or a direct care worker, including the nature of the allegation and evidence supporting a determination that substantiates the allegation of abuse, neglect or misappropriation of property of a client, patient or resident;

(2) Documentation of substantiated findings of abuse, neglect or misappropriation of property of a client, patient or resident;

(3) If the certified nursing assistant or direct care worker appealed the substantiated finding, the date of the hearing; and

(4) The statement of the certified nursing assistant or direct care worker disputing the allegation of abuse, neglect or misappropriation of property of a client, patient or resident if the certified nursing assistant or direct care worker submitted such a statement; and [2015, c. 196, §9 (NEW).]

D. Petitions filed by a certified nursing assistant or direct care worker for removal of an employment ban issued by the department that was based on a criminal conviction and the department's review and determination. [2015, c. 196, §9 (NEW).]

[2015, c. 196, §9 (NEW) .]

3. **Eligibility requirements for listing; certified nursing assistant.** The State Board of Nursing shall adopt rules pursuant to the Maine Administrative Procedure Act defining eligibility requirements for listing on the registry as a certified nursing assistant, including rules regarding temporary listing of nursing assistants who have received training in another jurisdiction. The rules must permit certified nursing assistants to work under the supervision of a registered professional nurse in a facility providing assisted housing services as defined in chapter 1664 and must recognize work in those facilities for the purpose of qualifying for and continuing listing on the registry. Rules adopted regarding the work of certified nursing assistants in facilities providing assisted housing services are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

[2015, c. 196, §9 (AMD) .]

3-A. **Listing on the registry; direct care worker.** A direct care worker listed for purposes other than a disqualifying notation may be listed on the registry as a registered direct care worker for 2-year renewable periods. The department shall adopt routine technical rules regarding listing direct care workers on the registry, including but not limited to the following:

A. Direct care workers with disqualifying offenses must be listed on the registry; and [2015, c. 196, §9 (NEW).]

B. Direct care workers without disqualifying offenses who are registered for training, education or compliance purposes must comply with requirements for continued listing on the registry. [2015, c. 196, §9 (NEW).]

The rules may include provisions for direct care workers registered for training, education or compliance purposes including provisions for the temporary listing of direct care workers who received training in another jurisdiction.

A certified nursing assistant in good standing on the registry may qualify for registration as a direct care worker.

[2015, c. 196, §9 (NEW) .]

4. **Department verification of credentials and training.** The department may verify the credentials and training of certified nursing assistants and registered direct care workers listed on the registry.

[2015, c. 196, §9 (AMD) .]

4-A. **Provider verification fee.** The department may establish a provider verification fee not to exceed $25 annually per provider for verification of a certified nursing assistant's or registered direct care worker's credentials and training. Providers may not pass the cost on to the individual certified nursing assistant or registered direct care worker. Provider verification fees collected by the department must be placed in a special revenue account to be used by the department to operate the registry, including but not limited to

the cost of criminal history record checks. The department may adopt rules 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.

[2015, c. 196, §9 (AMD) .]

5. **Employment eligibility verification; certified nursing assistant.** An employer, including a health care institution, facility or other organization that employs an individual as a certified nursing assistant, shall verify that the certified nursing assistant is listed as active and has no disqualifying notations on the registry.

[2015, c. 196, §9 (AMD) .]

5-A. **Employment eligibility verification; direct care worker.** An employer, including a health care institution, facility or other organization that employs an individual as a direct care worker, shall verify that the direct care worker, if listed on the registry, has no disqualifying notations and has complied with the training or education requirements for registration, if applicable.

[2015, c. 196, §9 (NEW) .]

6. **Prohibited employment based on disqualifying offenses.** An individual with a disqualifying offense, including a substantiated complaint or a disqualifying criminal conviction, may not work as a certified nursing assistant or a direct care worker, and an employer is subject to penalties for employing a disqualified or otherwise ineligible person in accordance with applicable federal or state laws.

A. [2015, c. 494, Pt. A, §16 (RP).]

B. [2015, c. 494, Pt. A, §16 (RP).]

[2015, c. 494, Pt. A, §16 (RPR) .]

6-A. **Background check.** Certified nursing assistants and direct care workers are subject to a background check as defined by rules adopted by the department and according to the following:

A. A training program for certified nursing assistants or direct care workers must secure or pay for a background check on each individual who applies for enrollment. The individual's current name and all previous names are subject to the background check. A copy of the background check is given to the individual who, upon successful completion of the training, submits it with an application to be listed on the registry as a certified nursing assistant or a registered direct care worker.

(1) Prior to enrolling an individual, a training program for certified nursing assistants or direct care workers must notify individuals that a background check will be conducted and that certain disqualifying offenses, including criminal convictions, may prohibit an individual from working as a certified nursing assistant or a direct care worker. [2015, c. 196, §9 (NEW); 2015, c. 299, §10 (NEW).]

B. Pursuant to sections 1717, 1724, 2137, 2149-A, 7706, 8606 and 9005 and Title 34-B, section 1225, licensed, certified or registered providers shall secure and pay for a background check prior to hiring an individual who will work in direct contact with clients, patients or residents, including a certified nursing assistant or a direct care worker. [2015, c. 494, Pt. A, §17 (RPR).]

C. The department may secure a background check on certified nursing assistants and registered direct care workers on the registry every 2 years. [2015, c. 196, §9 (NEW); 2015, c. 299, §10 (NEW).]

D. A person or other legal entity that is not otherwise licensed by the department and that employs or places a certified nursing assistant or direct care worker to provide services allowing direct access shall secure and pay for a background check in accordance with state law and rules adopted by the department. [2015, c. 494, Pt. A, §18 (RPR).]

[2015, c. 494, Pt. A, §§17, 18 (AMD) .]

6-B. **Convictions within previous 10 years; impact on employment eligibility.** The department shall determine the effect of a criminal conviction within the previous 10 years on the employability of an individual as a certified nursing assistant or direct care worker based on rules adopted by the department pursuant to subsection 18.

[2015, c. 196, §9 (NEW) .]

6-C. **Table of crimes.** Department rules must include a table of crimes. Specific crimes listed on the table must be considered substantive offenses under Title 17-A, Part 2 or crimes identified in federal or state law that prohibit employment of an individual subject to this chapter. Convictions of specific crimes must be categorized in the table of crimes as disqualifying criminal convictions or nondisqualifying criminal convictions. Convictions in other jurisdictions for similar crimes must be identified as disqualifying or nondisqualifying convictions.

A. A disqualifying criminal conviction within the previous 10 years prohibits employment as a certified nursing assistant or a direct care worker.

(1) An individual with a disqualifying criminal conviction is subject to an employment ban of 10 or 30 years. The department shall adopt rules that specify disqualifying criminal convictions that prohibit employment for 10 years and disqualifying criminal convictions that prohibit employment for 30 years. [2015, c. 196, §9 (NEW).]

B. Nondisqualifying criminal convictions do not prohibit employment as a certified nursing assistant or a direct care worker. [2015, c. 196, §9 (NEW).]

[2015, c. 196, §9 (NEW) .]

6-D. **Petition for removal of an employment ban; criminal conviction.** Prior to the expiration of an employment ban under subsection 6-C, paragraph A, subparagraph (1), an individual may petition the department for removal of an employment ban that is based on a disqualifying criminal conviction. Unless otherwise prohibited, removal of the employment ban allows the individual to work as a certified nursing assistant or a direct care worker.

A. No sooner than 5 years after an individual is discharged from the legal restraints imposed by the criminal conviction, an individual may petition the department for removal of a 10-year employment ban. [2015, c. 196, §9 (NEW).]

B. No sooner than 15 years after an individual is discharged from the legal restraints imposed by the criminal conviction, an individual may petition the department for removal of a 30-year employment ban. [2015, c. 196, §9 (NEW).]

C. A successful petitioner must meet the criteria established by department rules for removal of an employment ban. Criteria must include but not be limited to an assessment of the risk of reoffending and the conduct of the petitioner since the conviction.

A petition for removal of an employment ban submitted by a certified nursing assistant or a registered direct care worker must be denied if the conduct that led to the conviction would have resulted in a lifetime ban if that conduct had been investigated as a complaint that resulted in a substantiated finding under subsection 13. [2015, c. 196, §9 (NEW).]

D. When the department grants a petition for removal of an employment ban, the individual, unless otherwise prohibited, may work as a certified nursing assistant or a direct care worker. The notation of the criminal conviction remains on the registry. [2015, c. 196, §9 (NEW).]

[2015, c. 196, §9 (NEW) .]

7. **Time limit on consideration of prior criminal conviction.**

[2015, c. 196, §9 (RP) .]

8. **Exception; certified nursing assistant convictions prior to June 2, 2003.** The restrictions on employment based on criminal convictions prior to June 2, 2003 do not apply to an individual listed and active on the registry as a certified nursing assistant prior to June 2, 2003, as long as the individual meets other state and federal requirements for certified nursing assistants and continues to maintain an active status by timely renewal as required by the rules.

[2015, c. 196, §9 (AMD) .]

9. **Notification.**

[2015, c. 196, §9 (RP) .]

10. **Complaint investigation.** The department may investigate complaints and allegations against certified nursing assistants or registered direct care workers of abuse, neglect, exploitation or misappropriation of property of a client, patient or resident.

[2015, c. 196, §9 (NEW) .]

11. **Issue a decision.** After an investigation under subsection 10, the department shall issue a written decision that the allegation of abuse, neglect, exploitation or misappropriation of property of a client, patient or resident is unsubstantiated or substantiated. Each allegation of abuse, neglect or misappropriation of property must be considered separately. A substantiated finding must be based on factors established by department rules. The written decision must include at least the following information:

A. Whether the allegation is unsubstantiated or substantiated; [2015, c. 196, §9 (NEW).]

B. A description of the factors supporting a substantiated finding; [2015, c. 196, §9 (NEW).]

C. If a notation of a substantiated finding is entered on the registry; [2015, c. 196, §9 (NEW).]

D. A description of the employment prohibition, if any; and [2015, c. 196, §9 (NEW).]

E. Notice of the right to appeal the department's decision pursuant to subsection 12. [2015, c. 196, §9 (NEW).]

[2015, c. 196, §9 (NEW) .]

12. **Right to hearing; appeal.** In accordance with department rules, a certified nursing assistant or registered direct care worker may request an administrative hearing to appeal a substantiated finding under subsection 11.

[2015, c. 196, §9 (NEW) .]

13. **Substantiated finding; lifetime employment ban.** A certified nursing assistant or a registered direct care worker with a notation of a substantiated finding on the registry is banned for life from employment as either a certified nursing assistant or a direct care worker.

[2015, c. 196, §9 (NEW) .]

14. **Registration requirements; direct care workers.** An individual registered by the department as a direct care worker for training, education or compliance purposes must comply with requirements established by department rules, including but not limited to the following:

A. Submission of a completed department-approved application form with required documents; [2015, c. 196, §9 (NEW).]

B. Successful completion of training requirements; and [2015, c. 196, §9 (NEW).]

C. Submission to a background check, if required. [2015, c. 196, §9 (NEW).]

[2015, c. 196, §9 (NEW) .]

15. **Department review of application; decision.** After review of an application for an initial or renewed registration for a direct care worker for training, education or compliance purposes, the department shall render a written decision to either deny or approve the application. The decision must be based on factors established by department rules and the factors must be included in the written decision.

A. A department-issued registration for a direct care worker for training, education or compliance purposes is for a term of 2 years. The issued date and the expiration date must be on the registration. [2015, c. 196, §9 (NEW).]

[2015, c. 196, §9 (NEW) .]

16. **Renewal of registration.** Prior to expiration of a direct care worker's registration for training, education or compliance purposes, the direct care worker shall secure a department-issued renewed registration.

[2015, c. 196, §9 (NEW) .]

17. **Failure to renew registration prior to expiration.** Upon expiration of the 2-year registration under subsection 15, a direct care worker registered for training, education or compliance purposes pursuant to subsection 14 who fails to secure a department-issued renewed registration will receive a notation on the registry that may disqualify the direct care worker for employment in the capacity for which the training, education or compliance purposes were required. A direct care worker who elects not to renew a registration remains eligible for employment as a direct care worker in a capacity that does not require registration-level training or education pursuant to subsection 14, paragraph B.

[2015, c. 196, §9 (NEW) .]

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

[2015, c. 196, §9 (NEW) .]

SECTION HISTORY
RR 1991, c. 2, §76 (RNU). 1991, c. 421, §1 (NEW). 1993, c. 247, §1 (AMD). 1995, c. 670, §B2 (AMD). 1995, c. 670, §D5 (AFF). 1997, c. 465, §§1,2 (AMD). 2001, c. 596, §B5 (AMD). 2001, c. 596, §B25 (AFF). 2003, c. 376, §§1,2 (AMD). 2003, c. 599, §4 (AMD). 2003, c. 599, §5 (AFF). 2003, c. 634, §3 (AMD). 2003, c. 689, §B6 (REV). 2009, c. 215, §1

(AMD). 2009, c. 590, §2 (AMD). 2011, c. 257, §2 (AMD). 2015, c. 196, §9 (AMD). 2015, c. 299, §§9, 10 (AMD). 2015, c. 494, Pt. A, §§16-18 (AMD).

§1812-H. PARTICIPATION IN THE MEDICARE HEALTH INSURANCE FOR THE AGED PROGRAM

1. **Medicare.** Any nursing facility that participates in the Medicaid program must participate in the Medicare health insurance for the aged program as a skilled nursing facility.

[1993, c. 410, Pt. FF, §4 (AMD) .]

2. **Compliance.** Any nursing facility required to participate in the Medicare health insurance for the aged program shall:

A. File an application to become a Medicare provider by January 1, 1994; [1993, c. 410, Pt. FF, §5 (AMD).]

B. Follow required federal procedures for certification and become certified within 90 days of the department's recommendation for certification; [1991, c. 622, Pt. M, §10 (NEW).]

C. Submit an annual application for Medicare participation at the same time applications for licensure and Medicaid certification are due; and [1991, c. 622, Pt. M, §10 (NEW).]

D. Participate in the Medicare program by billing Medicare for care provided to eligible recipients prior to billing Medicaid. [1991, c. 622, Pt. M, §10 (NEW).]

[1993, c. 410, Pt. FF, §5 (AMD) .]

2-A. **Rules.** The department shall adopt rules to implement this section. The rules must consider the unique needs of different parts of the State. Nursing facilities in different parts of the State may be required to certify different numbers or percentages of beds depending on the number of Medicare recipients in those areas, the number of patients in hospitals who are waiting for nursing facility admission and other relevant demographic information. Nothing in this subsection prohibits the department from requiring all nursing facilities to certify all of their beds as Medicare skilled nursing facility beds.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 324, §3 (AMD) .]

2-B. **Implementation.** Notwithstanding any provision of this section to the contrary, a nursing facility may decline to admit a prospective resident after an evaluation of the person's clinical condition and related care needs and a determination that the facility lacks qualified staff to meet the level of care required for that person. A nursing facility is not subject to penalty or sanction for declining to admit a prospective resident under this subsection. Nothing in this subsection affects the obligation of a nursing facility to provide care specific to the needs of residents of the facility.

[2001, c. 600, §1 (NEW) .]

3. **Sanctions.** Failure to comply with any of the provisions listed in this section may result in the imposition of a penalty. The department may impose a penalty of not less than $100 per bed per day and not more than $5,000 per day for failure to comply with any of these provisions. This penalty must be imposed

for each day a facility fails to comply with subsection 2, paragraph D. A repeated failure to comply with a provision results in fines of not less than $200 per bed per day and not more than $10,000 per day. The imposition and collection of these penalties are governed by section 7946.

[2007, c. 324, §3 (AMD) .]

SECTION HISTORY
1991, c. 622, §M10 (NEW). 1991, c. 671, §L2 (AMD). 1993, c. 410, §§FF4-7 (AMD). 2001, c. 600, §1 (AMD). 2007, c. 324, §3 (AMD).

§1812-I. CRITICAL ACCESS HOSPITAL DEFINED

For purposes of this chapter, "critical access hospital" has the same meaning as set out in section 7932, subsection 10. [2003, c. 673, Pt. HH, §1 (NEW).]

SECTION HISTORY
2003, c. 673, §HH1 (NEW).

§1812-J. UNLICENSED ASSISTIVE PERSONS

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

A. "Certified nursing assistant" means an individual who has successfully completed an approved nursing assistant training program, holds a certificate of training and meets the eligibility requirements established by the State Board of Nursing for listing on the registry. [2009, c. 215, §2 (NEW).]

A-1. "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish. [2011, c. 257, §3 (NEW).]

A-2. "Disqualifying offense" means a substantiation of abuse, neglect or exploitation or a criminal conviction identified in rules adopted by the department that prohibit employment as an unlicensed assistive person. [2015, c. 299, §11 (AMD).]

A-3. "Health care and direct access services settings" means settings in which individuals receive services that require direct access by a certified nursing assistant or unlicensed assistive person or other employee in providing direct care and related services. [2015, c. 299, §11 (AMD).]

A-4. "High severity" means the level, as established by the department by rule, of abuse, neglect or misappropriation of property of a client, patient or resident that forms the basis for a substantiated finding after investigation of a complaint against an unlicensed assistive person of abuse, neglect or misappropriation of property of a client, patient or resident. [2011, c. 257, §3 (NEW).]

A-5. "Indicated finding" means an administrative determination made by the department, after investigation of a complaint against an unlicensed assistive person of abuse, neglect or misappropriation of property of a client, patient or resident, that the abuse, neglect or misappropriation of property of a client, patient or resident was of low to moderate severity based on criteria established by the department by rule and that the person is not prohibited from employment as an unlicensed assistive person. [2011, c. 257, §3 (NEW).]

A-6. "Low to moderate severity" means the level, as established by the department by rule, of abuse, neglect or misappropriation of property of a client, patient or resident that forms the basis for an indicated finding after investigation of a complaint against an unlicensed assistive person of abuse, neglect or misappropriation of property of a client, patient or resident. [2011, c. 257, §3 (NEW).]

A-7. "Nondisqualifying criminal conviction" means a criminal conviction identified in rules adopted by the department that is included as a notation on the registry but does not prohibit employment as an unlicensed assistive person. [2011, c. 257, §3 (NEW).]

B. "Registry" means the Maine Registry of Certified Nursing Assistants and Direct Care Workers, which is a list of certified nursing assistants, with notations if applicable, and a list of direct care workers registered for training, education or compliance purposes, or unlicensed assistive persons with notations and is established under section 1812-G. [2015, c. 299, §12 (AMD).]

C. "State survey agency" means the agency specified in 42 United States Code, Sections 1395aa and 1396 responsible for determining whether institutions and agencies meet requirements for participation in the State's Medicare and Medicaid programs and authorized to investigate and substantiate complaints against certified nursing assistants. [2011, c. 257, §3 (AMD).]

C-1. "Substantiated finding" means an administrative determination made by the department, after investigation of a complaint against an unlicensed assistive person of abuse, neglect or misappropriation of property of a client, patient or resident, that the abuse, neglect or misappropriation of property of a client, patient or resident was of high severity based on criteria established by the department by rule. [2011, c. 257, §3 (NEW).]

D. "Unlicensed assistive person" means an unlicensed individual who by virtue of employment has direct access to and provides direct care or direct contact assistance with activities of daily living or other services to individuals in homes, assisted living programs, residential care facilities, hospitals and other health care and direct access services settings. "Unlicensed assistive person" includes but is not limited to a direct support professional, residential care specialist, personal support specialist, mental health support specialist, mental health rehabilitation technician, behavior specialist, other qualified mental health professional, certified residential medication aide and registered medical assistant and other direct access workers or direct care workers as described in rules adopted by the department. "Unlicensed assistive person" does not include a certified nursing assistant employed in the capacity of a certified nursing assistant. [2015, c. 299, §13 (AMD).]

E. "Unsubstantiated finding" means an administrative determination made by the department, after investigation of a complaint against an unlicensed assistive person of abuse, neglect or misappropriation of property of a client, patient or resident, that no abuse, neglect or misappropriation of property of a client, patient or resident was found to support an indicated finding or a substantiated finding of abuse, neglect or misappropriation of property of a client, patient or resident. [2011, c. 257, §3 (NEW).]

F. "Direct care worker" means an individual who by virtue of employment generally provides to individuals direct contact assistance with personal care or activities of daily living or has direct access to provide care and services to clients, patients or residents regardless of setting. "Direct care worker" does not include a certified nursing assistant employed in that person's capacity as a certified nursing assistant. [2015, c. 299, §14 (NEW).]

[2015, c. 299, §§11-14 (AMD) .]

2. Complaint investigation. The department may investigate complaints and allegations of abuse, neglect, exploitation or misappropriation of property of a client, patient or resident in a home or health care setting against unlicensed assistive persons.

[2015, c. 299, §15 (AMD) .]

2-A. Department decision after investigation of complaint. Based on criteria established by rule, the department, after investigation of a complaint of abuse, neglect or misappropriation of property of a client, patient or resident, shall:

A. Make a substantiated finding; [2011, c. 257, §4 (NEW).]

B. Make an indicated finding; or [2011, c. 257, §4 (NEW).]

C. Make an unsubstantiated finding. [2011, c. 257, §4 (NEW).]

[2011, c. 257, §4 (NEW) .]

3. **Substantiated finding of complaint; registry listing.** When a complaint against an unlicensed assistive person is substantiated by the department and the unlicensed assistive person is listed on the registry pursuant to subsection 4, the department's decision becomes final agency action as defined in Title 5, section 8002, subsection 4. The department shall notify the employer of the unlicensed assistive person that a substantiated finding of a complaint has been listed as a notation on the registry.

[2011, c. 257, §5 (AMD) .]

3-A. **Indicated finding of complaint; no registry listing.** An indicated finding by the department of a complaint against an unlicensed assistive person does not prohibit employment and is not listed as a notation on the registry. The department's complaint investigation decision becomes final agency action as defined in Title 5, section 8002, subsection 4.

[2011, c. 257, §6 (NEW) .]

4. **Registry listing.** The department shall list an unlicensed assistive person employed as a direct care worker with a disqualifying offense notation and may register an unlicensed assistive person or direct care worker for training, education and compliance purposes. Disqualifying notations must include but are not limited to the following information:

A. Documentation of the department's investigation, including the nature of the allegation and the evidence that led the department to substantiate the allegation of abuse, neglect, exploitation or misappropriation of property; [2015, c. 299, §16 (AMD).]

B. The date of the hearing, if the unlicensed assistive person chose to appeal the department finding that the complaint was substantiated; [2015, c. 299, §16 (AMD).]

C. The unlicensed assistive person's statement to the department disputing the allegation, if the unlicensed assistive person chose to submit one; and [2015, c. 299, §16 (AMD).]

D. Notations indicating the listed unlicensed assistive person is not in compliance with training or educational requirements. [2015, c. 299, §16 (NEW).]

[2015, c. 299, §16 (AMD) .]

5. **Right to hearing.** The department shall notify the unlicensed assistive person of the right to request a hearing to contest the finding that the complaint under subsection 3 was substantiated.

[2009, c. 215, §2 (NEW) .]

6. **Petition for removal of a substantiated finding of abuse, neglect or misappropriation of property.** No sooner than 12 months after the date an abuse, neglect or misappropriation of property substantiated finding is placed on the registry, an unlicensed assistive person may petition the department to remove a notation from the registry if the substantiated complaint of abuse, neglect or misappropriation of property is a one-time occurrence and there is no pattern of abuse, neglect or misappropriation of property.

[2011, c. 257, §7 (AMD) .]

7. **Prohibited employment based on disqualifying offenses.** An employer who employs an unlicensed assistive person to provide direct access services shall conduct a comprehensive background check in accordance with state law and rules adopted by the department and is subject to the employment restrictions set out in section 1812-G and other applicable federal and state laws. The employer is subject to penalties for employing a disqualified or otherwise ineligible person in accordance with applicable federal or state laws.

A. [2015, c. 299, §17 (RP).]

B. [2015, c. 299, §17 (RP).]

C. [2011, c. 257, §8 (RP).]

[2015, c. 494, Pt. D, §3 (AMD) .]

8. **Rules.** The department may 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.

[2009, c. 215, §2 (NEW) .]

SECTION HISTORY
2009, c. 215, §2 (NEW). 2011, c. 257, §§3-8 (AMD). 2015, c. 299, §§11-17 (AMD). 2015, c. 494, Pt. D, §3 (AMD).

§1812-K. INTERMEDIATE CARE FACILITY FOR PERSONS WITH INTELLECTUAL DISABILITIES

1. **Survey.** A state survey agency shall conduct a survey of each intermediate care facility for persons with intellectual disabilities not later than 15 months after the last day of the previous survey. The statewide average interval between surveys must be 12 months or less. The statewide average interval is computed at the end of each federal fiscal year by comparing the last day of the most recent survey for each participating facility to the last day of each facility's previous survey. As used in this section, "state survey agency" means the agency specified in 42 United States Code, Sections 1395aa and 1396 responsible for determining whether institutions and agencies meet requirements for participation in the State's Medicare and Medicaid programs.

[2013, c. 179, §5 (NEW) .]

2. **Rules.** The department shall adopt rules necessary to license intermediate care facilities for persons with intellectual disabilities in accordance with the Maine Administrative Procedure Act. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2013, c. 588, Pt. A, §24 (AMD) .]

SECTION HISTORY
2013, c. 179, §5 (NEW). 2013, c. 588, Pt. A, §24 (AMD).

§1813. LICENSES FOR NEW AND EXISTING HOSPITALS

A person, partnership, association or corporation or any state, county or local governmental unit may not continue to operate an existing hospital, sanatorium, convalescent home, rest home, nursing home or ambulatory surgical facility or open a hospital, sanatorium, convalescent home, rest home, nursing home or ambulatory surgical facility unless the operation is approved and regularly licensed by the State. [1991, c. 104, (RPR).]

Notwithstanding any other provision of this Title, a state-operated mental health hospital subject to licensure may have its current conditional license extended until January 1, 1993. By January 1, 1993, the department shall adopt rules that apply specifically to the licensure of psychiatric and mental health hospitals. Until those rules are adopted, the department shall apply existing hospital licensure rules to psychiatric and mental health hospitals. [1991, c. 104, (RPR).]

For nursing facilities providing both nursing home and assisted living services, the department shall issue one license reflecting both levels of care. The commissioner shall adopt rules to implement this paragraph. Rules adopted pursuant to this paragraph are routine technical rules as defined by Title 5, chapter 375, subchapter II-A. [1997, c. 488, §1 (NEW).]

SECTION HISTORY
1967, c. 231, §3 (AMD). 1989, c. 136, §2 (AMD). 1989, c. 572, §3 (AMD). 1989, c. 875, §E34 (RPR). 1989, c. 878, §A59 (RPR). 1991, c. 104, (RPR). 1997, c. 488, §1 (AMD).

§1814. APPLICATION

Any person, partnership, association or corporation, including state, county or local governmental units, desiring a license shall file with the department a verified application containing the name of the applicant desiring the license; whether the persons so applying are at least 18 years of age; the type of institution to be operated; the location; the name of the person in charge. Application on behalf of a corporation or association or governmental units shall be made by any 2 officers thereof or by its managing agents. All applicants shall submit satisfactory evidence of their ability to comply with the minimum standards of this chapter and all regulations adopted thereunder. [1989, c. 136, §3 (AMD).]

SECTION HISTORY
1969, c. 433, §44 (AMD). 1971, c. 598, §34 (AMD). 1989, c. 136, §3 (AMD).

§1815. FEES

Each application for a license to operate a hospital, convalescent home or nursing home must be accompanied by a nonrefundable fee. Hospitals shall pay $40 for each bed contained within the facility. Nursing and convalescent homes shall pay $26 for each bed contained within the facility. Each application for a license to operate an ambulatory surgical facility must be accompanied by the fee established by the department. The department shall establish the fee for an ambulatory surgical facility, not to exceed $500, on the basis of a sliding scale representing size, number of employees and scope of operations. All licenses must be renewed annually, or for a term of years, as required by law upon payment of a renewal fee. Hospitals shall pay a $40 renewal fee for each bed contained within the facility. Nursing and convalescent homes shall pay a $26 renewal fee for each bed contained within the facility. In the case of a license renewal that is valid for more than one year, the renewal fee must be multiplied by the number of years in the term of the license. The State's share of all fees received by the department under this chapter must be deposited in the General Fund. A license granted may not be assignable or transferable. State hospitals are not required to pay licensing fees. [2011, c. 257, §9 (AMD).]

SECTION HISTORY
1967, c. 231, §4 (AMD). 1975, c. 491, §2 (AMD). 1981, c. 703, §A12 (AMD). 1989, c. 136, §4 (AMD). 1989, c. 572, §4 (AMD). 1989, c. 878, §A60 (RPR). 1991, c. 752, §2 (AMD). 2003, c. 20, §K4 (AMD). 2003, c. 507, §C1 (AMD). 2003, c. 507, §C4 (AFF). 2011, c. 257, §9 (AMD).

§1815-A. NURSING HOME SURCHARGE

In addition to the fee in section 1815, an application for a license to operate a nursing home must be accompanied by a nonrefundable surcharge of $5 for each bed contained within the facility. The surcharge must be deposited in the General Fund. [1991, c. 765, §1 (NEW).]

SECTION HISTORY
1991, c. 765, §1 (NEW).

§1816. INSPECTIONS

Every building, institution or establishment for which a license has been issued shall be periodically inspected by duly appointed representatives of the Bureau of Medical Services under the rules and regulations to be established by the department. No institution of any kind licensed pursuant to this chapter shall be required to be licensed or inspected under the laws of this State relating to hotels, restaurants, lodging houses, boardinghouses and places of refreshments. No such license shall be issued until the applicant has furnished the department with a written statement signed by the Commissioner of Public Safety or the proper municipal official designated in Title 25, chapters 313 to 321 to make fire safety inspections that the home and premises comply with said chapters 313 to 321 relating to fire safety. The department shall establish and pay reasonable fees to the municipal official or the Commissioner of Public Safety for each such inspection. Said written statement shall be furnished annually. [1981, c. 470, Pt. A, §71 (AMD).]

For nursing facilities providing both nursing home and assisted living services, the department shall ensure that a single coordinated licensing and life safety code inspection is performed. The commissioner shall adopt rules to implement this paragraph. Rules adopted pursuant to this paragraph are routine technical rules as defined by Title 5, chapter 375, subchapter II-A. [1997, c. 488, §2 (NEW).]

A hospital licensed under this chapter is exempt from department inspection requirements under this chapter if the hospital is certified by the Centers for Medicare and Medicaid Services for participation in the federal Medicare program and holds full accreditation status by a health care facility accrediting organization recognized by the Centers for Medicare and Medicaid Services. If a hospital is certified to participate in the federal Medicare program and not accredited by a health care facility accrediting organization recognized by the Centers for Medicare and Medicaid Services, the department shall inspect the hospital every 3 years for compliance with the Centers for Medicare and Medicaid Services' conditions of participation. The provisions of this paragraph do not exempt a hospital from an inspection by the department in response to a complaint or suspected violation of this chapter or of the Centers for Medicare and Medicaid Services' conditions of participation or an inspection by another state agency or municipality for building code, fire code, life safety code or other purposes unrelated to health care facility licensing or accreditation. For purposes of this paragraph, "Centers for Medicare and Medicaid Services" means the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services. [2007, c. 314, §1 (NEW); 2007, c. 314, §2 (AFF).]

SECTION HISTORY
1971, c. 592, §5 (AMD). 1975, c. 623, §27 (AMD). 1981, c. 470, §A71 (AMD). 1997, c. 488, §2 (AMD). 2007, c. 314, §1 (AMD). 2007, c. 314, §2 (AFF).

§1817. ISSUANCE OF LICENSES

The department is authorized to issue licenses to operate hospitals, sanatoriums, convalescent homes, rest homes, nursing homes, ambulatory surgical facilities and other related institutions that, after inspection, are found to comply with this chapter and any rules adopted by the department. An initial license may be issued for up to 12 months. A license may be renewed for up to 24 months. The fee for this temporary or conditional license is $15 and is payable at the time of issuance of the license regardless of the term. When an institution, upon inspection by the department, is found not to meet all requirements of this chapter or department rules, the department is authorized to issue either: [2007, c. 324, §4 (RPR).]

1. **Temporary license.** A temporary license for a specified period not to exceed 90 days, during which time corrections specified by the department must be made by the institution for compliance with this chapter and departmental rules, if in the judgment of the commissioner the best interests of the public will be so served; or

[2007, c. 324, §4 (NEW) .]

2. **Conditional license.** A conditional license setting forth conditions that must be met by the institution to the satisfaction of the department.

[2007, c. 324, §4 (NEW) .]

Failure of the institution to meet any of the department's conditions immediately voids the temporary or conditional license by written notice by the department to the licensee or, if the licensee cannot be reached for personal service, by notice left at the licensed premises. A new application for a regular license may be considered by the department if, when and after the conditions set forth by the department at the time of the issuance of this temporary or conditional license have been met and satisfactory evidence of this fact has been furnished to the department. The department may amend, modify or refuse to renew a license in conformity with the Maine Administrative Procedure Act, or file a complaint with the District Court requesting suspension or revocation of any license on any of the following grounds: violation of this chapter or the rules issued pursuant to this chapter; permitting, aiding or abetting the commission of any illegal act in that institution; or conduct of practices detrimental to the welfare of a patient. Whenever, on inspection by the department, conditions are found to exist that violate this chapter or department rules issued pursuant to this chapter that, in the opinion of the commissioner, immediately endanger the health or safety of patients in an institution or create an emergency, the department by its duly authorized agents may, under the emergency provisions of Title 4, section 184, subsection 6, request that the District Court suspend or revoke the license. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2007, c. 324, §4 (NEW).]

SECTION HISTORY
1965, c. 453, (RPR). 1967, c. 231, §5 (AMD). 1973, c. 303, §3 (AMD). 1977, c. 694, §345 (RPR). 1989, c. 572, §5 (AMD). RR 1999, c. 2, §25 (AFF). RR 1999, c. 2, §24 (COR). 2007, c. 324, §4 (RPR).

§1818. APPEALS

Any person who is aggrieved by the decision of the department in refusing to issue a license or the renewal of a license may request a hearing as provided by the Maine Administrative Procedure Act, Title 5, chapter 375. [1981, c. 470, Pt. A, §72 (AMD).]

SECTION HISTORY
1973, c. 303, §3 (AMD). 1981, c. 470, §A72 (AMD).

§1819. INVESTMENT OF HOSPITAL TRUST FUNDS

Hospitals may treat any 2 or more trust funds as a single fund solely for the purpose of investment, if such investment is not prohibited by the instrument, judgment, decree or order creating such trust funds. Unless ordered by decree, the hospital so investing said funds is not required to render a court accounting with regard to such funds, but it, as accountant, or any interested person, may by petition to the Superior Court or the probate court in the county where said hospital is located secure approval of such accounting on such conditions as the court may establish.

§1819-A. FINANCIAL DISCLOSURE

Each hospital licensed under this chapter must annually publicly disclose: [2005, c. 249, §1 (NEW).]

1. **IRS Form 990.** The federal Internal Revenue Service Form 990, including all related disclosable schedules, for the hospital and for each tax-exempt entity related to the hospital that is required by federal law to file that form with the Internal Revenue Service; and

[2005, c. 249, §1 (NEW) .]

2. **IRS Form 1120.** The federal Internal Revenue Service Form 1120 for each for-profit entity in which the hospital has a controlling interest.

[2005, c. 249, §1 (NEW) .]

Information required to be disclosed under this section must be submitted by the hospital to the department within 5 months after the end of the hospital's fiscal year or within 5 months after the date on which the entity files the applicable form with the Internal Revenue Service. The department shall make available for public inspection and photocopying copies of all documents required by this section and shall post those documents on the department's publicly accessible website. The department shall post a chart on the website listing each hospital and providing a link to the documents filed pursuant to subsection 1. [2009, c. 350, Pt. C, §1 (AMD).]

SECTION HISTORY
2005, c. 249, §1 (NEW). 2009, c. 350, Pt. C, §1 (AMD).

§1820. STANDARDS

The department shall have the power to establish reasonable standards under this chapter which it finds to be necessary and in the public interest and may rescind or modify such regulations from time to time as may be in the public interest, in so far as such action is not in conflict with any of the provisions of said chapter. No standards, rules or regulations of the department pursuant to this chapter shall be adopted or enforced which would have the effect of denying a license to any hospital or other institution required to be licensed, solely by reason of the school or system of practice employed or permitted to be employed by physicians therein, provided such school or system of practice is recognized by the laws of this State.

§1820-A. RIGHT OF ENTRY AND INSPECTION OF NURSING HOMES AND BOARDING HOMES

The department and any duly designated officer or employee thereof shall have the right to enter upon and into the premises of any nursing home licensed pursuant to this chapter at any reasonable time in order to determine the state of compliance with this chapter and any rules and regulations in force pursuant thereto. Such right of entry and inspection shall extend to any premises which the department has reason to believe is being operated or maintained as a nursing home without a license, but no such entry or inspection of any premises shall be made without the permission of the owner or person in charge thereof, unless a warrant is first obtained from the District Court authorizing the same. Any application for a nursing home license made pursuant to this chapter shall constitute permission for and complete acquiescence in any entry or inspection of the premises for which the license is sought in order to facilitate verification of the information submitted on or in connection with such application. [1975, c. 719, §3 (AMD).]

SECTION HISTORY
1967, c. 334, (NEW). 1975, c. 719, §3 (AMD).

§1821. VIOLATIONS; PENALTIES

(REPEALED)

SECTION HISTORY
1967, c. 231, §6 (AMD). 1987, c. 774, §2 (RP).

§1822. NOTICE WHEN NURSING HOME VOLUNTARILY CLOSED

Any person, including county or local government units, who is conducting, managing or operating any hospital, sanatorium, convalescent home, rest home, nursing home or institution within the meaning of this chapter, and who is properly licensed therefor in accordance with this chapter shall give at least 30 days' advance notice of the voluntary closing of such facility to the patients therein and to those persons,

governmental units or institutions who are primarily responsible for the welfare of those patients who are being cared for by said hospital, sanatorium, convalescent home, rest home, nursing home or institution so that adequate preparation may be made for the orderly transfer of said patients to another qualified facility. [1971, c. 281, (NEW).]

Failure to provide such notice shall subject the offender to the same penalties provided in section 1821. [1971, c. 281, (NEW).]

SECTION HISTORY
1971, c. 281, (NEW).

§1822-A. NOTICE TO NURSING FACILITY APPLICANTS

If an applicant to a nursing facility has not received a preadmission assessment in accordance with section 3174-I, the nursing facility shall provide to the applicant and any relative or friend assisting the applicant a notice prepared by the department regarding preadmission assessment. The notice must indicate that preadmission assessment is required and that, if the applicant depletes the applicant's resources and applies for Medicaid in the future, the applicant may need to leave the nursing facility if an assessment conducted at that time finds that the applicant is not medically eligible for nursing facility services. [1995, c. 170, §1 (AMD).]

SECTION HISTORY
1993, c. 410, §FF8 (NEW). 1995, c. 170, §1 (AMD).

§1823. TREATMENT OF MINORS

Any hospital licensed under this chapter or alcohol or drug treatment facility licensed pursuant to section 7801 that provides facilities to a minor in connection with the treatment of that minor for venereal disease or abuse of drugs or alcohol or for the collection of sexual assault evidence through a sexual assault forensic examination is under no obligation to obtain the consent of that minor's parent or guardian or to inform that parent or guardian of the provision of such facilities so long as such facilities have been provided at the direction of the person or persons referred to in Title 32, sections 2595, 3292, 3817, 6221 or 7004. The hospital shall notify and obtain the consent of that minor's parent or guardian if that hospitalization continues for more than 16 hours. [1999, c. 90, §2 (AMD).]

SECTION HISTORY
1973, c. 145, §6 (NEW). 1977, c. 78, §146 (AMD). 1979, c. 96, §1 (AMD). 1979, c. 127, §142 (AMD). 1979, c. 663, §134 (AMD). 1999, c. 90, §2 (AMD).

§1824. PERSONAL FUNDS OF RESIDENTS

The operator or agent of any skilled nursing or intermediate care facility, licensed pursuant to this chapter, who manages, holds or deposits the personal funds of any resident of the facility is subject to all the procedures and provisions included in section 7857. [2001, c. 596, Pt. B, §6 (AMD); 2001, c. 596, Pt. B, §25 (AFF).]

SECTION HISTORY
1975, c. 719, §4 (NEW). 2001, c. 596, §B6 (AMD). 2001, c. 596, §B25 (AFF).

§1825. SMOKING IN NURSING HOMES

(REPEALED)

SECTION HISTORY

1983, c. 293, (NEW). 2009, c. 300, §9 (RP).

§1826. NURSING HOME ADMISSION CONTRACTS

All contracts or agreements executed at the time of admission or prior to admission by a resident or legal representative and by any nursing home licensed pursuant to this chapter shall be subject to the requirements of this section. [1985, c. 291, §1 (NEW).]

1. **Required contract provisions.** Each contract or agreement shall contain the following provisions.

A. A resident may obtain medical care from any qualified institution, agency or person of his choice, as long as that health care provider complies with any applicable laws or rules concerning the provision of care to the resident. [1985, c. 291, §1 (NEW).]

B. A resident may obtain medication from any qualified pharmacy, as long as that pharmacy complies with any applicable state rules and federal regulations and with the reasonable policies of the facility concerning procurement of medication. [1985, c. 291, §1 (NEW).]

[1985, c. 291, §1 (NEW) .]

2. **Contract requirements.** Each contract or agreement is subject to the following requirements.

A. No contract or agreement may contain a provision for the discharge of a resident or the transfer of a resident to another facility or to another room within the same facility which is inconsistent with state law or rule. [1985, c. 291, §1 (NEW).]

B. Each contract or agreement must contain a complete copy of the department rules establishing residents' rights and must contain a written acknowledgement that the resident has been informed of those rights. If a resident is under full guardianship, there must be a written acknowledgement of the receipt of those rights by the guardian. If a resident is under limited guardianship, both the resident and the guardian must acknowledge receipt of the rights. All notices and information regarding rights must be written in language that is plain and understandable. No provision in the contract or agreement may negate, limit or otherwise modify any provision of the residents' rights. [2011, c. 542, Pt. A, §29 (AMD).]

C. No provision of a contract or agreement may require or imply a lesser standard of care or responsibility than is required by law or rule. [1985, c. 291, §1 (NEW).]

D. No provision in a contract or agreement may state or imply a lesser degree of responsibility for the personal property of a resident than is required by law or rule. [1985, c. 291, §1 (NEW).]

E. No contract or agreement may require the resident to sign a waiver of liability statement as a condition of discharge, even if the discharge is against medical advice. This does not prohibit a facility from attempting to obtain a written acknowledgement that the resident has been informed of the potential risk in being discharged against medical advice. [1985, c. 291, §1 (NEW).]

F. Each contract or agreement shall contain a provision which provides for at least 30 days' notice prior to any changes in rates and charges, responsibilities, services to be provided or any other items included in the contract or agreement. [1985, c. 291, §1 (NEW).]

G. No contract or agreement may require the resident to authorize the facility or its staff to manage, hold or otherwise control the income or other assets of a resident. [1985, c. 291, §1 (NEW).]

H. No contract or agreement may contain any provisions which restrict or limit the ability of a resident to apply for and receive Medicaid or which require a specified period of residency prior to applying for Medicaid. The resident may be required to notify the facility when an application for Medicaid has been made. No contract or agreement may require a deposit or other prepayment from Medicaid recipients. No contract or agreement may refuse to accept retroactive Medicaid benefits. [1985, c. 291, §1 (NEW).]

I. No contract or agreement may contain a provision that provides for the payment of attorney's fees or any other cost of collecting payments from the resident, except that attorney's fees and costs may be collected against any agent under a power of attorney who breaches the agent's duties as set forth in section 1826-A or Title 18-A, section 5-914 or against a conservator appointed under Title 18-A, section 5-404 for breach of the conservator's duties. [2015, c. 247, §1 (AMD).]

[2015, c. 247, §1 (AMD) .]

3. **Other contract provisions.** The contract or agreement may contain other provisions that do not violate state law or rule or federal law or regulation and that are specifically allowed by the standardized contract under subsection 4.

[1997, c. 329, §1 (AMD) .]

4. **Standardized contract.** The commissioner shall adopt rules to standardize nursing home contracts for all nursing home residents to clarify the rights and obligations of residents. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter II-A.

[1997, c. 329, §2 (NEW) .]

SECTION HISTORY
1985, c. 291, §1 (NEW). 1997, c. 329, §§1,2 (AMD). 2011, c. 542, Pt. A, §29 (AMD). 2015, c. 247, §1 (AMD).

§1827. PHOTOGRAPHS OF NURSING HOME RESIDENTS

A nursing home may require an identification photograph of each resident. Photographs may not be used for any other purpose without the permission of the resident for each specific use. The permission must indicate the specific purpose which the pictures are to be used for and, except for the identification photograph, may not be contained in the admission contract or agreement. [1985, c. 291, §1 (NEW).]

SECTION HISTORY
1985, c. 291, §1 (NEW).

§1828. RECORDS; DISCLOSURE

1. **Confidential information.** The following provisions apply to records that are made, acquired or retained by the department in connection with the administration of the Medicaid program and the licensing or certification of hospitals, nursing homes and other medical facilities and entities.

A. Except as provided in Title 5, section 9057 and in subsections 2 and 3, confidential information may not be released without a court order or a written release from the person whose privacy interest is protected by this section. [1989, c. 175, §2 (NEW).]

B. "Confidential information" means any information which directly or indirectly identifies:

(1) Any person who makes a complaint to the department;

(2) A resident or a recipient of services of any facility or provider licensed or certified by the department;

(3) Any recipient of a public welfare program, such as the United States Social Security Act, Title XIX; or

(4) Any medical or personal information concerning the individuals listed in subparagraphs (2) and (3). [1989, c. 175, §2 (NEW).]

[1989, c. 175, §2 (NEW) .]

2. **Optional disclosure.** The department may disclose relevant confidential information to the extent allowed by federal law and regulation to the following persons or agencies:

A. Employees of the department and legal counsel for the department in carrying out their official functions; [1989, c. 175, §2 (NEW).]

B. Professional and occupational licensing boards pursuant to chapter 857; [1989, c. 175, §2 (NEW).]

C. An agency or person investigating a report of abuse or neglect when the investigation is authorized by law or by an agreement with the department; [1989, c. 175, §2 (NEW).]

D. A physician treating an individual whom the physician reasonably suspects may have been abused or neglected; [1989, c. 175, §2 (NEW).]

E. The resident or recipient of services on whose behalf the complaint was made; or [1989, c. 175, §2 (NEW).]

F. A parent, guardian, spouse or adult child of a resident or recipient of services or any other person permitted by the resident or recipient to participate in decisions relating to the resident's or recipient's care. [1989, c. 175, §2 (NEW).]

[1989, c. 175, §2 (NEW) .]

3. **Mandatory disclosure.** The department shall disclose relevant confidential information to the extent allowed by federal law and regulations to the following:

A. A law enforcement agency investigating a report of abuse or neglect or the commission of a crime by an owner, operator or employee of a facility or provider; or [1989, c. 175, §2 (NEW).]

B. Appropriate state or federal agencies when disclosure is necessary to the administration of the Medicaid program. [1989, c. 175, §2 (NEW).]

[1989, c. 175, §2 (NEW) .]

4. **Further disclosure.** Information released pursuant to subsections 2 and 3 shall be used solely for the purpose for which it was provided and shall not be further disseminated.

[1989, c. 175, §2 (NEW) .]

SECTION HISTORY
1989, c. 175, §2 (NEW).

§1829. NOTICE TO MEDICAL UTILIZATION REVIEW ENTITY

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

A. "Medical utilization review entity" means a person, corporation, organization or other entity that provides medical utilization review services as defined in Title 24-A, section 2773. [1991, c. 548, Pt. A, §17 (RPR).]

B. "Emergency treatment" means treatment of a case involving accidental bodily injury or the sudden and unexpected onset of a critical condition requiring medical or surgical care for which a person seeks immediate medical attention within 24 hours of the onset. [1991, c. 548, Pt. A, §17 (RPR).]

[1991, c. 548, Pt. A, §17 (RPR) .]

2. **Notification requirement.** If a hospital provides emergency treatment to a person who is insured or otherwise covered under a policy or contract that requires review of hospitalization by a medical utilization review entity, the hospital must notify the medical utilization review entity covering that person, unless the person is:

A. Released from the hospital no more than 48 hours after admission; or [1991, c. 548, Pt. A, §17 (RPR).]

B. Covered under an insurance policy or contract that is not subject to Title 24, section 2302-B, Title 24-A, section 2749-A or Title 24-A, section 2847-A. [1993, c. 645, Pt. A, §2 (AMD).]

The notification must include the name of the person admitted, the general medical nature of the admission and the telephone number of the admitting physician or other health care provider treating the person.

[1993, c. 645, Pt. A, §2 (AMD) .]

3. **Timing of notification.** Notification must be made within 2 business days after the hospital determines the identity of the utilization review entity and receives written authorization to release the information by the patient or other person authorized to permit release of the information.

[1991, c. 548, Pt. A, §17 (RPR) .]

4. **Exemption.** The hospital is exempt from this requirement if:

A. The hospital receives a written confirmation from the admitting physician, the patient or a representative of the patient that the medical utilization review entity has been notified; or [1991, c. 548, Pt. A, §17 (RPR).]

B. The hospital is not able to obtain written authorization to release the information, following a good faith effort by the hospital to obtain that authorization. [1991, c. 548, Pt. A, §17 (RPR).]

[1991, c. 548, Pt. A, §17 (RPR) .]

5. **Immunity from liability for notification.** Neither the hospital nor any of its employees or representatives may be held liable for damages resulting from the notification required by this section.

[1991, c. 548, Pt. A, §17 (RPR) .]

SECTION HISTORY
1989, c. 767, §1 (NEW). 1989, c. 823, (NEW). 1991, c. 548, §A17 (RPR). 1993, c. 645, §A2 (AMD).

§1830. PHARMACEUTICAL SERVICES IN NURSING HOMES

1. **Notice.** Each nursing home shall post a notice in a place within the nursing home where notices for residents are ordinarily posted stating that each resident has the right to obtain medication from a pharmacy of the resident's choice as provided in section 1826, subsection 1.

[1991, c. 548, Pt. A, §18 (NEW) .]

SECTION HISTORY
1991, c. 548, §A18 (NEW).

§1831. PATIENT REFERRALS

1. **Provision of information.** In order to provide for informed patient or resident decisions, a hospital or nursing facility shall provide a standardized list of licensed providers of care and services and available physicians for all patients or residents prior to discharge for whom home health care, hospice care, acute rehabilitation care, a hospital swing bed as defined in section 328, subsection 15 or nursing care is needed. The list must include a clear and conspicuous notice of the rights of the patient or resident regarding choice of providers.

A. For all patients or residents requiring home health care or hospice care, the list must include all licensed home health care and hospice providers that request to be listed and any branch offices, including addresses and phone numbers, that serve the area in which the patient or resident resides. [2013, c. 214, §1 (AMD).]

B. For all patients or residents requiring nursing facility care or a hospital swing bed, the list must include all appropriate facilities that request to be listed that serve the area in which the patient or resident resides or wishes to reside and the physicians available within those facilities that request to be listed. [2013, c. 214, §1 (AMD).]

C. The hospital or nursing facility shall disclose to the patient or resident any direct or indirect financial interest the hospital or nursing facility has in the nursing facility or home health care provider. [1997, c. 337, §1 (NEW).]

[2013, c. 214, §1 (AMD) .]

2. **Rulemaking.** The department shall establish by rule guidelines necessary to carry out the purposes of this section, including but not limited to the standardized list referenced in subsection 1 and contact information for the long-term care ombudsman program under section 5107-A. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

[2013, c. 214, §1 (AMD) .]

SECTION HISTORY
1997, c. 337, §1 (NEW). 2013, c. 214, §1 (AMD).

§1832. SAFETY AND SECURITY IN HOSPITALS

A hospital licensed under this chapter shall, on an annual basis, adopt a safety and security plan to protect the patients, visitors and employees of the hospital from aggressive and violent behavior. The safety and security plan must include a process for hospitals to receive and record incidents and threats of violent behavior occurring at or arising out of employment at the hospital. The safety and security plan must prohibit a representative or employee of the hospital from interfering with a person making a report as provided in the plan. [2011, c. 254, §1 (NEW); 2011, c. 254, §2 (AFF).]

SECTION HISTORY

2011, c. 254, §1 (NEW). 2011, c. 254, §2 (AFF).

Chapter 405-A: HOSPITAL AND HEALTH CARE PROVIDER COOPERATION ACT

§1841. SHORT TITLE

This chapter may be known and cited as "the Hospital and Health Care Provider Cooperation Act." [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

SECTION HISTORY
2005, c. 670, §1 (NEW). 2005, c. 670, §4 (AFF).

§1842. LEGISLATIVE FINDINGS AND INTENT

The Legislature finds that it is necessary and appropriate to encourage hospitals and other health care providers to cooperate and enter into agreements that will facilitate cost containment, improve quality of care and increase access to health care services. This Act provides processes for state review of overall public benefit, for approval through certificates of public advantage and for continuing supervision. It is the intent of the Legislature that a certificate of public advantage approved under this chapter provide state action immunity under applicable federal antitrust laws. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

SECTION HISTORY
2005, c. 670, §1 (NEW). 2005, c. 670, §4 (AFF).

§1843. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

1. **Cooperative agreement.** "Cooperative agreement" means an agreement that names the parties to the agreement and describes the nature and scope of the cooperation for:

A. The sharing, allocation or referral of patients, personnel, instructional programs, medical or mental health services, support services or facilities or medical, diagnostic or laboratory facilities, procedures or other services traditionally offered by hospitals or health care providers; [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

B. The coordinated negotiation and contracting with payors or employers; or [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

C. The merger of 2 or more hospitals or 2 or more health care providers. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

A cooperative agreement under this chapter is an agreement between 2 or more hospitals or an agreement between 2 or more health care providers. An agreement between one or more hospitals and one or more health care providers is not a cooperative agreement for the purposes of this chapter.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

2. **Covered entity.** "Covered entity" means a hospital or health care provider.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

3. **Health care provider.** "Health care provider" means a licensed community mental health services provider, a physician licensed under Title 32, chapter 36 or 48 and operating in this State or a corporation or business entity engaged primarily in the provision of physician health care services.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

4. **Hospital.** "Hospital" means:

A. An acute care institution licensed and operating in this State as a hospital under section 1811 or the parent of such an institution; or [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

B. A hospital subsidiary or hospital affiliate in the State that provides medical services or medically related diagnostic and laboratory services or engages in ancillary activities supporting those services. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

5. **Merger.** "Merger" means a transaction by which ownership or control over substantially all of the stock, assets or activities of one or more covered entities is placed under the control of another covered entity. A merger between one or more hospitals and one or more health care providers is not a merger for the purposes of this chapter.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

SECTION HISTORY
2005, c. 670, §1 (NEW). 2005, c. 670, §4 (AFF).

§1844. CERTIFICATE OF PUBLIC ADVANTAGE

1. **Authority.** A covered entity may negotiate and enter into a cooperative agreement with another covered entity and may file an application for a certificate of public advantage pursuant to this section. The approval of an application for a certificate of public advantage is governed by the standards of subsection 5.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

2. **Application for certificate.** The application process for a certificate of public advantage is as follows.

A. At least 45 days prior to filing an application for a certificate of public advantage for a merger, the parties to a merger agreement shall file a letter of intent with the department describing the proposed merger. Copies of the letter of intent and all accompanying materials must be submitted to the Attorney General at the time the letter of intent is filed with the department. [2011, c. 90, Pt. J, §11 (AMD).]

B. The parties to a cooperative agreement shall file with the department an application for a certificate of public advantage with regard to the cooperative agreement and pay the application fee established under section 1851. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

C. The application must include a signed copy of the original cooperative agreement and must state all consideration passing to any party under the agreement. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

D. The parties to a cooperative agreement shall submit copies of the application and all the accompanying materials to the Attorney General at the time they file the application with the department. [2011, c. 90, Pt. J, §12 (AMD).]

Copies of the application and all accompanying materials filed by the applicant, public comments, records of the department maintained with regard to the application and copies of the letter of intent filed for a merger may be examined at an office of the department.

[2011, c. 90, Pt. J, §§11, 12 (AMD) .]

3. **Public notice.** Within 10 business days of the filing of an application under this section, the department shall give public notice of the filing as follows.

A. The department shall publish notice in a newspaper of general circulation in Kennebec County and in a newspaper published within the service area in which the proposed cooperative agreement would be effective. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

B. The department shall provide notice by mailing copies of the application and letter of intent, if any, to all persons who request notification from the department. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

C. Notice under this subsection must include:

(1) A brief description of the proposal;

(2) A description of the review process and schedule; and

(3) A statement of the availability of the application and records pertaining to it and letter of intent as provided in subsection 2. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

4. **Procedure for department review.** The following procedures apply to review by the department of an application filed under this section.

A. The department shall review and evaluate the application in accordance with the standards set forth in subsection 5. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

B. Any person may provide the department with written comments concerning the application within 30 days after the public notice in subsection 3, paragraph A. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

C. The department shall provide the Attorney General with copies of all comments from persons submitted under paragraph B. [2011, c. 90, Pt. J, §13 (AMD).]

D. This paragraph applies with regard to a public hearing.

(1) The department may hold a public hearing when it determines a public hearing is appropriate.

(2) The department shall hold a public hearing if 5 or more persons who are residents of the State and who are from the health service area to be served by the applicant request, in writing, that a hearing be held. A request under this subparagraph must be received by the department no later than 30 days after publication of the notice under subsection 3.

(3) If a public hearing is held, an electronic or stenographic record of the public hearing must be kept as part of the record of the application by the department. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

E. The parties to a cooperative agreement may withdraw their application and thereby terminate all proceedings under this chapter as follows:

(1) Without the approval of the department, any party or the Superior Court at any time prior to the filing of an answer or responsive pleading in a court action under section 1848, subsection 2 or prior to entry of a consent decree under section 1848, subsection 9; or

(2) Without the approval of the department or any party at any time prior to the issuance of a final decision under paragraph G if a court action has not been filed under section 1848, subsection 2. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

F. The department shall issue a final decision to grant or deny an application for a certificate of public advantage under this section no less than 40 days and no more than 90 days after the filing of the application. The department shall issue a preliminary decision at least 5 days prior to issuing the final decision. The preliminary and final decisions must be in writing and set forth the basis for the decisions. The department shall provide copies of the preliminary and final decisions to the applicants, the Office of the Attorney General and all persons who requested notification from the department under subsection 3, paragraph B. [2011, c. 90, Pt. J, §14 (AMD).]

[2011, c. 90, Pt. J, §§13, 14 (AMD) .]

5. Standards for approval of a certificate of public advantage. The department shall issue a certificate of public advantage for a cooperative agreement if it determines that the applicants have demonstrated by a preponderance of the evidence that the likely benefits resulting from the agreement outweigh any disadvantages attributable to a reduction in competition likely to result from the agreement. The department may not issue to health care providers a certificate of public advantage for a cooperative agreement that allows coordinated negotiation and contracting with payors or employers unless such negotiation and contracting are ancillary to clinical or financial integration. In issuing a decision on an application for a certificate of public advantage under this section, the department shall make specific findings as to the nature and extent of any likely benefits and disadvantages found under this subsection.

A. In evaluating the potential benefits of a cooperative agreement, the department shall consider whether one or more of the following benefits are likely to result from the cooperative agreement:

(1) Enhancement of the quality of care provided to citizens of the State;

(2) Preservation of hospitals or health care providers and related facilities in geographical proximity to the communities traditionally served by those facilities;

(3) Gains in the cost efficiency of services provided by the hospitals or others;

(4) Improvements in the utilization of hospital or other health care resources and equipment;

(5) Avoidance of duplication of hospital or other health care resources; and

(6) Continuation or establishment of needed educational programs for health care providers. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

B. The department's evaluation of any disadvantages attributable to a reduction in competition likely to result from a cooperative agreement may include, but is not limited to, the following factors:

(1) The extent of any likely adverse impact on the ability of health maintenance organizations, preferred provider organizations, managed health care service agents or other health care payors to negotiate optimal payment and service arrangements with hospitals or health care providers;

(2) The extent of any disadvantages attributable to reduction in competition among covered entities or other persons furnishing goods or services to, or in competition with, covered entities that is likely to result directly or indirectly from the cooperative agreement;

(3) The extent of any likely adverse impact on patients or clients in the quality, availability and price of health care services;

(4) The extent of any likely adverse impact on the access of persons enrolled in in-state educational programs for health professions to existing or future clinical training programs; and

(5) The availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits over disadvantages attributable to any reduction in competition likely to result from the agreement. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

C. In evaluating a cooperative agreement under the standards in paragraphs A and B, the department shall consider the extent to which any likely disadvantages may be ameliorated by any reasonably enforceable conditions under subparagraph (1) and the extent to which the likely benefits or favorable balance of benefits over disadvantages may be enhanced by any reasonably enforceable conditions under subparagraph (2). Reasonably enforceable conditions are those conditions that the department determines are subject to future measurement or evaluation in order to assess compliance with those conditions.

(1) In a certificate issued under this subsection, the department may include conditions reasonably necessary to ameliorate any likely disadvantages of the type specified in paragraph B.

(2) In a certificate issued under this subsection, the department may include additional conditions, if proposed by the applicants, designed to achieve public benefits, which may include but are not limited to the benefits listed in paragraph A. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

D. In a certificate of public advantage issued under this subsection, the department may include a condition requiring the certificate holders to submit fees sufficient to fund expenses for consultants or experts necessary for the continuing supervision required under section 1845. These fees must be paid at the time of any review conducted under section 1845. The total amount charged to the certificate holders for continuing supervision may not exceed $5,000 for mergers involving hospitals with 50 or more beds and $2,500 for all other cooperative agreements. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

6. **Intervention.** The Attorney General may intervene as a right in any proceeding under this chapter before the department. Except as provided in this subsection, intervention is governed by the provisions of Title 5, section 9054.

[2011, c. 90, Pt. J, §15 (AMD) .]

7. **Attorney General enforcement.** The Attorney General may file an action in Superior Court to enforce any final action taken by the department under this section. In the event that the Attorney General files an action pursuant to its separate authority outlined in section 1848, pending department proceedings in accordance with this section are stayed pursuant to section 1848, subsection 2.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

SECTION HISTORY
2005, c. 670, §1 (NEW). 2005, c. 670, §4 (AFF). 2011, c. 90, Pt. J, §§11-15 (AMD).

§1845. CONTINUING SUPERVISION

Continuing supervision of holders of certificates of public advantage under this chapter may consist of periodic reports, supervisory reviews and additional supervisory activities. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

1. **Periodic report and supervisory review.** With regard to a certificate of public advantage approved under this chapter, the certificate holder shall report periodically to the department on the extent of the benefits realized and compliance with other terms and conditions of the certificate. The certificate holder shall submit copies of the report to the Attorney General at the time the report is filed with the department. The Attorney General may submit to the department comments on the report filed under this subsection. The department shall consider any comments on the report from the Attorney General in the course of its evaluation of the certificate holder's report. Within 60 days of receipt of the certificate holder's report, the

department shall make findings regarding the report, including responses to any comments from the Attorney General, determine whether to institute additional supervisory activities under this section and notify the certificate holder.

[2011, c. 90, Pt. J, §16 (AMD) .]

2. **Additional supervisory activities.** The provisions of this subsection apply to additional supervisory activities determined necessary under subsection 1.

A. The department shall conduct additional supervisory activities whenever requested by the Attorney General or whenever the department, in its discretion, determines those activities appropriate, and:

(1) For certificates of public advantage not involving mergers, at least once in the first 18 months after the transaction described in the cooperative agreement has closed; and

(2) For certificates of public advantage involving mergers, at least once between 12 and 30 months after the transaction described in the cooperative agreement has closed. [2011, c. 90, Pt. J, §17 (AMD).]

B. In its discretion, the department may conduct additional supervisory activities by:

(1) Soliciting and reviewing written submissions from the certificate holders, the Attorney General or the public;

(2) Conducting a hearing in accordance with Title 5, chapter 375, subchapter 4 and the department's administrative hearings rules; or

(3) Using any alternative procedures appropriate under the circumstances. [2011, c. 90, Pt. J, §17 (AMD).]

C. The department shall notify the certificate holders if it intends to consider the imposition of any additional conditions or measures authorized under subsection 3. If the department notifies certificate holders under this paragraph, the certificate holders may request and are entitled to a hearing in accordance with Title 5, chapter 375, subchapter 4. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

D. A decision of the department regarding additional supervisory activities is governed by the standards set forth in subsection 3. The burden of proof is on the parties seeking any remedial order. A remedial order may not issue unless the basis for it is established by a preponderance of the evidence. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

[2011, c. 90, Pt. J, §17 (AMD) .]

3. **Standards governing additional supervisory activities.** The provisions of this subsection govern the standards of any additional supervisory activities conducted under subsection 2.

A. If the department determines in any additional supervisory activities conducted under subsection 2 that the certificate holders are not in substantial compliance with any conditions included in the certificate under section 1844, subsection 5 or in a consent decree entered into by the department, the department may at its discretion:

(1) Impose additional conditions to secure compliance with any conditions included in the certificate or consent decree; or

(2) Issue notice to the certificate holders compelling compliance with any conditions included in the certificate or consent decree. If after 30 days the department determines that the notice was not effective in securing compliance with the conditions, the department may impose any additional measures authorized by law to compel compliance with the conditions, or seek a court order revoking the certificate in accordance with subsection 4. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

B. The department may impose additional conditions to ameliorate any disadvantages attributable to any reduction in competition, or seek a court order revoking the certificate in accordance with subsection 4, if the department determines in any additional supervisory activities conducted under subsection 2 that, as a result of changed or unanticipated circumstances, the benefits resulting from the activities authorized under the certificate and the unavoidable costs of revoking the certificate are outweighed by disadvantages attributable to a reduction in competition resulting from the activities authorized under the certificate. For purposes of this paragraph, "unanticipated circumstances" includes the failure to realize anticipated benefits of the agreement or the realization of unanticipated anticompetitive effects from the agreement. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

4. **Action to revoke certificate.** The department is authorized to seek a court order revoking a certificate of public advantage under the circumstances specified in subsection 3, paragraph A, subparagraph (2) or subsection 3, paragraph B. In any such action the standards for adjudication to be applied by the court are the same as in section 1848, subsections 5 and 6. In assessing disadvantages attributable to a reduction in competition likely to result from the agreement, the court may draw upon the determinations of federal and Maine courts concerning unreasonable restraint of trade under 15 United States Code, Sections 1 and 2 and Title 10, sections 1101 and 1102. The department's burden of proof is the same as that for the Attorney General in an action under section 1848, subsections 5 and 6.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

5. **Attorney General enforcement.** The Attorney General may file an action in Superior Court to enforce any final action taken by the department as a result of additional supervisory proceedings under this section. In the event that the Attorney General files an action pursuant to its separate authority outlined in section 1848, any pending department proceedings are stayed pursuant to section 1848, subsection 7.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

6. **Fees and costs.** If the department prevails in an action under this section, the department and the Attorney General are entitled to an award of the reasonable costs of deposition transcripts incurred in the course of the action and reasonable attorney's fees, expert witness fees and court costs incurred in the action.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

SECTION HISTORY
2005, c. 670, §1 (NEW). 2005, c. 670, §4 (AFF). 2011, c. 90, Pt. J, §§16, 17 (AMD).

§1846. RECORD KEEPING

The department shall maintain records of all applications for a certificate of public advantage, together with the records of all submissions, comments, reports and department proceedings with respect to those applications, certificates approved by the department, continuing supervision and any other proceedings under this chapter. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

SECTION HISTORY
2005, c. 670, §1 (NEW). 2005, c. 670, §4 (AFF).

§1847. JUDICIAL REVIEW OF DEPARTMENT ACTION

An applicant, certificate holder or intervenor aggrieved by a final decision of the department in granting or denying an application for a certificate of public advantage, refusing to act on an application or imposing additional conditions or measures with regard to a certificate of public advantage is entitled to judicial review of the final decision in accordance with the Maine Administrative Procedure Act. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

SECTION HISTORY
2005, c. 670, §1 (NEW). 2005, c. 670, §4 (AFF).

§1848. ATTORNEY GENERAL AUTHORITY

1. **Investigative powers.** The Attorney General, at any time after an application or letter of intent is filed under section 1844, subsection 2, may require by subpoena the attendance and testimony of witnesses and the production of documents in Kennebec County, or the county in which the applicants are located, for the purpose of investigating whether the cooperative agreement satisfies the standards set forth in section 1844, subsection 5. All documents produced and testimony given to the Attorney General are confidential. The Attorney General may seek an order from the Superior Court compelling compliance with a subpoena issued under this section.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

2. **Court action; time limits.** The Attorney General may seek to enjoin the operation of a cooperative agreement for which an application for a certificate of public advantage has been filed by filing suit against the parties to the cooperative agreement in Superior Court. The Attorney General may file an action before or after the department acts on the application for a certificate; however, the action must be brought no later than 40 days following the department's approval of an application for a certificate of public advantage. After the filing of a court action under this subsection, the department may not take any further action under this chapter and the time periods specified for departmental action under section 1844, subsection 4 are tolled until the court action is dismissed by the Attorney General or the Superior Court orders the department to take further action.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

3. **Automatic stay.** Upon the filing of a complaint in an action under subsection 2, the department's approval of a certificate of public advantage, if previously issued, must be stayed unless the court orders otherwise or until the action is concluded. The applicant for a certificate may apply to the Superior Court for relief from that stay. Relief may be granted only upon showing of compelling justification. The Attorney General may apply to the court for any temporary or preliminary relief to enjoin the implementation of the cooperative agreement pending final disposition of the case.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

4. **Standard for adjudication.** In an action brought under subsection 2, the applicants for a certificate of public advantage bear the burden of establishing by a preponderance of the evidence that, in accordance with section 1844, subsection 5, the likely benefits resulting from the cooperative agreement and any conditions proposed by the applicants outweigh any disadvantages attributable to a reduction in competition that may result from the agreement. In assessing disadvantages attributable to a reduction in competition likely to result from the agreement, the court may draw upon the determinations of federal and Maine courts concerning unreasonable restraint of trade under 15 United States Code, Sections 1 and 2 and Title 10, sections 1101 and 1102.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

5. **Ongoing evaluation of benefits.** If, at any time following the 40-day period specified in subsection 2, the Attorney General determines that, as a result of changed circumstances or unanticipated circumstances, the benefits resulting from a certified cooperative agreement or a consent decree entered under subsection 9 do not outweigh any disadvantages attributable to a reduction in competition resulting from the agreement, the Attorney General may file suit in the Superior Court seeking to revoke the certificate of public advantage. The standard for adjudication for an action to revoke brought under this subsection is as follows.

A. Except as provided in paragraph B, in an action brought under this subsection, the Attorney General has the burden of establishing by a preponderance of the evidence that, as a result of changed circumstances or unanticipated circumstances, the benefits resulting from the cooperative agreement and the unavoidable costs of revoking the certificate are outweighed by disadvantages attributable to a reduction in competition resulting from the agreement. For purposes of this paragraph, "unanticipated circumstances" includes the failure to realize anticipated benefits of the agreement or the realization of unanticipated anticompetitive effects from the agreement. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

B. In an action brought under this subsection, if the Attorney General first establishes by a preponderance of the evidence that the department's certification was obtained as a result of material misrepresentation to the department or the Attorney General or as the result of coercion, threats or intimidation toward any party to the cooperative agreement, then the parties to the agreement bear the burden of establishing by clear and convincing evidence that the benefits resulting from the agreement and the unavoidable costs of revoking the agreement outweigh the disadvantages attributable to any reduction in competition resulting from the agreement. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

6. **Enforcement of conditions.** Conditions and measures included in a certificate of public advantage may be enforced according to this subsection.

A. If the certificate holders in a cooperative agreement not involving a merger are not in substantial compliance with the conditions included in the certificate of public advantage under section 1844, subsection 5 or a consent decree entered under subsection 9 or with the conditions or measures added pursuant to additional supervisory activities under section 1845, subsection 3, the Attorney General may seek an order from the Superior Court compelling compliance with such conditions or measures or other appropriate equitable remedies. If the Superior Court grants such relief and that relief is not effective in securing compliance with the conditions or measures, the Superior Court may impose additional equitable remedies, including the exercise of civil contempt powers, or may revoke the certificate upon a determination that advantages to be gained by revoking the certificate outweigh the unavoidable costs resulting from a revocation of the certificate. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

B. If the certificate holders in a cooperative agreement involving a merger are not in substantial compliance with the conditions included in the certificate of public advantage under section 1844, subsection 5 or a consent decree entered under subsection 9 or with the conditions or measures added pursuant to additional supervisory activities under section 1845, subsection 3, the Attorney General may seek an order from the Superior Court compelling compliance with such conditions or measures. If the certificate holders to the merger fail to comply with any court order compelling compliance with such conditions or measures, the Superior Court may impose additional equitable remedies to secure compliance with its orders, including the exercise of civil contempt powers or appointment of a receiver. If these additional measures are not effective in securing compliance with the conditions or measures and the Superior Court determines that the advantages to be gained by divestiture outweigh the unavoidable costs of requiring divestiture, the Superior Court may revoke the certificate and order divestiture of assets. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

C. In an action brought under this subsection, the Attorney General has the burden of proving by a preponderance of the evidence the basis for any equitable remedies requested by the Attorney General and adopted by the Superior Court. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

[2005, c. 2, §16 (COR) .]

7. **Effect of court action.** After the filing of a court action under subsection 5 or 6, the department may not take any further action under this chapter until the court action is dismissed by the Attorney General or the Superior Court orders the department to take further action.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

8. **Fees and costs.** If the Attorney General prevails in an action under this section, the Attorney General and the department are entitled to an award of the reasonable costs of deposition transcripts incurred in the course of the investigation or litigation and reasonable attorney's fees, expert witness fees and court costs incurred in litigation.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

9. **Resolution by consent decree.** The Superior Court may resolve any action brought by the Attorney General under this chapter by entering an order with the consent of the parties. The consent decree may contain any conditions authorized by section 1844, subsection 5, paragraph C or conditions or measures authorized under section 1845, subsection 3. A consent decree under this subsection may not be filed with the Superior Court until 30 days after the filing of the application under section 1844, subsection 2. Upon the entry of such an order, the parties to the cooperative agreement have the protection specified in section 1849 and the cooperative agreement has the effectiveness specified in section 1849.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

SECTION HISTORY
RR 2005, c. 2, §16 (COR). 2005, c. 670, §1 (NEW). 2005, c. 670, §4 (AFF).

§1849. EFFECT OF FILING AN APPLICATION UNDER THIS CHAPTER; APPLICABILITY

1. **Validity of certified cooperative agreements.** Notwithstanding Title 5, chapter 10; Title 10, chapter 201; or any other provision of law, a cooperative agreement for which a certificate of public advantage has been issued is a lawful agreement. Notwithstanding Title 5, chapter 10; Title 10, chapter 201; or any other provision of law, if the parties to a cooperative agreement file an application for a certificate of public advantage governing the agreement with the department, the conduct of the parties in negotiating and entering into a cooperative agreement is lawful conduct. This subsection does not provide immunity to any person for conduct in negotiating and entering into a cooperative agreement for which an application for a certificate of public advantage is not filed.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

2. **Validity of cooperative agreements determined not in public interest.** In an action by the Attorney General under section 1848, subsection 2, if the Superior Court determines that the applicants have not established by a preponderance of the evidence that the likely benefits resulting from a cooperative agreement outweigh any disadvantages attributable to any potential reduction in competition resulting from

the agreement, the cooperative agreement is invalid and has no further force or effect when the judgment becomes final after the time for appeal has expired or the judgment of the Superior Court is affirmed on appeal.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

3. **Other laws, rules and regulations.** This chapter does not exempt covered entities from compliance with laws governing certificates of need or other applicable laws, rules and regulations.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

4. **Contract disputes.** A dispute between parties to a cooperative agreement concerning its meaning or terms is governed by normal principles of contract law.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

5. **Termination; surrender.** This chapter does not prohibit certificate holders from terminating their cooperative agreement by mutual agreement, consent decree or court determination or by surrendering their certificate of public advantage to the department. Any certificate holder that terminates the agreement shall file a notice of termination with the department within 30 days after termination, surrender the certificate of public advantage and submit copies to the Attorney General at the time the notice of termination is submitted to the department.

[2011, c. 90, Pt. J, §18 (AMD) .]

SECTION HISTORY
2005, c. 670, §1 (NEW). 2005, c. 670, §4 (AFF). 2011, c. 90, Pt. J, §18 (AMD).

§1850. ASSESSMENT

Except for state-operated mental health hospitals, any hospital licensed by the department is subject to an annual assessment under this chapter. The department shall determine and collect the assessment. The amount of the assessment must be based upon each hospital's gross patient service revenue. For any fiscal year, the aggregate amount raised by assessment may not exceed $200,000. The department shall deposit funds collected under this section into a dedicated revenue account. Funds remaining in the account at the end of each fiscal year do not lapse but carry forward into subsequent years. Funds deposited into the account must be allocated to carry out the purposes of this chapter. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

SECTION HISTORY
2005, c. 670, §1 (NEW). 2005, c. 670, §4 (AFF).

§1851. APPLICATION FEE

The application fee for a certificate of public advantage is governed by this section. The application fee for a certificate of public advantage that involves a merger of 2 or more hospitals, each of which has 50 or more beds, is $10,000. The application fee is $2500 for a certificate of public advantage filed by health care providers or hospitals that are not subject to the $10,000 fee pursuant to this section. The department shall deposit all funds received under this section and section 1844, subsection 5 into a nonlapsing dedicated revenue account to be used only by the Attorney General for the payment of the cost of experts and consultants in connection with reviews conducted under this chapter. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

SECTION HISTORY

2005, c. 670, §1 (NEW). 2005, c. 670, §4 (AFF).

§1852. RULEMAKING

The department shall adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

SECTION HISTORY
2005, c. 670, §1 (NEW). 2005, c. 670, §4 (AFF).

Chapter 405-B: LIMITATION ON PAYMENTS TO HEALTH CARE INSTITUTIONS

§1861. LIMITATION ON PAYMENTS TO HEALTH CARE INSTITUTIONS

The Legislature is concerned that certain health care institutions have engaged persons with the intent to interfere with, inhibit or disrupt the free exercise of the right of all employees to organize and choose representatives for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection as provided in Title 26, section 931. The Legislature declares that it is consistent with public policy to prohibit the use of funds received from the State for the purpose of engaging those persons. The Legislature acknowledges the right of employers to communicate with employees concerning the issue of unionization and further recognizes that employers may obtain counsel for advice and assistance. [1989, c. 502, Pt. A, §69 (AMD).]

SECTION HISTORY
1983, c. 473, (NEW). 1989, c. 502, §A69 (AMD).

§1862. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1983, c. 473, (NEW).]

1. **Disallowed expenditure.** "Disallowed expenditure" means an amount paid to any person for those acts or services rendered, which result in:

A. The commission of an unfair labor practice or prohibited practice as determined by:

(1) The National Labor Relations Board pursuant to the United States Code, Title 29, Section 158;

(2) The Maine Labor Relations Board pursuant to Title 26, chapter 7, 9, 9-A or 9-B; or

(3) A court of competent jurisdiction pursuant to Title 26, section 911; and [1983, c. 473, (NEW).]

B. Influencing employees respecting unionization, when costs for these activities are disallowed for reimbursement pursuant to Medicare law and regulation. [1983, c. 473, (NEW).]

[1983, c. 473, (NEW) .]

2. **Health care institution.** "Health care institution" means any person, partnership, association or corporation, including county or local government unit, required to obtain a license pursuant to chapter 405.

[1983, c. 473, (NEW) .]

3. **Person.** "Person" means any person, partnership, association or corporation engaged or employed by a health care institution.

[1983, c. 473, (NEW) .]

4. **Proportional share.** "Proportional share" means the revenue received from the State during the previous 12 months, divided by the sum of revenue received from the State, 3rd party payors and patients during the corresponding 12 months.

[1983, c. 473, (NEW) .]

SECTION HISTORY
1983, c. 473, (NEW).

§1863. RECOVERY OF STATE FUNDS

Upon notification that a health care institution has paid an amount for a disallowed expenditure, the department shall make a determination as to the amount of the disallowed expenditure. The department shall withhold an amount equal to a proportional share of the amount of the disallowed expenditure, according to a schedule determined by the department, from future payments of medical assistance reimbursements to be received by the health care institution. If that agency or court determination of a violation is under appeal, the withholding shall be stayed pending a final adverse decision against the institution. [1983, c. 473, (NEW).]

SECTION HISTORY
1983, c. 473, (NEW).

§1864. EXPENDITURES NOT INCLUDED

To the extent consistent with Medicare and Medicaid law and regulation, disallowed expenditures shall not include amounts paid to any person for services rendered as follows: [1983, c. 473, (NEW).]

1. **Unfair labor practice.** In the commission of any unfair labor practice out of necessity to obtain judicial review of a unit determination finding;

[1983, c. 473, (NEW) .]

2. **Contract negotiations.** Reasonable expenses for contract negotiations or preparations therefor;

[1983, c. 473, (NEW) .]

3. **Disputes concerning contracts.** Reasonable expenses associated with disputes concerning the interpretation of contracts;

[1983, c. 473, (NEW) .]

4. **Attorneys' fees.** Expenses for attorneys' fees arising out of a court or agency proceeding or appeal or in preparation therefor; or

[1983, c. 473, (NEW) .]

5. **Educational instruction.** Reasonable expenses for educational instruction of supervisors or management employees concerning state or federal labor laws.

[1983, c. 473, (NEW) .]

SECTION HISTORY
1983, c. 473, (NEW).

§1865. REPORTING REQUIREMENT

1. **Report.** Each health care institution which receives funds from the department shall annually report to the department the amount paid to any person for the purpose of influencing its employees, respecting unionization, or attempts to coerce employees to otherwise interfere with or restrain the exercise of employee rights to organize and choose representatives for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

[1983, c. 473, (NEW) .]

2. **Violation.** Violation of this section shall result in an administrative fine of up to $500 for each offense, as determined pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375.

[1983, c. 473, (NEW) .]

SECTION HISTORY
1983, c. 473, (NEW).

§1866. RULES

The Commissioner of Health and Human Services shall adopt rules in order to implement this chapter, pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375. [1983, c. 473, (NEW); 2003, c. 689, Pt. B, §7 (REV).]

SECTION HISTORY
1983, c. 473, (NEW). 2003, c. 689, §B7 (REV).

§1867. DISTANCE RESTRICTION ON PLACEMENT OF MEDICAID RECIPIENTS

The department may make Medicaid reimbursement for a nursing facility contingent on a maximum distance between a patient's home and the nursing facility if the maximum distance is not more than 60 miles; except that the distance restriction may not be applied to the Maine Veterans' Homes. [2015, c. 397, §2 (AMD).]

SECTION HISTORY
1991, c. 780, §R2 (NEW). 1993, c. 205, §1 (RPR). 2015, c. 397, §2 (AMD).

Chapter 405-C: TUBERCULOSIS SANATORIUMS

§1871. ESTABLISHMENT AND MAINTENANCE

The State shall maintain by building, lease or by purchase one or more sanatoriums in such districts of the State as seems best to serve the needs of the people for the care and treatment of persons affected with tuberculosis. If at any time the number of persons requiring such care and treatment in these sanatoriums decreases to a level which, in the judgment of the Commissioner of Health and Human Services, makes continued operation and maintenance of a sanatorium impracticable, the commissioner, with the advice and consent of the Governor, may close any or all sanatoriums. In the event that all sanatoriums are closed as provided, any funds from the sanatorium accounts and appropriations may, with the advice and consent of the Governor, be made available to the Commissioner of Health and Human Services for the purpose of providing alternative treatment and care for those patients needing treatment and care. Where lease or purchase is made, the State shall have the right to enlarge or otherwise adapt the property to meet the needs of the situation. These additions or improvements shall be considered permanent. At the expiration of the original lease of any property for use as a tuberculosis sanatorium, the State shall have the right of renewal or of purchase. [1983, c. 816, Pt. A, §16 (RAL); 2003, c. 689, Pt. B, §7 (REV).]

Without regard to the matter of sanatorium closure, the commissioner also may purchase care for tuberculosis patients from private practitioners and private medical institutions. In making payments for care, he shall take into consideration payments that may be available through insurance or other 3rd parties. [1983, c. 816, Pt. A, §16 (RAL).]

SECTION HISTORY
1983, c. 459, §3 (NEW). 1983, c. 816, §A16 (RAL). 2003, c. 689, §B7 (REV).

§1872. ADMISSION; CHARGES

Patients may be admitted to these sanatoriums upon application to the Department of Health and Human Services, if found to be suffering from tuberculosis or if suspected of having tuberculosis. All patients in the sanatoriums, the parents of minor children or the spouse, shall pay to the State for treatment, including board, supplies and incidentals necessary to the prescribed medical and surgical treatment both for inpatient and outpatient services, the amount determined by the department. The department may, if it finds that the patient or relatives liable by law are unable to pay the amount determined, in whole or in part, waive payment or so much thereof as the circumstances appear to warrant. [1983, c. 816, Pt. A, §16 (RAL); 2003, c. 689, Pt. B, §6 (REV).]

All funds collected from this source shall be credited to the General Fund. No pauper disabilities shall be created by reason of any aid or assistance given under this section. [1983, c. 816, Pt. A, §16 (RAL).]

This section does not apply to persons who may be committed under section 1022. [1983, c. 816, Pt. A, §16 (RAL).]

SECTION HISTORY
1983, c. 459, §3 (NEW). 1983, c. 816, §A16 (RAL). 2003, c. 689, §B6 (REV).

Chapter 405-D: HOSPITAL COOPERATION ACT

§1881. SHORT TITLE

(REPEALED)

SECTION HISTORY
1991, c. 814, §1 (NEW). 2005, c. 670, §4 (AFF). 2005, c. 670, §2 (RP).

§1882. DEFINITIONS

(REPEALED)

SECTION HISTORY
1991, c. 814, §1 (NEW). 1995, c. 232, §§1,2 (AMD). 1995, c. 583, §§1,2 (AMD). 2005, c. 670, §4 (AFF). 2005, c. 670, §2 (RP).

§1883. CERTIFICATION FOR COOPERATIVE AGREEMENTS

(REPEALED)

SECTION HISTORY
1991, c. 814, §1 (NEW). 1995, c. 232, §§3,4 (AMD). 1995, c. 583, §§3-7 (AMD). 2005, c. 670, §4 (AFF). 2005, c. 670, §2 (RP).

§1884. JUDICIAL REVIEW OF DEPARTMENT ACTION

(REPEALED)

SECTION HISTORY
1991, c. 814, §1 (NEW). 2005, c. 670, §4 (AFF). 2005, c. 670, §2 (RP).

§1885. ATTORNEY GENERAL AUTHORITY

(REPEALED)

SECTION HISTORY
1991, c. 814, §1 (NEW). 1993, c. 719, §10 (AMD). 1993, c. 719, §12 (AFF). 1995, c. 232, §5 (AMD). 1995, c. 583, §§8-12 (AMD). 2005, c. 670, §4 (AFF). 2005, c. 670, §2 (RP).

§1886. EFFECT OF CERTIFICATION; APPLICABILITY

(REPEALED)

SECTION HISTORY
1991, c. 814, §1 (NEW). 1995, c. 583, §§13,14 (AMD). 2005, c. 670, §4 (AFF). 2005, c. 670, §2 (RP).

§1887. ASSESSMENT

(REPEALED)

SECTION HISTORY
1991, c. 814, §1 (NEW). 1995, c. 232, §6 (AMD). 1999, c. 306, §1 (AMD). 1999, c. 306, §2 (AFF). 2005, c. 670, §4 (AFF). 2005, c. 670, §2 (RP).

§1888. REVIEW

(REPEALED)

SECTION HISTORY
1991, c. 814, §1 (NEW). 1995, c. 232, §7 (AMD). 2005, c. 670, §4 (AFF). 2005, c. 670, §2 (RP).

§1889. APPLICATION FEE

(REPEALED)

SECTION HISTORY
1995, c. 583, §15 (NEW). 2005, c. 670, §4 (AFF). 2005, c. 670, §2 (RP).

Chapter 406: FAMILY PLANNING SERVICES

§1901. LEGISLATIVE INTENT

The Legislature finds that family planning services are not sufficiently available as a practical matter to many persons in this State; that unwanted conception may place severe medical, emotional, social and economic burdens on the family unit and that it is desirable that inhibitions and restrictions to the delivery of family planning services be reduced so that all persons desiring and needing such services shall have ready and practicable access thereto in appropriate settings sensitive to their needs and beliefs. The Legislature therefore declares that it is consistent with public policy to make available comprehensive medical knowledge, assistance and services relating to family planning. [1973, c. 624, §1 (NEW).]

SECTION HISTORY
1973, c. 624, §1 (NEW).

§1902. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings. [1973, c. 624, §1 (NEW).]

1. **Contraceptive procedures.** "Contraceptive procedures" means any medically accepted procedure to prevent conception when performed by or under the direction of a physician on a requesting and consenting patient.

[1973, c. 624, §1 (NEW) .]

1-A. **Comprehensive family life education.** "Comprehensive family life education" means education in kindergarten to grade 12 regarding human development and sexuality, including education on family planning and sexually transmitted diseases, that is medically accurate and age appropriate; that respects community values and encourages parental communication; that develops skills in communication, decision making and conflict resolution; that contributes to healthy relationships; that promotes responsible sexual behavior with an emphasis on abstinence; that addresses the use of contraception; that promotes individual responsibility and involvement regarding sexuality; and that teaches skills for responsible decision making regarding sexuality.

[2001, c. 654, §1 (NEW) .]

2. **Contraceptive supplies.** "Contraceptive supplies" means those medically approved drugs, prescriptions, rhythm charts, devices and other items designed to prevent conception through chemical, mechanical, behavioral or other means.

[1973, c. 624, §1 (NEW) .]

3. **Family planning.** "Family planning" means informed and voluntary self-determination of desired family size and of the timing of child bearing based upon comprehensive knowledge of factors pertinent to this determination.

[1973, c. 624, §1 (NEW) .]

4. **Family planning services.** "Family planning services" means counseling with trained personnel regarding family planning, contraceptive procedures and the treatment of infertility; distribution of literature relating to family planning, contraceptive procedures and the treatment of infertility; referral of patients to physicians or health agencies for consultation, examination, tests, medical treatment and prescription for the purposes of family planning, contraceptive procedures and treatment of infertility and provision of contraceptive procedures and contraceptive supplies by those qualified to do so under the laws of this State.

[1973, c. 624, §1 (NEW) .]

5. **Physician.** "Physician" means any doctor of medicine or doctor of osteopathy duly licensed to practice his profession in this State.

[1973, c. 624, §1 (NEW) .]

6. **Person.** "Person" means any person regardless of sex, race, number of children, marital status, motive and citizenship.

[1973, c. 624, §1 (NEW) .]

SECTION HISTORY
1973, c. 624, §1 (NEW). 2001, c. 654, §1 (AMD).

§1903. AUTHORITY AND POLICY

It shall be the policy and authority of this State that: [1973, c. 624, §1 (NEW).]

1. **Availability.** Family planning services shall be readily and practicably available to all persons desiring and needing such services;

[1973, c. 624, §1 (NEW) .]

2. **Consistent with public policy.** The delivery of family planning services by duly authorized persons in all agencies and instrumentalities of this State is consistent with public policy;

[1973, c. 624, §1 (NEW) .]

3. **Refusal.** Nothing in this chapter shall inhibit a physician from refusing to furnish family planning services when the refusal is for medical reasons; and

[1981, c. 470, Pt. A, §73 (AMD) .]

4. **Objections.** No private institution or physician or no agent or employee of such institution or physician shall be prohibited from refusing to provide family planning services when such refusal is based upon religious or conscientious objection.

[1973, c. 624, §1 (NEW) .]

SECTION HISTORY
1973, c. 624, §1 (NEW). 1981, c. 470, §A73 (AMD).

§1904. RULES AND REGULATIONS

The Commissioner of Health and Human Services is authorized and directed to adopt rules and regulations and establish programs to enable the Department of Health and Human Services, either directly or under contractual arrangements with other organizations, to promptly implement this chapter. [1975, c. 293, §4 (AMD); 2003, c. 689, Pt. B, §§6, 7 (REV).]

SECTION HISTORY
1973, c. 624, §1 (NEW). 2003, c. 689, §§B6,7 (REV).

§1905. FUNDS

The Department of Health and Human Services is authorized to receive and disburse such funds as may be available to it for family planning services to any nonprofit organization, public or private, engaged in providing such services. Family planning programs administered by the Department of Health and Human Services may be developed in consultation, coordination or on a contractual basis, with other family planning agencies in this State, including, but not limited to, the Family Planning Association of Maine, Inc., and its affiliates. [1975, c. 293, §4 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY
1973, c. 624, §1 (NEW). 1975, c. 293, §4 (AMD). 2003, c. 689, §B6 (REV).

§1906. AVAILABILITY

To the extent family planning funds are available, the Department of Health and Human Services shall provide family planning services to medically indigent persons eligible for such services as determined by rules and regulations promulgated by the Commissioner of Health and Human Services. Family planning services shall also be available to all others who are unable to reasonably obtain these services privately, at a reasonable cost to be determined by the rules and regulations promulgated by the commissioner. Any funds so collected shall be retained by the department for the support of these services. [1975, c. 293, §4 (AMD); 2003, c. 689, Pt. B, §§6, 7 (REV).]

SECTION HISTORY
1973, c. 624, §1 (NEW). 1975, c. 293, §4 (AMD). 2003, c. 689, §§B6,7 (REV).

§1907. REFUSAL

The refusal of any person to accept family planning services shall not affect the right of such person to receive public assistance or public health services or to avail himself of any other public benefit. The employees of agencies engaged in the administration of this chapter shall recognize that the right to make decisions concerning family planning is a fundamental personal right of the individual and nothing in this chapter shall in any way abridge such right nor shall any individual be required to state his reasons for refusing the offer of family planning services. [1973, c. 624, §1 (NEW).]

SECTION HISTORY
1973, c. 624, §1 (NEW).

§1908. MINORS

Family planning services may be furnished to any minor who is a parent or married or has the consent of his or her legal guardian or who may suffer in the professional judgment of a physician probable health hazards if such services are not provided. [1973, c. 624, §1 (NEW).]

SECTION HISTORY
1973, c. 624, §1 (NEW).

§1909. CONSTRUCTION

This chapter shall be construed to protect the rights of all persons to pursue their religious beliefs, to follow the dictates of their own consciences, to prevent imposition upon any person's moral standards and to respect the right of every person to self-determination in respect to family planning. [1973, c. 624, §1 (NEW).]

SECTION HISTORY
1973, c. 624, §1 (NEW).

§1910. COMPREHENSIVE FAMILY LIFE EDUCATION SERVICES

The commissioner shall undertake initiatives to implement effective, comprehensive family life education services. In providing such services, the commissioner shall contract with local family planning programs to provide: [2001, c. 654, §2 (NEW).]

1. **Training.** Training for teachers, parents and community members in the development and implementation of comprehensive family life education curriculum and in planning for an evaluation component as part of comprehensive school health education;

[2001, c. 654, §2 (NEW) .]

2. **Staff.** Resource staff persons to provide expert training, curriculum development and implementation and evaluation services on a statewide basis;

[2001, c. 654, §2 (NEW) .]

3. **Forums.** Funding to promote and coordinate community and youth forums in communities identified as having high needs for comprehensive family life education;

[2001, c. 654, §2 (NEW) .]

4. **Issue management; policy development training.** Funding for issue management and policy development training for school boards, superintendents, principals and administrators across the State; and

[2001, c. 654, §2 (NEW) .]

5. **Recognition of performance.** Funding for grants to school-based comprehensive family life education programs to recognize outstanding performance and share strategies for success.

[2001, c. 654, §2 (NEW) .]

SECTION HISTORY
2001, c. 654, §2 (NEW).

§1911. PARENTAL OPTION

To the extent that comprehensive family life education takes place in a school, a parent may choose to not have that parent's child participate in a comprehensive family life education program. [2001, c. 654, §2 (NEW).]

SECTION HISTORY
2001, c. 654, §2 (NEW).

Chapter 407: MATERNAL AND CHILD HEALTH SERVICES

§1950. DEFINITION OF "CHILD"

For the purposes of this chapter, the word "child" shall mean any person who has not attained the age of 18 years. [1971, c. 598, §35 (AMD).]

SECTION HISTORY
1969, c. 433, §45 (NEW). 1971, c. 598, §35 (AMD).

§1951. HEALTH IMPROVEMENT PROGRAM

The department is authorized to administer a program to extend and improve its services for promoting the health of mothers and children, especially in rural areas and in areas suffering from severe economic distress. This chapter may not be construed as authorizing any public official, agent or representative, in carrying out this chapter, to take charge of any child over the objections of either the father or the mother of that child, or of the person standing in loco parentis to that child, except pursuant to a proper court order. [2011, c. 512, §1 (AMD).]

SECTION HISTORY
2011, c. 512, §1 (AMD).

§1952. ACCEPTANCE OF FEDERAL PROVISIONS

(REPEALED)

SECTION HISTORY
1981, c. 470, §§A74,A75 (AMD). 1981, c. 703, §A13 (RP).

§1953. FEDERAL GRANTS

(REPEALED)

SECTION HISTORY
1981, c. 470, §A76 (AMD). 1981, c. 703, §A14 (RP).

Chapter 408: PUBLIC HEALTH NURSING

§1961. PUBLIC HEALTH NURSING PROGRAM

There is established within the Department of Health and Human Services, Bureau of Health, the Public Health Nursing Program. [1995, c. 502, Pt. D, §2 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY

1977, c. 516, (NEW). 1995, c. 502, §D2 (AMD). 2003, c. 689, §B6 (REV).

§1962. DIRECTOR

The Director of the Public Health Nursing Program must be licensed as a registered nurse in the State and shall have education and experience in community health nursing. [1995, c. 502, Pt. D, §3 (AMD).]

SECTION HISTORY
1977, c. 516, (NEW). 1985, c. 785, §B86 (AMD). 1995, c. 502, §D3 (AMD).

§1963. RESPONSIBILITIES OF THE PUBLIC HEALTH NURSING PROGRAM

The Public Health Nursing Program has the following responsibilities: [1995, c. 502, Pt. D, §4 (AMD).]

1. **Establish standards.** To establish standards for the following programs carried out by the department pursuant to state or federal laws or regulations:

A. Community nursing services in communicable diseases; [1977, c. 516, (NEW).]

B. Programs for promoting the health of mothers and children; and [1977, c. 516, (NEW).]

C. School health screening, to be done in cooperation with the Department of Education; [1995, c. 502, Pt. D, §4 (AMD).]

[1995, c. 502, Pt. D, §4 (AMD) .]

2. **Information.** To inform community nursing agencies of the standards in subsection 1;

[1977, c. 516, (NEW) .]

3. **Provide nursing services.** To provide, at the discretion of the director, nursing services in communities that lack these services or in which these services are inadequate according to established standards; and

[1995, c. 502, Pt. D, §4 (AMD) .]

4. **Provide technical assistance.** To provide technical assistance to school health nurses, prenatal clinics, community immunization clinics and child health conferences and groups seeking to establish clinics and conferences.

[1995, c. 502, Pt. D, §4 (AMD) .]

SECTION HISTORY
1977, c. 516, (NEW). 1989, c. 700, §A75 (AMD). 1995, c. 502, §D4 (AMD).

Chapter 408-A: SCHOOL NURSE CONSULTANT

§1971. SCHOOL NURSE CONSULTANT POSITION

(REPEALED)

SECTION HISTORY

1999, c. 731, §QQ1 (NEW). 2007, c. 1, Pt. D, §3 (AMD). 2007, c. 539, Pt. EE, §1 (AMD). 2007, c. 572, Pt. A, §16 (AMD). 2009, c. 415, Pt. A, §11 (AMD). 2011, c. 380, Pt. DD, §4 (RP).

§1972. DUTIES

(REPEALED)

SECTION HISTORY
1999, c. 731, §QQ1 (NEW). 2011, c. 380, Pt. DD, §5 (RP).

Chapter 409: CRIPPLED CHILDREN

§2000. DEFINITION OF "CHILD"

For the purposes of this chapter, the word "child" means any person who has not attained the age of 22 years. [2001, c. 574, §12 (AMD).]

SECTION HISTORY
1969, c. 433, §46 (NEW). 1971, c. 598, §36 (AMD). 2001, c. 574, §12 (AMD).

§2001. PROGRAM OF SERVICE

The department, through its Bureau of Health, is authorized to administer a program of services for children who are disabled or who are suffering from conditions that lead to a disability, and to supervise the administration of those services included in the program that are not administered directly by it. The purpose of the program is to develop, extend and improve services for locating such children and for providing for medical, surgical, corrective and other services of care, and for facilities for diagnosis, hospitalization and aftercare. Nothing in this chapter may be construed as authorizing any public official, agent or representative, in carrying out this chapter, to take charge of any child over the objection of either the father or the mother of such child, or of the person standing in loco parentis to such child, except pursuant to a proper court order. [2001, c. 574, §13 (AMD).]

SECTION HISTORY
2001, c. 574, §13 (AMD).

§2002. ACCEPTANCE OF FEDERAL PROVISIONS

(REPEALED)

SECTION HISTORY
1981, c. 470, §A77 (AMD). 1981, c. 703, §A15 (RP).

§2003. FEDERAL GRANTS

(REPEALED)

SECTION HISTORY
1981, c. 470, §A78 (AMD). 1981, c. 703, §A16 (RP).

Chapter 411: MAINE MEDICAL LABORATORY ACT

Article 1: TITLE, INTENT AND APPLICATION

§2011. SHORT TITLE

This Act may be cited as the "Maine Medical Laboratory Act." [1975, c. 218, (RPR).]

SECTION HISTORY
1967, c. 380, (NEW). 1975, c. 218, (RPR).

§2012. PURPOSE

The proper operation of medical laboratories within the State is a matter of vital concern, since they provide essential health services by aiding medical practitioners in the diagnosis and treatment of disease. It is the purpose of this Act to develop, establish and enforce minimum standards for the licensure of medical laboratories and to provide for qualifications for the director of such laboratories. This Act shall be liberally construed to carry out these objectives and purposes. [1981, c. 66, §1 (AMD).]

SECTION HISTORY
1967, c. 380, (NEW). 1975, c. 218, (RPR). 1981, c. 66, §1 (AMD).

§2013. EXEMPTIONS

(REPEALED)

SECTION HISTORY
1967, c. 380, (NEW). 1975, c. 218, (RPR). 1981, c. 470, §A79 (AMD).
1987, c. 211, §§1,2 (AMD). 1989, c. 72, §1 (RP).

§2013-A. APPLICABILITY

In general, this Act applies to all medical laboratories and directors of medical laboratories operating in the State. [1989, c. 72, §2 (NEW).]

1. **Exemptions.** Subject to the limitations set forth in subsections 2 and 3, the following entities are exempted from the provisions of this Act under the following circumstances:

A. Medical laboratories operated by the United States Government, the State or municipalities of the State; [1989, c. 72, §2 (NEW).]

B. Laboratory facilities and laboratory services operated in a hospital licensed by the State; [1989, c. 72, §2 (NEW).]

C. Physicians and medical staff pursuant to this paragraph:

(1) Physicians, physician assistants, family nurse practitioners, Medicare-certified rural health clinics, professional associations or group practices performing only tests acceptable to the department, as defined by rule, exclusively for the examination of their own patients; and

(2) Physicians, physician assistants, family nurse practitioners, Medicare-certified rural health clinics, professional associations or group practices performing tests, other than those listed in subparagraph (1), exclusively for the examination of their own patients are subject only to sections 2024, 2025 and 2039.

Notwithstanding subparagraphs (1) and (2), laboratories incorporated for the mutual use of physician or group practice owners are subject to all provisions of this Act; [2005, c. 383, §21 (AMD).]

D. Medical laboratories in a school, college, university or industrial plant that are under the direct supervision of, and whose services are used exclusively by, a duly licensed physician and that perform only tests acceptable to the department; otherwise, only sections 2024, 2025 and 2039 apply; [2005, c. 383, §21 (AMD).]

E. Laboratories operated and maintained for research and teaching purposes that are recognized by the department or involve no patient or public health service; [2005, c. 383, §21 (AMD).]

F. The practice of radiology by a radiologist; and [1989, c. 72, §2 (NEW); 1989, c. 456, §1 (AMD).]

G. Laboratory services performing health screening tests as defined and regulated by rule adopted by the department. Services exempted under this paragraph include, but are not limited to, the performance of screening tests for cholesterol and colon cancer. [1993, c. 600, Pt. B, §4 (AMD).]

[2005, c. 383, §21 (AMD) .]

2. **Maternal serum alpha-fetoprotein testing.** Notwithstanding subsection 1, all medical laboratories and directors of medical laboratories shall be subject to all provisions of this Act, and rules promulgated under it, which govern the performance of maternal serum alpha-fetoprotein testing.

[1989, c. 72, §2 (NEW) .]

3. **Public health reporting requirements.** Notwithstanding subsection 1, any facility, regardless of location, that receives, forwards or analyzes specimens of material from the human body or referred cultures of specimens from the human body and reports the results to health care providers who use the data for purposes of patient care must comply with chapter 250.

[2005, c. 383, §22 (NEW) .]

SECTION HISTORY
1989, c. 72, §2 (NEW). 1989, c. 456, §§1,2 (AMD). 1989, c. 665, §1 (AMD). 1993, c. 600, §§B2-4 (AMD). 2005, c. 383, §§21,22 (AMD).

Article 2: DEFINITIONS

§2014. DEFINITIONS

For the purposes of this Act, the following words and phrases have the meanings ascribed to them unless the context otherwise requires. [1975, c. 218, (RPR).]

1. **Commission.**

[1993, c. 600, Pt. B, §5 (RP) .]

2. **Department.** "Department" means the Department of Health and Human Services of the State of Maine.

[1975, c. 293, §4 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

3. **Director of medical laboratory.** "Director of medical laboratory" means an individual who is responsible for the professional, technical and scientific operation of a medical laboratory, including the reporting of the findings of medical laboratory tests. The director of a medical laboratory may not be merely nominal, but must be responsible for its operation to such extent as may be necessary to assure compliance with the objects and purposes of this Act.

[1975, c. 218, (RPR) .]

4. **Medical laboratory.** "Medical laboratory" or "laboratory" means any institution, building or place which provides through its ownership or operation an organization which employs methods and instruments for the examination of blood, tissues, secretions and excretions of the human body or any function of the

human body in order to diagnose disease, follow the course of disease, aid in the treatment of such disease or detect drugs or toxic substances or which produces information used as a basis for health advice or which purports to offer such examinations unless otherwise provided by law.

[1987, c. 211, §3 (AMD) .]

5. **Person.** "Person" means any individual, corporation, partnership or association.

[1975, c. 218, (RPR) .]

SECTION HISTORY
1967, c. 380, (NEW). 1975, c. 218, (RPR). 1975, c. 293, §4 (AMD). 1987, c. 211, §3 (AMD). 1993, c. 600, §B5 (AMD). 2003, c. 689, §B6 (REV).

Article 3: APPLICATION FOR AND ISSUANCES OF LICENSES AND RENEWALS

§2015. LICENSE

The department shall issue a medical laboratory license to any medical laboratory which has applied for said license on forms provided by the department and which is found to be in compliance with this Act. [1993, c. 600, Pt. B, §6 (AMD).]

No medical laboratory licensed under this Act shall send specimens to any laboratory within the State unless such laboratory is in compliance with this Act. When the specimen has been referred for examination to an out-of-state laboratory, the report shall bear or be accompanied by a clear statement that such findings were obtained in such other laboratory, which shall be identified. [1975, c. 218, (RPR).]

SECTION HISTORY
1967, c. 380, (NEW). 1975, c. 218, (RPR). 1993, c. 600, §B6 (AMD).

§2016. APPLICATION

Application must be made on a form prescribed by the department. Licenses must be issued to perform testing in one or more of the following categories or specialties: Histocompatibility; microbiology, including subcategories bacteriology, mycology, parasitology, virology; immunology or serology, including subcategories syphilis and nonsyphilis; chemistry, including subcategories routine, clinical microscopy or urinalysis and other, including toxicology; hematology, including coagulation; immunohematology, including subcategories blood group and Rh typing, Rh titers, cross matching, antibody detection and identification; pathology, including subcategories tissue, oral, diagnostic cytology; and radiobioassay. All applications must be accompanied by a license application fee. The application must contain the following information: [2011, c. 531, §1 (AMD).]

1. **Name and location.** The name and location of the medical laboratory;

[1975, c. 218, (RPR) .]

2. **Director and owners.** The name of the director of the laboratory and the name of the owner or owners, if different;

[1975, c. 218, (RPR) .]

3. **Services.** A description of the services provided by such medical laboratory; and

[1975, c. 218, (RPR) .]

4. **Other information.** Such other information as the department may deem necessary or expedient in carrying out its powers and duties under this Act.

[1975, c. 218, (RPR) .]

SECTION HISTORY
1967, c. 380, (NEW). 1975, c. 218, (RPR). 1987, c. 211, §4 (AMD). 1991, c. 528, §J1 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §J1 (AMD). 2011, c. 531, §1 (AMD).

§2017. RENEWAL

A license shall expire 3 years after the date of issuance unless renewed. Licenses may be renewed in the same manner and subject to the same conditions as the issuance of the original license and upon payment of a renewal application fee of $200 for the first category and $60 for each additional category. [1987, c. 211, §5 (AMD).]

SECTION HISTORY
1967, c. 380, (NEW). 1975, c. 218, (RPR). 1987, c. 211, §5 (AMD).

§2018. TERMS

A license to conduct a medical laboratory when the owner is not the director shall be issued jointly to the owner and the director for the premises stated in the application, and they shall be severally and jointly responsible to the department for the maintenance and conduct thereof and for any violations of this Act and regulations pertaining thereto. A separate license must be obtained for each location. A license shall be valid only in the hands of the persons to whom it is issued and shall not be the subject of sale, assignment or transfer, voluntary or involuntary, nor shall a license be valid for any premises other than those for which issued. A new license, for the unexpired length of time of the original license, may be secured, without the payment of any additional fee, for the new location, director or owner prior to the actual change, provided that the contemplated change is in compliance with this Act and regulations pertaining thereto. [1975, c. 218, (RPR).]

This section is not to be construed as limiting the ownership of laboratories to persons who qualify under the provisions of this chapter as a director, but rather is intended to stipulate that a director as defined in section 2014, subsection 3, is necessary in order for a laboratory to obtain a license. [1975, c. 218, (RPR).]

SECTION HISTORY
1967, c. 380, (NEW). 1975, c. 218, (RPR).

§2019. DISPLAY

Any person maintaining, conducting or operating a medical laboratory shall display, in a prominent place in the medical laboratory, the license issued to him by the department. A medical laboratory shall not in any advertisement, announcement, letter, circular, poster, sign or any other manner include any statement expressly or by implication to the effect that it is approved or endorsed by the department. [1975, c. 218, (RPR).]

SECTION HISTORY
1967, c. 380, (NEW). 1975, c. 218, (RPR).

§2020. FEES

Fees required under this Act may not be returned to the applicant or licensee under any circumstances. [1975, c. 218, (RPR).]

SECTION HISTORY
1967, c. 380, (NEW). 1975, c. 218, (RPR).

§2021. USE

All fees charged and collected by the department shall be deposited by it in the State Treasury to the credit of the department. All such money is appropriated to be used by the department in carrying out this Act. The expenditures of the department may be paid from that money. [1993, c. 600, Pt. B, §7 (AMD).]

SECTION HISTORY
1967, c. 380, (NEW). 1975, c. 218, (RPR). 1993, c. 600, §B7 (AMD).

§2022. DUPLICATE

A licensee may obtain a duplicate copy of the license upon payment of $2 to the department. [1975, c. 218, (RPR).]

SECTION HISTORY
1967, c. 380, (NEW). 1975, c. 218, (RPR).

Article 4: POWERS AND DUTIES OF THE DEPARTMENT

§2023. RULES AND REGULATIONS

The department shall prescribe and publish rules and regulations for medical laboratories. These rules and regulations shall relate to: [1993, c. 600, Pt. B, §8 (AMD).]

1. **Qualifications of directors and technical personnel.** The qualifications of directors and technical personnel of medical laboratories;

[1987, c. 211, §6 (AMD) .]

2. **Location and construction of laboratory.** The location and construction of the laboratory, including plumbing, heating, lighting, ventilation, electrical services and similar conditions which shall insure the conduct and operation of the laboratory in a manner which will protect the public health;

[1975, c. 218, (RPR) .]

3. **Sanitary conditions.** All sanitary conditions within the laboratory and its surroundings, including water supply, sewage, the handling of specimens and general hygiene which shall ensure the protection of the public health;

[1989, c. 72, §3 (AMD) .]

4. **Equipment.** Equipment essential in the opinion of the department to proper conduct and operation of a medical laboratory; and

[1993, c. 600, Pt. B, §9 (AMD) .]

5. **Standards of performance.** Standards of performance essential to the achievement of accurate, reliable results and the protection of public health, including standards for maternal serum alpha-fetoprotein testing, covering, at a minimum, volume of testing, population-based reference data, adjustment for variables affecting interpretation of results, confirmatory analyses, reports, review and follow-up and procedures to ensure that patients and physicians are provided adequate and reliable follow-up testing and counseling services and that the department is provided with data on test results and pregnancy outcomes.

[1989, c. 72, §4 (NEW) .]

SECTION HISTORY
1967, c. 380, (NEW). 1975, c. 218, (RPR). 1987, c. 211, §6 (AMD). 1989, c. 72, §§3,4 (AMD). 1993, c. 600, §§B8,9 (AMD).

§2023-A. FEES

The department shall adopt a schedule of fees by rulemaking to implement provisions of this chapter. [1991, c. 528, Pt. J, §2 (NEW); 1991, c. 528, Pt. RRR, (AFF); 1991, c. 591, Pt. J, §2 (NEW).]

SECTION HISTORY
1991, c. 528, §J2 (NEW). 1991, c. 528, §RRR (AFF). 1991, c. 591, §J2 (NEW).

§2024. INSPECTION

The department is authorized to inspect the premises and operations of all medical laboratories, subject to licensure or any provisions under this Act. [1987, c. 211, §7 (AMD).]

SECTION HISTORY
1967, c. 380, (NEW). 1975, c. 218, (RPR). 1987, c. 211, §7 (AMD).

§2025. PERFORMANCE EVALUATION

The department shall require the demonstration of proficiency in the performance of the tests offered by laboratories subject to licensure or the provisions of this paragraph through successful participation in a proficiency testing program acceptable to the department covering all categories or subcategories in which testing is offered. Evaluated copies of results shall be forwarded to the department. [1993, c. 600, Pt. B, §10 (AMD).]

SECTION HISTORY
1967, c. 380, (NEW). 1975, c. 218, (RPR). 1987, c. 211, §8 (RPR). 1993, c. 600, §B10 (AMD).

Article 5: MAINE MEDICAL LABORATORY COMMISSION

§2026. MEMBERSHIP

(REPEALED)

SECTION HISTORY
1967, c. 380, (NEW). 1975, c. 218, (RPR). 1983, c. 812, §122 (AMD). 1987, c. 211, §9 (AMD). 1989, c. 503, §B88 (AMD). 1993, c. 600, §B11 (RP).

§2027. EXPENSES

(REPEALED)

SECTION HISTORY
1967, c. 380, (NEW). 1975, c. 218, (RPR). 1983, c. 812, §123 (AMD). 1993, c. 600, §B12 (RP).

§2028. CONSULTATION AND MEETINGS

(REPEALED)

SECTION HISTORY
1967, c. 380, (NEW). 1975, c. 218, (RPR). 1993, c. 600, §B13 (RP).

Article 6: QUALIFICATIONS OF A DIRECTOR OF A MEDICAL LABORATORY

§2029. DIRECTOR

Every medical laboratory shall have a director who is a legal resident of the State of Maine, except under certain conditions which may be designated by the department. The director shall also possess one of the following qualifications: [1993, c. 600, Pt. B, §14 (AMD).]

1. **Certification.** Is a physician licensed to practice medicine in the State of Maine, certified by the American Board of Pathology or the American Osteopathic Board of Pathology, or who possesses qualifications acceptable to the department and equivalent to such certification;

[1993, c. 600, Pt. B, §14 (AMD) .]

2. **Special qualifications.** Is a physician licensed to practice medicine with special qualifications acceptable to the department; or

[1993, c. 600, Pt. B, §14 (AMD) .]

3. **Qualified persons other than physicians.** Has an earned doctorate degree in a chemical, physical or biological science from an accredited institution and either is certified in at least one laboratory specialty by the American Board of Clinical Chemistry, American Board of Medical Microbiology or other national accrediting board acceptable to the department. Medical laboratories directed by persons qualified under this subsection shall only perform those examinations within the scientific area in which members of the staff are trained and certified.

[1993, c. 600, Pt. B, §14 (AMD) .]

A medical laboratory may not perform examinations in the field of pathologic anatomy, including exfoliative cytology, unless the director or an employee of the laboratory is a diplomate of the American Board of Pathology certified in pathologic anatomy or the American Osteopathic Board of Pathology certified in pathologic anatomy, or unless the director is a physician licensed to practice medicine in the State who possesses special qualifications acceptable to the department, or unless the director is a dentist licensed in Maine and is certified by the American Board of Oral Pathology. [1993, c. 600, Pt. B, §14 (AMD).]

SECTION HISTORY
1967, c. 380, (NEW). 1973, c. 625, §116 (AMD). 1975, c. 218, (RPR). 1981, c. 66, §§2-4 (AMD). 1987, c. 211, §10 (AMD). 1993, c. 600, §B14 (AMD).

Article 7: ACCEPTANCE, COLLECTION, IDENTIFICATION AND EXAMINATION OF SPECIMENS AND REPORTS OF FINDINGS

§2030. REQUESTED

1. **Request from authorized person.** Except as otherwise provided, a medical laboratory shall examine specimens only at the request of a licensed physician or other person authorized by law to use the findings of laboratory examinations.

[1989, c. 665, §2 (NEW) .]

2. **Exceptions.** Notwithstanding this section, a medical laboratory may examine specimens without a physician referral for a limited number of laboratory services to be determined by rules adopted by the department. Those services include testing for:

A. Glucose for patients who have been previously diagnosed as having diabetes; [1989, c. 665, §2 (NEW).]

B. Pregnancy; [1989, c. 665, §2 (NEW).]

C. Colon cancer; and [1989, c. 665, §2 (NEW).]

D. Cholesterol. [1989, c. 665, §2 (NEW).]

[1993, c. 600, Pt. B, §15 (AMD) .]

3. **Testing without referral.** This section does not require any medical laboratory to perform laboratory services without a physician referral.

[1989, c. 665, §2 (NEW) .]

SECTION HISTORY
1967, c. 380, (NEW). 1975, c. 218, (RPR). 1989, c. 665, §2 (RPR). 1993, c. 600, §B15 (AMD).

§2031. TESTS REPORTED

The result of a test must be reported directly to the licensed physician or other person authorized by law who requested it. A report of results issued from a medical laboratory must clearly identify that medical laboratory and the director. [2009, c. 2, §50 (COR).]

SECTION HISTORY
1967, c. 380, (NEW). 1975, c. 218, (RPR). RR 2009, c. 2, §50 (COR).

§2031-A. ITEMIZED BILLING STATEMENTS

A medical laboratory that performs services under this Act shall send an itemized billing statement to the patient. [2011, c. 531, §2 (NEW).]

SECTION HISTORY
2011, c. 531, §2 (NEW).

§2032. SPECIMENS

The following persons may collect or process specimens: licensed health care professionals; designees of licensed health care professionals acting within their scope of practice; and qualified medical laboratory personnel who are authorized by the director of the medical laboratory. [2011, c. 531, §3 (RPR).]

SECTION HISTORY
1967, c. 380, (NEW). 1975, c. 218, (RPR). 2011, c. 531, §3 (RPR).

§2033. REBATES OR FEE SPLITTING PROHIBITED

The owner or director of a laboratory licensed under this Act, either personally or through an agent, may not practice in any manner that offers or implies to offer rebates to persons submitting specimens or other fee splitting inducements or participate in any fee splitting arrangement. This applies to contents of fee schedules, billing methods or personal solicitation. The contractual provision of laboratory services for a fixed fee independent of the number of specimens submitted for such services is declared to be a violation of this section. [2011, c. 531, §4 (AMD).]

SECTION HISTORY
1967, c. 380, (NEW). 1973, c. 179, (AMD). 1975, c. 218, (RPR). 2011, c. 531, §4 (AMD).

§2034. RECORDS

Records involving laboratory services and copies of reports of laboratory tests shall be kept in a manner satisfactory to the department and shall be available at all times for inspection by its representative. [1975, c. 218, (RPR).]

SECTION HISTORY
1967, c. 380, (NEW). 1975, c. 218, (RPR).

Article 8: REVOCATION AND SUSPENSION OF LICENSES

§2035. DENIAL; REVOCATION

A license may be denied or revoked or the renewal of a license may be denied for any of the following reasons: [1975, c. 218, (RPR).]

1. **Violation of Act.** Violation of any of the provisions of this Act or the rules and regulations promulgated by the department hereunder;

[1975, c. 218, (RPR) .]

2. **Assignment from unauthorized person.** Knowingly accepting an assignment for medical laboratory tests or specimens from and the rendering a report thereon to persons not authorized by law to submit such specimens;

[1975, c. 218, (RPR) .]

3. **Conviction.** A conviction of a felony or of any crime involving moral turpitude under the laws of any state or of the United States arising out of or in connection with the operation of a medical laboratory. The record of conviction or a certified copy thereof shall be conclusive evidence of such conviction; or

[1975, c. 218, (RPR) .]

4. **Lending name.** Knowingly lending the use of the name of a licensed medical laboratory or its director to an unlicensed medical laboratory.

[1975, c. 218, (RPR) .]

SECTION HISTORY
1967, c. 380, (NEW). 1975, c. 218, (RPR).

§2036. HEARING

Before suspension or revocation of its license, if requested, a hearing must be held to show cause why a license should not be suspended or revoked. [1993, c. 600, Pt. B, §16 (AMD).]

SECTION HISTORY
1967, c. 380, (NEW). 1975, c. 218, (RPR). 1993, c. 600, §B16 (AMD).

Article 9: OFFENSES AND PENALTIES

§2037. OFFENSES

It is unlawful for any person to: [1975, c. 218, (RPR).]

1. **Unlicensed.** Operate, maintain, direct or engage in the business of operating a medical laboratory, as defined, unless he has obtained a medical laboratory license from the department; or

[1981, c. 470, Pt. A, §80 (AMD) .]

2. **Unsupervised.** Conduct, maintain or operate a medical laboratory unless such medical laboratory is under the direct and responsible supervision and direction of the person possessing those qualifications required by Article 6.

[1975, c. 218, (RPR) .]

SECTION HISTORY
1967, c. 380, (NEW). 1975, c. 218, (RPR). 1981, c. 470, §A80 (AMD).

§2038. PENALTIES

The performance of any of the acts specified in section 2037 shall constitute a misdemeanor punishable, upon conviction, by a fine of not less than $50 nor more than $500, or by imprisonment for not more than one year, or by both. [1975, c. 218, (RPR).]

SECTION HISTORY
1967, c. 380, (NEW). 1975, c. 218, (RPR).

Article 10: INJUNCTIONS

§2039. INJUNCTION

The operation or maintenance of a medical laboratory subject to licensure or any provisions of this Act, in violation of this Act, is declared a nuisance inimical to the public health, welfare and safety. The department, in the name of the people of the State, through the Attorney General, may, in addition to other

remedies provided, bring an action for an injunction to restrain such violation or to enjoin the future operation or maintenance of any such medical laboratory unless compliance with this Act has been obtained. [1987, c. 211, §11 (AMD).]

SECTION HISTORY
1967, c. 380, (NEW). 1975, c. 218, (RPR). 1987, c. 211, §11 (AMD).

Article 11: APPEALS

§2040. APPEAL

Any person aggrieved by a decision of the department may appeal to the District Court Judge under Title 5, chapter 375. [1993, c. 600, Pt. B, §17 (AMD); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF).]

SECTION HISTORY
1967, c. 380, (NEW). 1973, c. 303, §3 (AMD). 1975, c. 218, (RPR). 1981, c. 470, §A81 (AMD). 1993, c. 600, §B17 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF).

Chapter 412: LICENSING OF END-STAGE RENAL DISEASE FACILITIES

§2041. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1997, c. 658, §1 (NEW).]

1. **Agreement.** "Agreement" means a written document executed between an ESRD facility and another facility in which the other facility agrees to assume responsibility for furnishing specified services to patients and for obtaining reimbursement for those services.

[1997, c. 658, §1 (NEW) .]

2. **Arrangement.** "Arrangement" means a written document executed between an ESRD facility and another facility in which the other facility agrees to furnish specified services to patients but the ESRD facility retains responsibility for those services and for obtaining reimbursement for them.

[1997, c. 658, §1 (NEW) .]

3. **Dialysis.** "Dialysis" means a process by which dissolved substances are removed from a patient's body by diffusion from one fluid compartment to another across a semipermeable membrane. The 2 types of dialysis that are in common use are hemodialysis and peritoneal dialysis.

[1997, c. 658, §1 (NEW) .]

4. **End-stage renal disease or ESRD.** "End-stage renal disease" or "ESRD" means that stage of renal impairment that appears irreversible and permanent and requires a regular course of dialysis or kidney transplantation to maintain life.

[1997, c. 658, §1 (NEW) .]

5. **ESRD facility.** "ESRD facility" means a renal dialysis center, a renal dialysis facility, a self-dialysis unit or a special-purpose renal dialysis facility.

[2011, c. 257, §10 (AMD) .]

6. **Renal transplantation center.**

[2011, c. 257, §11 (RP) .]

7. **Renal dialysis center.** "Renal dialysis center" means a hospital unit that is approved to furnish the full spectrum of diagnostic, therapeutic and rehabilitative services required for the care of ESRD dialysis patients, including inpatient dialysis furnished directly or under arrangement. A hospital need not provide renal transplantation to qualify as a renal dialysis center.

[1997, c. 658, §1 (NEW) .]

8. **Renal dialysis facility.** "Renal dialysis facility" means a unit that is approved to furnish dialysis services directly to ESRD patients. "Renal dialysis facility" includes a self-dialysis unit or a special-purpose renal dialysis facility.

[1997, c. 658, §1 (NEW) .]

9. **Self-dialysis unit.** "Self-dialysis unit" means a unit that is part of an approved renal dialysis center or renal dialysis facility and furnishes self-dialysis services.

[2011, c. 257, §12 (AMD) .]

10. **Special-purpose renal dialysis facility.** "Special-purpose renal dialysis facility" means a renal dialysis facility that is approved to furnish dialysis at special locations on a short-term basis to a group of dialysis patients otherwise unable to obtain treatment in the geographical area. The special locations must be either special rehabilitative locations, including vacation locations, serving ESRD patients temporarily residing at those locations or locations in need of ESRD facilities under emergency circumstances.

[1997, c. 658, §1 (NEW) .]

SECTION HISTORY
1997, c. 658, §1 (NEW). 2011, c. 257, §§10-12 (AMD).

§2042. LICENSING OF FACILITIES

1. **Licensing and certification required.** The following licensing and certification requirements apply to ESRD facilities.

A. Beginning January 1, 1999, a person, partnership, association or corporation may not represent itself as an ESRD facility, operate as an ESRD facility or otherwise provide ESRD services unless the person, partnership, association or corporation has obtained a license from the department. [1997, c. 658, §1 (NEW).]

B. Beginning January 1, 1999, an ESRD facility, other than an acute care hospital, must be Medicare-certified and meet Medicare requirements to be eligible for licensure as an ESRD facility. [1997, c. 658, §1 (NEW).]

[1997, c. 658, §1 (NEW) .]

2. **Licenses.** If, after receiving an application for a license under this chapter, the department finds that all other conditions of licensure are met, it shall issue a license to the applicant for a period of one year. If the department finds less than full compliance with the conditions of licensure, it may issue a conditional license.

The department may issue a conditional license if the applicant fails to comply with applicable laws and rules but the best interest of the public would be served by issuing a conditional license. The conditional license must specify when and what corrections must be made during the term of the conditional license.

When an applicant fails to comply with applicable laws and rules, the department may refuse to issue or renew a license.

[1997, c. 658, §1 (NEW) .]

3. **Appeals.** An applicant for a license under this chapter who is denied a license or whose application is not acted upon with reasonable promptness has the right of appeal to the commissioner. The commissioner shall provide the appellant with reasonable notice and opportunity for a fair hearing. The commissioner or a member of the department designated and authorized by the commissioner shall hear all evidence pertinent to the matter at issue and render a decision within a reasonable period after the date of hearing. The hearing must conform to the procedures detailed in this subsection. Review of any action or failure to act under this chapter must be pursuant to Title 5, chapter 375, subchapter VII. An action relative to the denial of a license provided under this chapter must be communicated to the applicant in writing and must include the specific reason or reasons for that action and must state that the person affected has a right to a hearing.

[1997, c. 658, §1 (NEW) .]

4. **Right of entry and inspection.** A duly designated employee of the department may enter the premises of any ESRD services provider who has applied for a license or who is licensed pursuant to this chapter or rules adopted pursuant to this chapter. These employees may inspect relevant documents of the ESRD services provider to determine whether the provider is in compliance with this chapter and rules adopted pursuant to this chapter. The right of entry and inspection extends to any premises and documents of a provider the department has reason to believe is providing ESRD services without a license. An entry or inspection must be made with the permission of the owner or person in charge unless a warrant is first obtained from the District Court authorizing that entry or inspection under section 2148.

[1997, c. 658, §1 (NEW) .]

5. **Application fee.** An application for a license under this chapter must be accompanied by a fee established by the department based on the cost of survey and enforcement. All fees collected under this subsection must be deposited into the General Fund.

[1997, c. 658, §1 (NEW) .]

6. **Compliance.** An ESRD facility must meet all appropriate state rules and federal regulations.

[1997, c. 658, §1 (NEW) .]

7. **Minimum survey requirement.** An ESRD facility is not eligible for licensure or renewal of licensure unless the ESRD facility has had a Medicare survey or a state licensure survey within the previous 36 months.

[2011, c. 257, §13 (AMD) .]

8. **Rules.** The department shall adopt rules governing the specific requirements for licensure under this chapter. These rules are routine technical rules in accordance with Title 5, chapter 375, subchapter II-A. The rules must include at least the following.

A. The ESRD facility must be in compliance with applicable federal, state and local laws and regulations. [1997, c. 658, §1 (NEW).]

B. The ESRD facility must meet all Medicare certification requirements. [1997, c. 658, §1 (NEW).]

C. All ESRD facilities must be required to have a backup emergency generator. The emergency generator must be made operational for a period of at least 1/2 hour each month. [1997, c. 658, §1 (NEW).]

[1997, c. 658, §1 (NEW) .]

9. **Sanctions.** A person who violates this chapter commits a civil violation for which a forfeiture not to exceed $100 per day of violation may be adjudged.

[1997, c. 658, §1 (NEW) .]

SECTION HISTORY
1997, c. 658, §1 (NEW). 2011, c. 257, §13 (AMD).

Chapter 413: HEALTH FACILITIES AUTHORITY

§2051. TITLE

This chapter shall be known as, and may be cited as, the "Maine Health and Higher Educational Facilities Authority Act." [1979, c. 680, §1 (AMD).]

SECTION HISTORY
1971, c. 303, §1 (NEW). 1979, c. 680, §1 (AMD).

§2052. DECLARATION OF NECESSITY

It is declared that for the benefit of the people of the State, the increase of their commerce, welfare and prosperity and the improvement of their health and living conditions, it is essential that health care facilities within the State be provided with appropriate additional means to expand, enlarge and establish health care facilities and other related facilities; that this and future generations of students be given the fullest opportunity to learn and to develop their intellectual capacities; and that it is the purpose of this chapter to provide a measure of assistance and an alternative method to enable health care facilities, institutions for higher education and nonprofit institutions providing an educational program in the State to provide the facilities and structures needed to accomplish the purposes of this chapter, all to the public benefit and good, and the exercise of the powers, to the extent and manner provided in this chapter, is declared the exercise of an essential governmental function. [2007, c. 354, §1 (AMD).]

SECTION HISTORY
1971, c. 303, §1 (NEW). 1973, c. 713, §1 (AMD). 1979, c. 680, §2 (AMD). 1991, c. 50, §§1-5 (AMD). 1993, c. 390, §1 (AMD). 2007, c. 354, §1 (AMD).

§2053. DEFINITIONS

As used in this chapter, the following words and terms shall have the following meanings unless the context indicates another or different meaning or intent. [1971, c. 303, §1 (NEW).]

1. **Authority.** "Authority" means the Maine Health and Higher Educational Facilities Authority created and established as a public body corporate and politic of the State of Maine by section 2054 or any board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers conferred upon the authority by this chapter shall be given by law.

[1979, c. 680, §3 (AMD) .]

2. **Bonds and notes.** "Bonds" and "notes" mean bonds and notes of the authority issued under this chapter, including refunding bonds, notwithstanding that the same may be secured by mortgage or the full faith and credit of the authority or the full faith and credit of a participating health care facility, a participating institution for higher education or a participating institution providing an educational program, or any other lawfully pledged security of a participating health care facility, a participating institution for higher education or a participating institution providing an educational program.

[2007, c. 354, §2 (AMD) .]

2-A. **Community health or social service facility.** "Community health or social service facility" means a community-based facility that provides medical or medically related diagnostic or therapeutic services, mental health services, services for persons with intellectual disabilities or autism, substance abuse services or family counseling and domestic abuse intervention services and is licensed by the State.

[2011, c. 542, Pt. A, §30 (AMD) .]

2-B. **Community health center.** "Community health center" means an incorporated nonprofit health facility that provides comprehensive primary health care to citizens in a community.

[1993, c. 390, §4 (NEW) .]

2-C. **Congregate housing facility.**

[1995, c. 670, Pt. C, §1 (RP); 1995, c. 670, Pt. D, §5 (AFF) .]

3. **Cost.** "Cost" as applied to a project or any portion thereof financed under this chapter shall mean the cost of construction, building, acquisition, equipping, alteration, enlargement, reconstruction and remodeling of a project and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements and interest acquired, necessary, used for or useful for or in connection with a project and all other undertakings which the authority deems reasonable or necessary for the development of a project, including but not limited to the cost of demolishing or removing any building or structures on land so acquired, the cost of acquiring any lands to which such building or structures may be moved, the cost of all machinery and equipment, financing charges, interest prior to and during construction, and if judged advisable by the authority, for a period after completion of such construction, the cost of financing the project, including interest on bonds and notes issued by the authority to finance the project; provisions for working capital; reserves for principal and interest and for extensions, enlargements, additions and improvements; cost of architectural, engineering, financial, legal or other special services, plans, specifications, studies, surveys, estimates of cost and revenues; administrative and operating expenses; expenses necessary or incident to determining the feasibility or practicability of constructing the project; and such other expenses necessary or incident to the construction and acquisition of the project, the financing of such construction, and acquisition and the placing of the project in operation.

[1971, c. 303, §1 (NEW) .]

3-A. **Health care facility.** "Health care facility" means a nursing home that is, or will be upon completion, licensed under chapter 405; a residential care facility that is, or will be upon completion, licensed under chapter 1663; a continuing care retirement community that is, or will be upon completion, licensed under Title 24-A, chapter 73; an assisted living facility that is, or will be upon completion, licensed under

chapter 1664; a hospital; a community mental health facility; a scene response air ambulance licensed under Title 32, chapter 2-B and the rules adopted thereunder; a facility of a hospice program that is, or will be upon completion, licensed under chapter 1681; a nonprofit statewide health information network incorporated in the State for the purpose of exchanging health care information among licensed health care providers in the State; or a community health center.

[2007, c. 72, §1 (AMD) .]

3-B. **Eligible entity.** "Eligible entity" means a facility or institution eligible to participate in financing or other borrowing services authorized by this chapter and includes a participating community health or social service facility, a participating health care facility, a participating institution for higher education or a participating institution providing an educational program.

[2007, c. 354, §3 (AMD) .]

4. **Hospital.** "Hospital" means any private, nonprofit or charitable institution or organization which is either:

A. Engaged in the operation of, or formed for the purpose of operating, a hospital which is, or will be upon completion, licensed as a hospital under the laws of the State; or [1983, c. 199, §1 (NEW).]

B. Whose sole members are 2 or more institutions or organizations which are licensed as hospitals or nursing homes under the laws of the State. [1983, c. 199, §1 (NEW).]

[1983, c. 199, §1 (RPR) .]

4-A. **Nursing home.**

[1991, c. 584, §2 (RP) .]

4-B. **Institution for higher education.** "Institution for higher education" means:

A. Any private, nonprofit, governmental or charitable institution or organization engaged in the operation of, or formed for the purpose of operating, an educational institution within this State, including the Maine Community College System and the University of Maine System, that, by virtue of law or charter, is an educational institution empowered to provide a program of education beyond the high school level; [2015, c. 363, §6 (AMD).]

B. The Maine School of Science and Mathematics, as established in Title 20-A, chapter 312; and [2015, c. 363, §6 (AMD).]

C. The Maine School for Marine Science, Technology, Transportation and Engineering, as established in Title 20-A, chapter 312-A. [2015, c. 363, §6 (NEW).]

[2015, c. 363, §6 (AMD) .]

4-C. **Participating community mental health facility.**

[1993, c. 390, §6 (RP) .]

4-D. **Participating community health or social service facility.** "Participating community health or social service facility" means a community health or social service facility that is exempt from taxation under section 501 of the United States Internal Revenue Code and that, pursuant to this chapter, undertakes the financing and construction or acquisition of a project or undertakes the refunding or refinancing of existing indebtedness as provided in and committed by this chapter.

[1995, c. 179, §2 (NEW) .]

4-E. **Institution providing an educational program.** "Institution providing an educational program" means a nonprofit or charitable institution, public or private, that is exempt from federal taxation pursuant to the United States Internal Revenue Code of 1986, as amended, Section 501 and that provides a program of education for the purpose of enhancing the knowledge or abilities of its members or the general public.

[2007, c. 354, §4 (NEW) .]

5. **Participating health care facility.** "Participating health care facility" means a health care or licensed assisted living facility that, pursuant to this chapter, undertakes the financing and construction or acquisition of a project or undertakes the refunding or refinancing of existing indebtedness as provided in and permitted by this chapter.

[1995, c. 670, Pt. C, §3 (AMD); 1995, c. 670, Pt. D, §5 (AFF) .]

5-A. **Participating institution for higher education.** "Participating institution for higher education" means an institution for higher education which, pursuant to this chapter, shall undertake the financing and construction or acquisition of a project or shall undertake the refunding or refinancing of obligations or of a mortgage or of advances as provided in and permitted by this chapter.

[1979, c. 680, §5 (NEW) .]

5-B. **Participating institution providing an educational program.** "Participating institution providing an educational program" means an institution providing an educational program that, pursuant to this chapter, undertakes the financing and construction or acquisition of a project or undertakes the refunding or refinancing of obligations or of a mortgage or of advances as provided in and permitted by this chapter.

[2007, c. 354, §5 (NEW) .]

6. **Project.** "Project" means:

A. In the case of a participating health care facility or a participating community health or social service facility, the acquisition, construction, improvement, reconstruction or equipping of, or construction of an addition or additions to, a structure designed for use as a health care facility, community health or social service facility, congregate housing facility, laboratory, laundry, nurses or interns residence or other multiunit housing facility for staff, employees, patients or relatives of patients admitted for treatment in the health care facility, community health or social service facility, doctors office building, administration building, research facility, maintenance, storage or utility facility or other structures or facilities related to any of the foregoing or required or useful for the operation of the project, or the refinancing of existing indebtedness in connection with any of the foregoing, including parking and other facilities or structures essential or convenient for the orderly conduct of the health care facility or community health or social service facility. "Project" also includes all real and personal property, lands, improvements, driveways, roads, approaches, pedestrian access roads, rights-of-way, utilities, easements and other interests in land, parking lots, machinery and equipment, and all other appurtenances and facilities either on, above or under the ground that are used or usable in connection with the structures mentioned in this paragraph, and includes landscaping, site preparation, furniture, machinery and equipment and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended, but does not include such items as food, fuel, supplies or other items that are customarily considered as a current operating charge. In the case of a hospital, as defined in subsection 4, paragraph B, a community health center or a community health or social service facility, "project" does not include any facilities, structures or appurtenances, the use of which is not directly related to the provision of patient care by its members; [2007, c. 354, §6 (AMD).]

B. In the case of a participating institution for higher education, the acquisition, construction, improvement, reconstruction or equipping of, or construction of an addition or additions to, any structure designed for use as a dormitory or other housing facility, dining facility, student union, academic

building, administrative facility, library, classroom building, research facility, faculty facility, office facility, athletic facility, health care facility, laboratory, maintenance, storage or utility facility or other building or structure essential, necessary or useful for instruction in a program of education provided by an institution for higher education, including a parking facility, or any multipurpose structure designed to combine 2 or more of the functions performed by the types of structures enumerated in this paragraph. "Project" includes all real and personal property, lands, improvements, driveways, roads, approaches, pedestrian access roads, rights-of-way, utilities, easements and other interests in land, machinery and equipment, and all appurtenances and facilities either on, above or under the ground that are used or usable in connection with any of the structures mentioned in this paragraph, and also includes landscaping, site preparation, furniture, machinery, equipment and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended, but does not include such items as books, fuel, supplies or other items that are customarily considered as a current operating charge; and [2007, c. 354, §6 (AMD).]

C. In the case of a participating institution providing an educational program, the acquisition, construction, improvement, reconstruction or equipping of, or construction of an addition or additions to, any structure designed for use as a dormitory or other housing facility, dining facility, student union, academic building, administrative facility, library, classroom building, research facility, faculty facility, office facility, athletic facility, health care facility, laboratory, maintenance, storage or utility facility, exhibition facility or space, performing arts facility, museum, theater, studio or other building or structure essential, necessary or useful to the participating institution providing an educational program, including a parking facility or any multipurpose structure designed to combine 2 or more of the functions performed by the types of structures enumerated in this paragraph. "Project" includes all real and personal property, lands, improvements, driveways, roads, approaches, pedestrian access roads, rights-of-way, utilities, easements and other interests in land, machinery and equipment, and all appurtenances and facilities either on, above or under the ground that are used or usable in connection with any of the structures mentioned in this paragraph, and also includes landscaping, site preparation, furniture, machinery, equipment and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended, but does not include such items as books, fuel, supplies or other items that are customarily considered as a current operating charge. [2007, c. 354, §6 (NEW).]

[2007, c. 354, §6 (AMD) .]

7. **Refinancing of existing indebtedness.** "Refinancing of existing indebtedness" means liquidation, with the proceeds of bonds or notes issued by the authority, of an indebtedness of a health care facility, an institution for higher education or a participating institution providing an educational program incurred to finance or aid in financing a lawful purpose of that health care facility, institution for higher education or participating institution providing an educational program not financed pursuant to this chapter that would constitute a project had it been undertaken and financed by the authority, or consolidation of such indebtedness with indebtedness of the authority incurred for a project related to the purpose for which the indebtedness of the health care facility, institution for higher education or participating institution providing an educational program was incurred.

[2007, c. 354, §7 (AMD) .]

SECTION HISTORY
1971, c. 303, §1 (NEW). 1973, c. 713, §§2-5 (AMD). 1979, c. 680, §§3-7 (AMD). 1983, c. 199, §§1,2 (AMD). RR 1991, c. 2, §78 (COR). 1991, c. 584, §§1-3 (AMD). 1993, c. 390, §§2-9 (AMD). 1993, c. 661, §1 (AMD). 1993, c. 706, §A5 (AMD). 1995, c. 179, §§1-3 (AMD). 1995, c. 362, §§1,2 (AMD). 1995, c. 452, §1 (AMD). 1995, c. 670, §§C1-3 (AMD). 1995, c. 670, §D5 (AFF). 1997, c. 385, §1 (AMD). 2001, c. 590, §4 (AMD). 2001, c. 596, §B7 (AMD). 2001, c. 596, §B25 (AFF). 2003, c. 20, §§OO2,DDD1

(AMD). 2003, c. 20, §OO4 (AFF). 2005, c. 407, §1 (AMD). 2007, c. 72, §1 (AMD). 2007, c. 354, §§2-7 (AMD). 2011, c. 542, Pt. A, §30 (AMD). 2015, c. 363, §6 (AMD).

§2054. HEALTH FACILITIES AUTHORITY; EXECUTIVE DIRECTOR

1. **Authority.** The Maine Health and Higher Educational Facilities Authority, established by Title 5, chapter 379, is constituted a public body corporate and politic and an instrumentality of the State, and the exercise by the authority of the powers conferred by this chapter is deemed and held to be the performance of an essential public function. The authority consists of 12 members, one of whom must be the Superintendent of Financial Institutions, ex officio; one of whom must be the Commissioner of Health and Human Services, ex officio; one of whom must be the Commissioner of Education, ex officio; one of whom must be the Treasurer of State, ex officio; and 8 of whom must be residents of the State appointed by the Governor. Not more than 4 of the appointed members may be members of the same political party. Three of the appointed members must be trustees, directors, officers or employees of health care facilities and one of these appointed members must be a person having a favorable reputation for skill, knowledge and experience in state and municipal finance, either as a partner, officer or employee of an investment banking firm that originates and purchases state and municipal securities, or as an officer or employee of an insurance company or bank whose duties relate to the purchase of state and municipal securities as an investment and to the management and control of a state and municipal securities portfolio. Of the 3 members first appointed who are trustees, directors, officers or employees of hospitals, one shall serve for 2 years, one for 3 years and one for 4 years. Of the 5 remaining members initially appointed, one shall serve for one year, one for 2 years, one for 3 years, one for 4 years and one for 5 years. For the 2 members whose terms expire in 1980 and 1981, the Governor shall appoint as successors, for terms of 5 years each, persons who are trustees, members of a corporation or board of governors, officers or employees of institutions for higher education. Annually, the Governor shall appoint, for a term of 5 years, a successor to the member whose term expires. Members shall continue in office until their successors have been appointed and qualified. The Governor shall fill any vacancy for the unexpired terms. A member of the authority is eligible for reappointment. Any non-ex officio member of the authority may be removed by the Governor, after hearing, for misfeasance, malfeasance or willful neglect of duty. Each member of the authority before entering upon the member's duties must take and subscribe the oath or affirmation required by the Constitution of Maine, Article IX. A record of each such oath must be filed in the office of the Secretary of State. The Superintendent of Financial Institutions, the Treasurer of State, the Commissioner of Health and Human Services and the Commissioner of Education may designate their deputies to represent them with full authority and power to act and vote in their behalf or, in the case of the Superintendent of Financial Institutions, the Commissioner of Health and Human Services and the Commissioner of Education, any member of their staffs to represent them as members at meetings of the authority with full power to act and, in the case of the Superintendent of Financial Institutions, the Commissioner of Health and Human Services and the Commissioner of Education, to vote in their behalf.

[1993, c. 390, §10 (AMD); 2001, c. 44, §11 (AMD); 2001, c. 44, §14 (AFF); 2003, c. 689, Pt. B, §7 (REV) .]

2. **Chairman, vice-chairman; executive director.** The authority shall annually elect one of its members as chairman and one as vice-chairman, and shall also appoint an executive director who shall not be a member of the authority and who shall serve at the pleasure of the authority and receive such compensation as shall be fixed by the authority.

[1971, c. 303, §1 (NEW) .]

3. **Duties of executive director.** The executive director shall keep a record of the proceedings of the authority and shall be custodian of all books, documents and papers filed with the authority and of the minute book or journal of the authority and of its official seal. He may cause copies to be made of all minutes and

other records and documents of the authority and may give certificates under the official seal of the authority to the effect that such copies are true copies, and all persons dealing with the authority may rely upon such certificates.

[1971, c. 303, §1 (NEW) .]

4. **Powers of authority.** The powers of the authority are vested in its members, and 5 members of the authority constitute a quorum at any meeting of the authority. A vacancy in the membership of the authority does not impair the right of a quorum to exercise all the rights and perform all the duties of the authority. An action taken by the authority under this chapter may be authorized by resolution approved by a majority of the members present at any regular or special meeting, which resolution takes effect immediately, or an action taken by the authority may be authorized by a resolution circularized or sent to each member of the authority, which resolution takes effect at such time as a majority of the members have signed an assent to such resolution. Resolutions of the authority need not be published or posted. The authority may delegate by resolution to one or more of its members or its executive director such powers and duties as it considers proper.

The authority may meet by telephonic, video, electronic or other similar means of communication with less than a quorum assembled physically at the location of a public proceeding identified in the notice required by Title 1, section 406 only if:

A. Each member can hear all other members, speak to all other members and, to the extent reasonably practicable, see all other members by videoconferencing or other similar means of communication during the public proceeding, and members of the public attending the public proceeding at the location identified in the notice required by Title 1, section 406 are able to hear and, to the extent reasonably practicable, see all members participating from other locations by videoconferencing or other similar means of communication; [2015, c. 449, §2 (NEW).]

B. Each member who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication identifies all persons present at the location from which the member is participating; [2015, c. 449, §2 (NEW).]

C. A member who participates while not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 does so only when the member's attendance is not reasonably practical. The reason that the member's attendance is not reasonably practical must be stated in the minutes of the meeting; and [2015, c. 449, §2 (NEW).]

D. Each member who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding all documents and materials discussed at the public proceeding, with substantially the same content as those presented at the public proceeding. Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available. Failure to comply with this paragraph does not invalidate an action taken by the authority at the public proceeding. [2015, c. 449, §2 (NEW).]

[2015, c. 449, §2 (AMD) .]

5. **Bond.** Each member of the authority shall execute a surety bond in the penal sum of $50,000 and the executive director shall execute a surety bond in the penal sum of $100,000, or, in lieu thereof, the chairman of the authority shall execute a blanket position bond covering each member, the executive director and the employees of the authority, each surety bond to be conditioned upon the faithful performance of the duties of

the office or offices covered, to be executed by a surety company authorized to transact business in this State as surety and to be approved by the Attorney General and filed in the office of the Secretary of State. The cost of each bond shall be paid by the authority.

[1971, c. 303, §1 (NEW) .]

6. **Expenses.** The members of the authority shall be compensated according to the provisions of Title 5, chapter 379.

[1983, c. 812, §125 (RPR) .]

7. **Conflict of interest.** Notwithstanding any other law to the contrary, it does not constitute a conflict of interest for a trustee, director, officer or employee of a health care facility or a participating institution providing an educational program or for a trustee, member of a corporation or board of governors, officer or employee of an institution for higher education to serve as a member of the authority if that trustee, director, member of a corporation or board of governors, officer or employee abstains from deliberation, action and vote by the authority under this chapter in specific respect to the health care facility, institution for higher education or participating institution providing an educational program of which that member is a trustee, director, member of a corporation or board of governors, officer or employee.

[2007, c. 354, §8 (AMD) .]

SECTION HISTORY
1971, c. 303, §1 (NEW). 1973, c. 585, §11 (AMD). 1973, c. 713, §6 (AMD). 1973, c. 788, §84 (AMD). 1975, c. 771, §217 (AMD). 1979, c. 533, §§11-13 (AMD). 1979, c. 680, §§8,9 (AMD). 1983, c. 812, §§124,125 (AMD). 1987, c. 403, §4 (AMD). 1989, c. 700, §A76 (AMD). 1991, c. 50, §§6,7 (AMD). 1993, c. 390, §§10,11 (AMD). 2001, c. 44, §11 (AMD). 2001, c. 44, §14 (AFF). 2003, c. 689, §B7 (REV). 2007, c. 354, §8 (AMD). 2015, c. 449, §2 (AMD).

§2055. POWERS OF AUTHORITY

The purpose of the authority is to assist participating health care facilities, participating institutions providing an educational program and participating institutions for higher education in the undertaking of projects and the refinancing of existing indebtedness that are declared to be public purposes, and for the purposes of this chapter the authority is authorized and empowered: [2007, c. 354, §9 (AMD).]

1. **Bylaws.** To have perpetual succession as a body politic and corporate and to adopt bylaws for the regulation of its affairs and the conduct of its business;

[1971, c. 303, §1 (NEW) .]

2. **Seal.** To adopt an official seal and alter the same at pleasure;

[1971, c. 303, §1 (NEW) .]

3. **Office.** To maintain an office at such place or places as it may designate;

[1971, c. 303, §1 (NEW) .]

4. **Sue.** To sue and be sued in its own name, and plead and be impleaded;

[1971, c. 303, §1 (NEW) .]

5. **Projects.** To determine the location and character of any project to be financed under this chapter and to acquire, construct, reconstruct, renovate, improve, replace, maintain, repair, extend, enlarge, operate, lease, as lessee or lessor, and regulate the same, to enter into contracts for any or all of such purposes, to enter into contracts for the management and operation of a project, and to designate a participating health care facility, a participating institution for higher education or a participating institution providing an educational program as its agent to determine the location and character of a project undertaken by the participating health care facility, participating institution for higher education or participating institution providing an educational program under this chapter and, as the agent of the authority, to acquire, construct, reconstruct, renovate, improve, replace, maintain, repair, extend, enlarge, operate, lease, as lessee or lessor, and regulate the same and, as the agent of the authority, to enter into contracts for any or all of such purposes, including contracts for the management and operation of such project;

[2007, c. 354, §10 (AMD) .]

6. **Bonds.** To borrow money and issue bonds, notes, bond anticipation notes and other obligations of the authority for any of its corporate purposes, and to fund or refund the same, all as provided in this chapter;

[1971, c. 303, §1 (NEW) .]

7. **Rates and fees.** Generally, to fix and revise from time to time and charge and collect rates, rents, fees and charges for the use of and for the services furnished or to be furnished by a project or any portion thereof and to contract with any person, partnership, association or corporation or other body public or private in respect thereof;

[1971, c. 303, §1 (NEW) .]

8. **Rules.** To establish rules for the use of a project or any portion thereof and to designate a participating health care facility, a participating institution for higher education or a participating institution providing an educational program as its agent to establish rules for the use of a project undertaken by the participating health care facility, participating institution for higher education or participating institution providing an educational program;

[2007, c. 354, §11 (AMD) .]

9. **Consultants and agents.** To employ consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers and such other employees and agents as may be necessary in its judgment, and to fix their compensation;

[1971, c. 303, §1 (NEW) .]

10. **Grants.** To receive and accept from the Federal Government or the State or any other public agency loans or grants for or in aid of the construction of a project or any portion thereof, and to receive and accept loans, grants, aid or contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such loans, grants, aid and contributions are made;

[1971, c. 303, §1 (NEW) .]

11. **Mortgages.** To mortgage any project and the site thereof for the benefit of the holders of bonds or notes or other obligations issued to finance such project;

[1971, c. 303, §1 (NEW) .]

12. **Loans.** To make loans to a participating health care facility, participating institution for higher education, participating institution providing an educational program, other entity eligible to use the authority or consortium of entities eligible to use the authority for the cost of a project in accordance with an agreement between the authority and the participating entity or entities, except that no such loan may exceed the total cost of the project as determined by the participating entity or entities and approved by the authority;

[2007, c. 354, §12 (AMD) .]

13. **Refund.** To make loans to a participating health care facility, a participating institution for higher education or a participating institution providing an educational program to refund outstanding obligations, mortgages or advances issued, made or given by such a participating health care facility, participating institution for higher education or participating institution providing an educational program for the cost of the project;

[2007, c. 354, §13 (AMD) .]

14. **Apportionment.** To charge to and equitably apportion among participating health care facilities, participating institutions for higher education and participating institutions providing an educational program its administrative costs and expenses incurred in the exercise of the powers and duties conferred by this chapter;

[2007, c. 354, §14 (AMD) .]

15. **Other acts.** To do all things necessary or convenient to carry out the purposes of this chapter. In carrying out the purposes of this chapter, the authority may undertake a project for 2 or more participating health care facilities jointly, 2 or more participating institutions for higher education jointly or 2 or more participating institutions providing educational programs, and, upon undertaking the project, all other provisions of this chapter apply to and for the benefit of the authority and such joint participants;

[2007, c. 354, §15 (AMD) .]

16. **Bulk purchases.** To purchase, lease or otherwise acquire, finance, sell and transfer for, to or on behalf of itself and any eligible entities organized pursuant to the United States Internal Revenue Code, Section 501 or in partnership with any of its eligible entities organized pursuant to the United States Internal Revenue Code, Section 501 commodities necessary for the daily operation of the facilities of the eligible entities, including, but not limited to, electricity, petroleum products, fuel oil and natural gas. For purposes authorized in this subsection, the University of Maine System and its colleges and universities are eligible participating institutions under the definition of eligible participant for the authority; and

[1999, c. 231, §1 (AMD) .]

17. **Nonprofit corporation.** In accordance with the limitations and restrictions of this chapter, to cause any of its powers, duties, programs or operations to be carried out by one or more nonprofit corporations. Nonprofit corporations acting at the direction of the authority must be organized and operated under the Maine Nonprofit Corporation Act. For the purposes authorized in this section the University of Maine System and its colleges and universities are eligible participating institutions under the definition of eligible participant for the authority.

[1997, c. 385, §4 (NEW) .]

SECTION HISTORY
1971, c. 303, §1 (NEW). 1979, c. 680, §§10-13 (AMD). 1981, c. 470, §A82 (AMD). 1991, c. 50, §§8-13 (AMD). 1991, c. 584, §4 (AMD). 1993, c. 390, §§12-18 (AMD). 1997, c. 385, §§2-4 (AMD). 1999, c. 231, §1 (AMD). 2007, c. 354, §§9-15 (AMD).

§2056. PAYMENT OF EXPENSES

All expenses incurred in carrying out this chapter shall be payable solely from funds provided under the authority of this chapter and no liability or obligation shall be incurred by the authority beyond the extent to which moneys shall have been provided under this chapter. [1971, c. 303, §1 (NEW).]

SECTION HISTORY
1971, c. 303, §1 (NEW).

§2057. ACQUISITION OF PROPERTY BY AUTHORITY

The authority is authorized and empowered, directly or by and through a participating health care facility, a participating institution for higher education or a participating institution providing an educational program, as its agent, to acquire by purchase or by gift or devise such lands, structures, property, real or personal, rights and air rights, rights-of-way, franchises, easements and other interests in lands, including lands lying under water and riparian rights, and air rights, that are located inside or outside the State, as it determines necessary or convenient for the construction or operation of a project, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner of lands, including lands lying under water and riparian rights, and air rights, that are located inside or outside the State, and to take title to lands, including lands lying under water and riparian rights, and air rights, that are located inside or outside the State in the name of the authority or in the name of a participating health care facility, a participating institution for higher education or a participating institution providing an educational program as its agent. [2007, c. 354, §16 (AMD).]

SECTION HISTORY
1971, c. 303, §1 (NEW). 1979, c. 680, §14 (AMD). 1991, c. 50, §14 (AMD). 1993, c. 390, §19 (AMD). 2007, c. 354, §16 (AMD).

§2058. CONVEYANCE OF TITLE TO PARTICIPATING INSTITUTIONS

When the principal of and interest on bonds of the authority issued to finance the cost of a particular project or projects for a participating health care facility, a participating institution for higher education or a participating institution providing an educational program, including any refunding bonds issued to refund and refinance such bonds, have been fully paid and retired or when adequate provision has been made to fully pay and retire the same, and all other conditions of the resolution or trust agreement authorizing and securing the same have been satisfied and the lien of such resolution or trust agreement has been released in accordance with the provisions of the bonds, the authority shall promptly do such things and execute such deeds and conveyances as are necessary and required to convey title to such project or projects to such participating health care facility, participating institution for higher education or participating institution providing an educational program, free and clear of all liens and encumbrances, all to the extent that title to such project or projects is not, at the time, vested in such participating health care facility, participating institution for higher education or participating institution providing an educational program. [2007, c. 354, §17 (AMD).]

SECTION HISTORY
1971, c. 303, §1 (NEW). 1979, c. 680, §15 (AMD). 1991, c. 50, §15 (AMD). 1993, c. 390, §20 (AMD). 2007, c. 354, §17 (AMD).

§2059. NOTES OF THE AUTHORITY

The authority is authorized from time to time to issue its negotiable notes for any corporate purpose, including the payment of all or any part of the cost of any project, and renew from time to time any notes by the issuance of new notes, whether the notes to be renewed have or have not matured. The authority may issue notes partly to renew notes or to discharge other obligations then outstanding and partly for any other purpose. The notes may be authorized, sold, executed and delivered in the same manner as bonds. Any

resolution or resolutions authorizing notes of the authority or any issue thereof may contain any provisions which the authority is authorized to include in any resolution or resolutions authorizing bonds of the authority or any issue thereof, and the authority may include in any notes any terms, covenants or conditions which it is authorized to include in any bonds. All such notes shall be payable from the proceeds of bonds or renewal notes or from the revenues of the authority or other moneys available therefor and not otherwise pledged, subject only to any contractual rights of the holders of any of its notes or other obligations then outstanding.
[1971, c. 303, §1 (NEW).]

SECTION HISTORY
1971, c. 303, §1 (NEW).

§2060. BONDS OF THE AUTHORITY

1. **Negotiable.** The authority is authorized from time to time to issue its negotiable bonds for the purpose of financing all or a part of the cost of any projects authorized hereby. In anticipation of the sale of such bonds, the authority may issue negotiable bond anticipation notes and may renew the same from time to time. Such notes shall be paid from any revenues of the authority or other moneys available therefor and not otherwise pledged, or from the proceeds of sale of the bonds of the authority in anticipation of which they were issued. The notes shall be issued in the same manner as the bonds. Such notes and the resolution or resolutions authorizing the same may contain any provisions, conditions or limitations which a bond resolution of the authority may contain.

[1971, c. 303, §1 (NEW) .]

2. **General obligations.** Except as may otherwise be expressly provided by the authority, every issue of its bonds, notes or other obligations is a general obligation of the authority payable from revenues or money of the authority available for the payment of the obligation and not otherwise pledged, subject only to agreements with the holders of particular bonds, notes or other obligations pledging particular revenues or money and subject to any agreements with a participating health care facility, participating institution for higher education or participating institution providing an educational program. Notwithstanding that such bonds, notes or other obligations may be payable from a special fund, they are and must be deemed to be for all purposes negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code, Article 8, subject only to the provisions of such bonds, notes or other obligations for registration.

[2007, c. 354, §18 (AMD) .]

3. **Issuance.** The bonds may be issued as serial bonds or as term bonds, or the authority, in its discretion, may issue bonds of both types. The bonds shall be authorized by resolution of the members of the authority and shall bear such date or dates, mature at such time or times, not exceeding 50 years from their respective dates, bear interest at such rate or rates, be payable at such time or times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, and be subject to such terms of redemption, as such resolution or resolutions may provide. The bonds or notes may be sold at public or private sale for such price or prices as the authority shall determine. The power to fix the date of sale of bonds, to receive bids or proposals, to award and sell bonds, and to take all other necessary action to sell and deliver bonds may be delegated to the executive director of the authority by resolution of the authority. Pending preparation of the definitive bonds, the authority may issue interim receipts or certificates which shall be exchanged for such definitive bonds.

[1971, c. 303, §1 (NEW) .]

4. **Provisions.** Any resolution or resolutions authorizing any bonds or any issue of bonds may contain provisions, which shall be a part of the contract with the holders of the bonds to be authorized, as to:

A. Pledging the full faith and credit of the authority, the full faith and credit of a participating health care facility, a participating institution of higher education or a participating institution providing an educational program, all or a part of the revenues of a project or a revenue-producing contract or contracts made by the authority with an individual, partnership, corporation or association or other body, public or private, to secure the payment of the bonds or of a particular issue of bonds, subject to such agreements with bondholders as may then exist; [2007, c. 354, §19 (AMD).]

B. The rentals, fees and other charges to be charged, and the amounts to be raised in each year thereby, and the use and disposition of the revenues; [1971, c. 303, §1 (NEW).]

C. The setting aside of reserves or sinking funds, and the regulation and disposition thereof; [1971, c. 303, §1 (NEW).]

D. Limitations on the right of the authority or its agent to restrict and regulate the use of the project; [1971, c. 303, §1 (NEW).]

E. Limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied and pledging such proceeds to secure the payment of the bonds or any issue of the bonds; [1971, c. 303, §1 (NEW).]

F. Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured and the refunding of outstanding bonds; [1971, c. 303, §1 (NEW).]

G. The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given; [1971, c. 303, §1 (NEW).]

H. Limitations on the amount of moneys derived from the project to be expended for operating, administrative or other expenses of the authority; [1971, c. 303, §1 (NEW).]

I. Defining the acts or omissions to act which shall constitute a default in the duties of the authority to holders of its obligations and providing the rights and remedies of such holders in the event of a default; [1971, c. 303, §1 (NEW).]

J. The mortgaging of a project and the site thereof for the purpose of securing the bondholders; and [1971, c. 303, §1 (NEW).]

K. Such other additional covenants, agreements and provisions as are judged advisable or necessary by the authority for the security of the holders of such bonds. [1971, c. 303, §1 (NEW).]

[2007, c. 354, §19 (AMD) .]

5. **Personal liability.** Neither the members of the authority nor any person executing the bonds or notes shall be liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

[1971, c. 303, §1 (NEW) .]

6. **Purchase.** The authority shall have power out of any funds available therefor to purchase its bonds or notes. The authority may hold, pledge, cancel or resell such bonds, subject to and in accordance with agreements with bondholders.

[1971, c. 303, §1 (NEW) .]

SECTION HISTORY
1971, c. 303, §1 (NEW). 1979, c. 680, §§16,17 (AMD). 1991, c. 50, §§16,17 (AMD). 1993, c. 390, §§21,22 (AMD). 2007, c. 354, §§18, 19 (AMD).

§2061. PROCEDURE BEFORE ISSUANCE OF BONDS

Notwithstanding any other provisions of this chapter, the authority is not empowered to undertake any project authorized by this chapter unless, prior to the issuance of any bonds or notes hereunder, the authority has determined that: [1975, c. 264, (RPR).]

1. **Assistance.** Such a project will enable or assist a health care facility to fulfill its obligation to provide health care facilities, an institution for higher education to provide educational facilities within the State or a participating institution providing an educational program to fulfill its mission within the State;

[2007, c. 354, §20 (AMD) .]

2. **Review.** Each project for a health care facility has been reviewed and approved to the extent required by the agency of the State that serves as the designated planning agency of the State or by the Department of Health and Human Services in accordance with the provisions of the Maine Certificate of Need Act of 2002, as amended;

[2011, c. 90, Pt. J, §19 (AMD) .]

3. **Lease.** Such a project will be leased to, or owned by, a health care facility, institution for higher education or institution providing an educational program inside the State;

[2007, c. 354, §21 (AMD) .]

4. **Payment.** Adequate provision has been or will be made for the payment of such project and that under no circumstances will the State be obligated for the payment of such project, or for the payment of the principal of, or interest on, any obligations issued to finance such project; and

[2001, c. 609, §2 (AMD) .]

5. **Projects for program of independent housing with services not required to be licensed.** If the project is for a program of independent housing with services that is not required to be licensed under this Title, the participating health care facility has agreed to comply with the requirements applicable to assisted living providers with regard to the standardized contract under section 7916 and residents' rights under section 7902-A, subsection 6 and rules adopted pursuant to those provisions. This requirement does not apply to the refinancing of an authority loan outstanding on April 1, 2002 or to a project specifically authorized under this chapter.

[2001, c. 609, §3 (NEW) .]

SECTION HISTORY
1971, c. 303, §1 (NEW). 1973, c. 713, §7 (AMD). 1975, c. 264, (RPR). 1979, c. 680, §18 (AMD). 1981, c. 455, (AMD). 1983, c. 579, §11 (AMD). 1991, c. 50, §§18-20 (AMD). 1991, c. 584, §5 (AMD). 1993, c. 390, §§23-25 (AMD). 2001, c. 609, §§1-3 (AMD). RR 2003, c. 2, §71 (COR). 2003, c. 469, §C16 (AMD). 2003, c. 510, §A16 (AMD). 2003, c. 599, §6 (AMD). 2003, c. 689, §B6 (REV). 2007, c. 354, §§20, 21 (AMD). 2011, c. 90, Pt. J, §19 (AMD).

§2062. TRUST AGREEMENT TO SECURE BONDS

In the discretion of the authority, any bonds issued under this chapter may be secured by a trust agreement by and between the authority and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the revenues to be received or

proceeds of any contract or contracts pledged and may convey or mortgage the project or any portion thereof. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper, and not in violation of law, including particularly such provisions as have been specifically authorized to be included in any resolution or resolutions of the authority authorizing bonds thereof. Any bank or trust company incorporated under the laws of this State, which may act as depositary of the proceeds of bonds or of revenues or other moneys, may furnish such indemnifying bonds or pledge such securities as may be required by the authority. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee or trustees, and may restrict the individual right of action by bondholders. In addition, any such trust agreement or resolution may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out such trust agreement or resolution may be treated as a part of the cost of the operation of a project. [1971, c. 303, §1 (NEW).]

SECTION HISTORY
1971, c. 303, §1 (NEW).

§2063. CREDIT OF STATE NOT PLEDGED

Bonds and notes issued under this chapter do not constitute or create a debt or debts, liability or liabilities on behalf of the State or of a political subdivision of the State other than the authority or a loan of the credit of the State or a pledge of the faith and credit of the State or of any such political subdivision other than the authority, but are payable solely from the funds provided for the bonds and notes. All such bonds and notes must contain on the face of the bonds and notes a statement to the effect that neither the State nor a political subdivision of the State is obligated to pay the same or the interest on the bonds and notes, except from revenues of the project or the portion of the project for which they are issued and that neither the faith and credit nor the taxing power of the State or of a political subdivision of the State is pledged to the payment of the principal of or the interest on such bonds or notes. The issuance of bonds or notes under this chapter may not directly or indirectly or contingently obligate the State or a political subdivision of the State to levy or to pledge any form of taxation whatever for the bonds and notes or to make an appropriation for their payment. Nothing in this section may prevent nor be construed to prevent the authority from pledging its full faith and credit or the full faith and credit of a participating health care facility, participating institution for higher education or participating institution providing an educational program to the payment of bonds or notes or issue of notes or bonds authorized pursuant to this chapter. [2007, c. 354, §22 (AMD).]

SECTION HISTORY
1971, c. 303, §1 (NEW). 1979, c. 680, §19 (AMD). 1991, c. 50, §21 (AMD). 1993, c. 390, §26 (AMD). 2007, c. 354, §22 (AMD).

§2064. RENTS AND CHARGES

The authority is authorized to fix, revise, charge and collect rates, rents, fees and charges for the use of and for the services furnished or to be furnished by each project and to contract with a person, partnership, association or corporation, or other body, public or private, in respect of rates, rents, fees and charges. Such rates, rents, fees and charges must be fixed and adjusted in respect of the aggregate of rates, rents, fees and charges from such project so as to provide funds sufficient with other revenues or money available for the project, if any, to pay the cost of maintaining, repairing and operating the project and each and every portion of the project, to the extent that the payment of such cost has not otherwise been adequately provided for, to pay the principal of and the interest on outstanding bonds or notes of the authority issued in respect of such project as the same become due and payable, and to create and maintain reserves required or provided for in a resolution authorizing, or trust agreement securing, such bonds or notes of the authority. Such rates, rents, fees and charges are not subject to supervision or regulation by a department, commission, board, body, bureau or agency of this State other than the authority. A sufficient amount of the revenues derived in respect of a project, except such part of such revenues as may be necessary to pay the cost of maintenance, repair and operation and to provide reserves and for renewals, replacements, extensions, enlargements and

improvements as may be provided for in the resolution authorizing the issuance of bonds or notes of the authority or in the trust agreement securing the same, must be set aside at such regular intervals as may be provided in such resolution or trust agreement in a sinking or other similar fund that is pledged to, and charged with, the payment of the principal of and the interest on such bonds or notes as the same become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge is valid and binding from the time when the pledge is made; the rates, rents, fees and charges and other revenues or other money so pledged and later received by the authority are immediately subject to the lien of such pledge without any physical delivery of the revenues or money or further act, and the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice of the lien. Neither the resolution nor a trust agreement nor any other agreement nor any lease by which a pledge is created need be filed or recorded except in the records of the authority. The use and disposition of money to the credit of such sinking or other similar fund are subject to the resolution authorizing the issuance of such bonds or notes or of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking or other similar fund may be a fund for all such bonds or notes issued to finance projects at a particular participating health care facility, participating institution for higher education or participating institution providing an educational program without distinction or priority of one over another, provided the authority in any such resolution or trust agreement may provide that such sinking or other similar fund is the fund for a particular project at a participating health care facility, participating institution for higher education or participating institution providing an educational program and for the bonds issued to finance a particular project and may, additionally, permit and provide for the issuance of bonds having a subordinate lien in respect of the security authorized in this chapter to other bonds of the authority, and, in such case, the authority may create separate sinking or other similar funds in respect of such subordinate lien bonds. [2007, c. 354, §23 (AMD).]

SECTION HISTORY
1971, c. 303, §1 (NEW). 1973, c. 713, §8 (AMD). 1979, c. 680, §20 (AMD). 1991, c. 50, §22 (AMD). RR 1993, c. 2, §12 (COR). 1993, c. 390, §27 (AMD). 2007, c. 354, §23 (AMD).

§2065. TRUST FUNDS

All moneys received pursuant to the authority of this chapter whether as proceeds from the sale of bonds or notes or as revenues, are trust funds to be held and applied solely as provided in this chapter. Any officer with whom, or any bank or trust company with which, such moneys are deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes of this chapter, subject to such regulations as this chapter and the resolution authorizing the bonds or notes of any issue or the trust agreement securing such bonds or notes provide. [1971, c. 303, §1 (NEW).]

SECTION HISTORY
1971, c. 303, §1 (NEW).

§2066. ENFORCEMENT OF RIGHTS AND DUTIES

Any holder of bonds, notes, bond anticipation notes, other notes or other obligations issued under this chapter or any of the coupons appertaining thereto, and the trustee or trustees under any trust agreement, except to the extent the rights herein given may be restricted by any resolution authorizing the issuance of, or any such trust agreement securing, such bonds, may, either at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of the State or granted under this chapter or under such resolution or trust agreement, and may enforce and compel the performance of all duties required by this chapter or by such resolution or trust agreement to be performed by the authority or by

any officer, employee or agent thereof, including the fixing, charging and collecting of the rates, rents, fees and charges herein authorized and required by such resolution or trust agreement to be fixed, established and collected. [1971, c. 303, §1 (NEW).]

SECTION HISTORY
1971, c. 303, §1 (NEW).

§2067. EXEMPTION FROM TAXATION

The exercise of the powers granted by this chapter will be in all respects for the benefit of the people of the State, for the increase of their commerce, welfare and prosperity, and for the improvement of their health and living conditions, and will constitute the performance of an essential governmental function, and neither the authority nor its agent shall or may be required to pay any taxes or assessments upon or in respect of a project or projects or any property acquired, used by the authority or its agent or under the jurisdiction, control, possession or supervision of the same or upon the activities of the authority or its agent in the operation or maintenance of a project or projects under this chapter, or upon income or other revenues received therefrom, and any bonds, notes and other obligations issued under this chapter, their transfer and the income therefrom, including any profit made on the sale thereof, as well as the income and property of the authority, are at all times exempt from taxation of every kind by the State and by the municipalities and all other political subdivisions of the State. [1971, c. 303, §1 (NEW).]

SECTION HISTORY
1971, c. 303, §1 (NEW).

§2068. BONDS DECLARED LEGAL INVESTMENTS

Bonds and notes issued by the authority under this chapter are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies and associations and other persons carrying on an insurance business, trust companies, banks, bankers, banking associations, savings banks and savings associations, including savings and loan associations, credit unions, building and loan associations, investment companies, executors, administrators, trustees and other fiduciaries, pension, profit-sharing, retirement funds and other persons carrying on a banking business, and all other persons whatsoever, who are now or may hereafter be, authorized to invest in bonds or other obligations of the State, may properly and legally invest funds, including capital in their control or belonging to them. Such bonds and notes are hereby made securities which may properly and legally be deposited with and received by any state or municipal or public officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or other obligations of the State is now or may hereafter be authorized by law. [1971, c. 303, §1 (NEW).]

SECTION HISTORY
1971, c. 303, §1 (NEW).

§2069. ANNUAL REPORTS

Within 4 months after the close of each fiscal year of the authority, the executive director of the authority shall prepare and submit a complete financial report to the Governor and to the Legislature, duly audited and certified by the auditor of accounts of the operations and activities of the authority during the preceding fiscal year to be distributed in the same way as state departmental reports. Within 5 months after the close of the authority's fiscal year, the executive director shall prepare and submit to the Legislature a detailed report on the activities of the authority during the preceding fiscal year. The report must contain information concerning the authority's financial and operational activities, including, but not limited to, resolutions, projects, grants, mortgages and loans. The report also must address continuing and potential problems with finances, operations and projects. [1999, c. 122, §1 (AMD).]

SECTION HISTORY

1971, c. 303, §1 (NEW). 1975, c. 771, §218 (AMD). 1999, c. 122, §1 (AMD).

§2070. REFUNDING BONDS

1. **Refunding.** The authority is authorized to provide for the issuance of bonds of the authority for the purpose of refunding any bonds of the authority then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the earliest or subsequent date of redemption, purchase or maturity of such bonds, and, if deemed advisable by the authority, for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improvements, extensions or enlargements of a project or any portion thereof.

[1971, c. 303, §1 (NEW) .]

2. **Use of proceeds.** The proceeds of any such bonds issued for the purpose of refunding outstanding bonds may, in the discretion of the authority, be applied to the purchase or retirement at maturity or redemption of such outstanding bonds either on their earliest or any subsequent redemption date or upon the purchase or at the maturity thereof and may, pending such application, be placed in escrow to be applied to such purchase or retirement at maturity or redemption on such date as may be determined by the authority.

[1971, c. 303, §1 (NEW) .]

3. **Escrow proceeds.** Any such escrowed proceeds, pending such use, may be invested and reinvested in obligations of, or guaranteed by, the United States of America, or in certificates of deposit or time deposits secured by obligations of, or guaranteed by, the United States of America, maturing at such time or times as shall be appropriate to assure the prompt payment, as to principal, interest and redemption premium, if any, of the outstanding bonds to be so refunded. The interest, income and profits, if any, earned or realized on any such investment may also be applied to the payment of the outstanding bonds to be so refunded. After the terms of the escrow have been fully satisfied and carried out, any balance of such proceeds and interest, income and profits, if any, earned or realized on the investments thereof may be returned to the authority for use by it in any lawful manner.

[1971, c. 303, §1 (NEW) .]

4. **Investments.** The portion of the proceeds of any such bonds issued for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improvements, extensions or enlargements of a project may be invested and reinvested in obligations of, or guaranteed by, the United States of America, or in certificates of deposit or time deposit secured by obligations of, or guaranteed by, the United States of America, maturing not later than the time or times when such proceeds will be needed for the purpose of paying all or any part of such cost. The interest, income and profits, if any, earned or realized on such investment may be applied to the payment of all or any part of such cost or may be used by the authority in any lawful manner.

[1971, c. 303, §1 (NEW) .]

5. **Conditions.** All such bonds shall be subject to this chapter in the same manner and to the same extent as other bonds issued pursuant to this chapter.

[1971, c. 303, §1 (NEW) .]

SECTION HISTORY
1971, c. 303, §1 (NEW).

§2071. SOURCE OF PAYMENT OF EXPENSES

All expenses incurred in carrying out this chapter shall be payable solely from funds provided under the authority of this chapter and no liability or obligation shall be incurred by the authority under this chapter beyond the extent to which moneys shall have been provided under this chapter. [1971, c. 303, §1 (NEW).]

SECTION HISTORY
1971, c. 303, §1 (NEW).

§2072. AGREEMENT OF THE STATE

The State pledges to and agrees with the holders of bonds, notes and other obligations issued under this chapter, and with those parties who may enter into contracts with the authority pursuant to this chapter, that the State will not limit, alter, restrict or impair the rights hereby vested in the authority and the participating health care facilities, the participating institutions for higher education and the participating institutions providing an educational program to acquire, construct, reconstruct, maintain and operate a project as defined in this chapter or to establish, revise, charge and collect rates, rents, fees and other charges as may be convenient or necessary to produce sufficient revenues to meet the expenses of maintenance and operation of the project and to fulfill the terms of any agreements made with the holders of bonds, notes or other obligations authorized and issued by this chapter, and with the parties who may enter into contracts with the authority pursuant to this chapter, or in any way impair the rights or remedies of the holders of such bonds, notes or other obligations of such parties until the bonds, notes and such other obligations, together with interest on the bonds, notes and other obligations, with interest on any unpaid installment of interest and all costs and expenses in connection with an action or proceeding by or on behalf of the bondholders, are fully met and discharged and such contracts are fully performed on the part of the authority. Nothing in this chapter precludes such limitation or alteration if and when adequate provision is made by law for the protection of the holders of such bonds, notes or other obligations of the authority or those entering into such contracts with the authority. The authority is authorized to include this pledge and undertaking for the State in such bonds, notes or other obligations or contracts. [2007, c. 354, §24 (AMD).]

SECTION HISTORY
1971, c. 303, §1 (NEW). 1979, c. 680, §21 (AMD). 1993, c. 390, §28 (AMD). 2007, c. 354, §24 (AMD).

§2073. ACT CUMULATIVE; NO NOTICE REQUIRED

Neither this chapter nor anything contained in this chapter is or shall be construed as a restriction or limitation upon any powers which the Maine Health and Higher Educational Facilities Authority might otherwise have under any laws of this State, and this chapter is cumulative of any such powers. This chapter does and shall be construed to provide a complete, additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws. Neither the making of contracts nor the issuance of bonds, notes, refunding bonds and other obligations pursuant to the provisions of this chapter need comply with the requirements of any other state law applicable to the making of contracts and the issuance of bonds, notes and other obligations, for the construction and acquisition of any project undertaken pursuant to this chapter. No proceedings, notice or approval shall be required for the issuance of any bonds, notes and other obligations or any instrument as security therefor, except as is provided in this chapter. [1979, c. 680, §22 (AMD).]

SECTION HISTORY
1971, c. 303, §1 (NEW). 1979, c. 680, §22 (AMD).

§2074. ACT LIBERALLY CONSTRUED

This chapter, being necessary for the welfare of the State and its inhabitants, shall be liberally construed so as to effect its purposes. [1971, c. 303, §1 (NEW).]

SECTION HISTORY
1971, c. 303, §1 (NEW).

§2075. MAINE HEALTH FACILITIES' RESERVE FUND

1. **Maine Health Facilities' Reserve Fund.** The authority shall establish and maintain a reserve fund called the "Maine Health Facilities' Reserve Fund" in which is deposited all money appropriated by the State for the purpose of that fund, all proceeds of bonds required to be deposited in the fund by terms of any contract between the authority and its bondholders or any resolution of the authority with respect to the proceeds of bonds and any other money or funds of the authority that the authority determines to deposit in the fund and any other money made available to the authority only for the purposes of the fund from any other source or sources.

A. Money in the reserve fund is held and applied solely to the payment of the interest on and principal of bonds secured by the reserve fund and sinking fund payments referred to in this chapter with respect to bonds secured by the reserve fund as the interest, principal and sinking fund payments become due and payable; and for the retirement of bonds, including the payment of any redemption premium required to be paid when any bonds are redeemed or retired before maturity. Money may not be withdrawn from the fund if the withdrawal reduces the amount in the reserve fund to an amount less than the required debt service reserve, except for:

(1) Payment of interest then due and payable on bonds;

(2) Payment of the principal of bonds then maturing and payable;

(3) Sinking fund payments referred to in this chapter with respect to bonds;

(4) The retirement of bonds in accordance with the terms of any contract between the authority and its bondholders; or

(5) The payment for which other money of the authority is not then available for payment of interest, principal or sinking fund payments or the retirement of bonds in accordance with the terms of any such contract. [1991, c. 584, §6 (NEW).]

B. As used in this chapter, "required debt service reserve" means, as of any date of computation, the amount or amounts required to be on deposit in the reserve fund as provided by resolution of the authority. For purposes of this chapter, the amount of any letter of credit, insurance contract, surety bond or similar financial undertaking available to be drawn upon and applied to obligations to which money in the reserve fund may be applied is deemed to be and must be counted as money in the Maine Health Facilities' Reserve Fund, capital reserve funds or any other reserve fund as provided by resolution of the authority. The required debt service reserve is, as of any date of computation, an aggregate amount equal to at least the largest amount of money required by the terms of all contracts between the authority and holders of bonds secured by the reserve fund to be raised in the current or any succeeding calendar year for:

(1) The payment of interest on and maturing principal of that portion of outstanding bonds secured by the reserve fund; and

(2) Sinking fund payments required by the terms of any such contracts to sinking funds established for the payment or redemption of those bonds. [1995, c. 179, §4 (AMD).]

C. To ensure the maintenance of the required debt service reserve in the reserve fund, there must be annually appropriated and paid to the authority for deposit in the fund the sum, if any, certified by the executive director of the authority to the Governor, required to restore the reserve fund to an amount

equal to the required debt service reserve. On or before December 1st of each year, the executive director shall make and deliver to the Governor a certificate stating the sum and the sum or sums so certified must be appropriated and paid to the authority during the current state fiscal year.

To ensure the maintenance of the required debt service reserve in any capital reserve fund to which, at the direction of the authority pursuant to the resolution or resolutions establishing a capital reserve fund, this provision applies, there is annually appropriated and paid to the authority for deposit in the fund the sum, if any, certified by the executive director of the authority to the Governor, required to restore the reserve fund to an amount equal to the required debt service reserve. On or before December 1st of each year, the director shall make and deliver to the Governor a certificate stating the sum and the sum or sums so certified must be appropriated and paid to the authority during the current state fiscal year. [1991, c. 584, §6 (NEW).]

[1995, c. 179, §4 (AMD) .]

2. **Capital reserve fund.** This subsection applies to capital reserve funds.

A. The authority may establish and maintain one or more special funds called "capital reserve funds" in which must be deposited:

(1) All money appropriated by the State for the purpose of those funds;

(2) All proceeds of bonds required to be deposited in those funds by the terms of any contract between the authority and its bondholders or any resolution of the authority with respect to the proceeds of bonds;

(3) Any other money or funds of the authority that the authority determines to deposit in those funds; and

(4) Any other money made available to the authority only for the purposes of the fund from any other source or sources. [1991, c. 584, §6 (NEW).]

B. Money in any capital reserve fund is held and applied solely:

(1) To pay the interest on and principal of bonds secured by the capital reserve fund and sinking fund payments referred to in this chapter with respect to bonds secured by the capital reserve fund as the interest and principal becomes due and payable; and

(2) To retire bonds secured by the capital reserve fund, including the payment of any redemption premium required to be paid when any such bonds are redeemed or retired before maturity. [1991, c. 584, §6 (NEW).]

C. The minimum amount of any capital reserve fund must be equal to the amounts required under the resolutions pursuant to which the bonds secured by the capital reserve fund are issued. These amounts are referred to in this chapter as the "required minimum reserve." With respect to bonds secured by a capital reserve fund for which the resolution authorizing the issuance of those bonds states that the provisions of subsection 1, paragraph C apply, the required minimum reserve is, as of any date of computation, an aggregate amount equal to at least the largest amount of money required by the terms of all contracts between the authority and its bondholders of the bonds to be raised in the current or any succeeding calendar year for the payment of interest on and maturing principal of that portion of the outstanding bonds or sinking fund payments required by the terms of any such contracts to sinking funds established for the payment or redemption of the bonds, all calculated on the assumption that the bonds will cease to be outstanding after the date of the computation because of the payment of the bonds at their respective maturities and the payments of the required money to sinking funds and the application of the sinking funds in accordance with the terms of all such contracts to the retirement of the bonds. [1991, c. 584, §6 (NEW).]

D. Money in any capital reserve fund may not be withdrawn if the withdrawal reduces the amount in the capital reserve fund to an amount less than the required minimum reserve for all such bonds issued and to be issued that are secured by the capital reserve fund, except for:

(1) Payment of interest then due and payable on bonds secured by the capital reserve fund then maturing and payable;

(2) Sinking fund payments required by the terms of any such contracts to sinking funds established for the payment of redemption of the bonds;

(3) The retirement of bonds secured by the capital reserve fund in accordance with the terms of any contract between the authority and its bondholders; and

(4) The payments for which other money of the authority is not then available for payment of interest or principal or sinking fund payments or retirement of bonds secured by the capital reserve fund in accordance with the terms of any such contract. [1991, c. 584, §6 (NEW).]

[1991, c. 584, §6 (NEW) .]

SECTION HISTORY
1991, c. 584, §6 (NEW). 1995, c. 179, §4 (AMD).

§2076. AUTHORITY TO INTERCEPT FEDERAL AND STATE AID

1. **Treasurer to withhold funds.** When the authority notifies the Treasurer of State in writing that an entity eligible to use the authority is in default as to the payment of principal or interest on any securities of that entity sold through or by the authority, or that the authority has reasonable grounds to predict that the entity will not be able to make a full payment when that payment is due, the Treasurer of State shall withhold any funds in the Treasurer of State's custody that are due or payable to the eligible entity until the amount of the principal or interest due or anticipated to be due has been paid to the authority or the trustee for the bondholders, or the authority notifies the Treasurer of State that satisfactory arrangements have been made for the payment of the principal and interest. Funds subject to withholding under this subsection include, but are not limited to, federal and state grants, contracts, allocations or appropriations.

[1991, c. 584, §7 (NEW) .]

2. **Withheld funds to be made available to authority.** If the authority further notifies the Treasurer of State in writing that no other arrangements are satisfactory, the Treasurer of State shall deposit in the General Fund and make available to the authority any funds withheld from the eligible entity under this section. The authority shall apply the funds to the costs incurred by the eligible entity, including payments required to be made to the authority or trustee for any bondholders of debt service on any debt issued by the authority for the eligible entity or required by the terms of any other law or contract to be paid to the holders or owners of debt issued on behalf of the eligible entity upon failure or default, or reasonable expectation of failure or default, of the eligible institution to pay the principal or interest on its securities when due.

[1991, c. 584, §7 (NEW) .]

3. **Other agencies to be notified.** Concurrent with any notice from the authority to the Treasurer of State under this section, the authority shall notify any other agency, department or authority of State Government that exercises regulatory, supervisory or statutory control over the operations of the eligible entity. Upon notification, the agency, department or authority shall immediately undertake reviews to determine what action, if any, that agency, department or authority should undertake to assist in the payment by the eligible entity of the money due or steps that the agencies of the State other than the Treasurer of State or the authority should take to assure the continued prudent operation of the eligible entity or provision of services to the people served by the eligible entity.

[1991, c. 584, §7 (NEW) .]

SECTION HISTORY
1991, c. 584, §7 (NEW).

§2077. LEASE FINANCE PROGRAM

1. **Establishment; administration.** A lease finance program under the jurisdiction and direction of the authority is established to provide for or assist with financing leases for eligible entities to acquire the use of personal or real property. The lease finance program must provide methods of direct or indirect financing, insurance, borrowing, credit enhancement and other financial tools for the lease, lease-purchase, rental or right of use of any real or personal property or other authorized activity of an eligible entity. For the purposes authorized in this section the University of Maine System and its colleges and universities are eligible participating institutions under the definition of eligible participant for the authority.

[1997, c. 385, §5 (NEW) .]

2. **Eligible entity defined.** For purposes of this section "eligible entity" means an eligible entity, as defined in section 2053, subsection 3-B, that is organized pursuant to the United States Internal Revenue Code, Section 501.

[1997, c. 385, §5 (NEW) .]

3. **Powers.** The authority may make loans or borrow money on behalf of any eligible entity for any of the purposes of this section. The authority may purchase, refinance or enter into leases with or on behalf of any eligible entity. The authority may purchase or refinance for or on behalf of any eligible entity any lease that is held or issued by a 3rd party. The authority may issue its bonds or notes for the purchase of leases on behalf of any eligible entity or any group of those entities or for the establishment of a pool of funds to be used for the purchase, financing or other means of acquisition of leases. The authority shall establish prudent standards for the terms and conditions of any lease financing made available to any eligible entity or any group of those entities. Terms and conditions include, but are not limited to, the general obligation of the eligible entity, liens on any real or personal property held by the eligible entity whether financed by the specific lease or not and sinking funds held by or available to the eligible entity.

[1997, c. 385, §5 (NEW) .]

4. **Application; eligibility.** The authority may prescribe and require an application or procedure for an eligible entity to participate in any form of lease financing assistance made available under this section. An application must include any information that the authority decides is necessary for implementing this section, including, but not limited to, supporting documents, certifications, feasibility studies, financial data, utilization studies or other applicable information. An eligible entity may not participate in any lease finance assistance made available under this section unless, in the sole judgment of the authority, the eligible entity has satisfactorily demonstrated that it will pay the principal, interest, fees and related charges on the bond, debt, or other instrument issued by the authority on its behalf or purchased by the bank from the eligible entity as well as the costs for operation and maintenance of any real or personal property acquired or made available for use by the eligible entity by virtue of the lease assistance. Satisfactory assurance can be demonstrated if an eligible entity has:

A. Established a method of payment by fee, rate, charges, assessment or other mechanism satisfactory to the authority; or [1997, c. 385, §5 (NEW).]

B. Provided collateral sufficient to ensure payment. [1997, c. 385, §5 (NEW).]

[1997, c. 385, §5 (NEW) .]

5. **State not liable.** Bonds, notes, leases or other forms of debt or liability entered into or issued by the authority under this section are not in any way a debt or liability of the State and do not constitute a loan of the credit of the State or create any debt or debts, liability or liabilities on behalf of the State or constitute a pledge of the faith and credit of the State. Each bond, note, lease or other evidence of debt or liability entered into by the authority must contain a statement to the effect that the authority is obligated to pay the principal,

interest, redemption premium, if any, and any other amounts payable solely from the sources pledged for that purpose by the authority and that neither the faith and credit nor the taxing power of the State is pledged to the payment of the principal, interest, premium, charge, fee or other amount of the bond, note, lease or other form of indebtedness, as the case may be.

[1997, c. 385, §5 (NEW) .]

6. **Lease finance agreement.** Lease financing and refinancing, lease purchase, loans and other forms of indebtedness or obligations incurred by an eligible entity due the authority under the terms of this section must be evidenced by and be made in accordance with the terms and conditions specified in a lease finance agreement to be executed by the authority and any eligible entity or any group of those entities. The lease finance agreement must specify, among other things, the terms and conditions for the disbursement of lease finance proceeds, the term and interest rate of the lease, the scheduling of lease payments or bond payments, as the case may be, and any other terms and conditions determined necessary or desirable by the authority.

[1997, c. 385, §5 (NEW) .]

7. **Utilization of municipal lease finance program.** The authority, for the benefit of its eligible entities, may utilize the municipal lease finance program created in Title 30-A, section 6006-C for the purposes of this section.

[1997, c. 385, §5 (NEW) .]

SECTION HISTORY
1997, c. 385, §5 (NEW).

Chapter 414: HEALTH CARE PRACTITIONER SELF-REFERRALS

§2081. SHORT TITLE

This chapter may be known and cited as the "Health Care Practitioner Self-referral Act." [1993, c. 308, §1 (NEW).]

SECTION HISTORY
1993, c. 308, §1 (NEW).

§2082. LEGISLATIVE FINDING

The Legislature finds that referral of patients by a health care practitioner to a facility in which the referring health care practitioner has an investment interest may present a potential conflict of interest, which could be harmful to the public health or welfare. [1993, c. 308, §1 (NEW).]

SECTION HISTORY
1993, c. 308, §1 (NEW).

§2083. APPLICABILITY

This chapter applies to referrals for health services made on or after January 1, 1994. However, if a health care practitioner acquired an investment interest in a facility before January 1, 1993, this chapter does not apply to referrals by that health care practitioner to that facility before January 1, 1997. [1993, c. 308, §1 (NEW).]

SECTION HISTORY
1993, c. 308, §1 (NEW).

§2084. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1993, c. 308, §1 (NEW).]

1. **Bureau.** "Bureau" means the Bureau of Insurance.

[1993, c. 308, §1 (NEW) .]

2. **Facility.** "Facility" means any sole proprietorship, partnership, firm, corporation or other business that provides health services.

[1993, c. 308, §1 (NEW) .]

3. **Group practice.** "Group practice" means a group of 2 or more health care practitioners legally organized as a partnership, professional corporation, nonprofit corporation or similar association in which:

A. Each health care practitioner who is a member, an employee or an independent contractor of the group provides substantially the full range of services that the health care practitioner routinely provides, including consultation, diagnosis or treatment, through the use of office space, facilities, equipment or personnel of the group; [1993, c. 308, §1 (NEW).]

B. The services of the health care practitioners are provided through the group and payments received for health services are treated as receipts of the group; and [1993, c. 308, §1 (NEW).]

C. The overhead expenses and the income from the practice are distributed by methods previously determined by the group. [1993, c. 308, §1 (NEW).]

[1993, c. 308, §1 (NEW) .]

4. **Health care practitioner.** "Health care practitioner" means an individual regulated under the laws of this State to provide health services. "Health care practitioners" include, without limitation, acupuncturists, chiropractors, dentists, dental hygienists, nurses, occupational therapists, optometrists, pharmacists, physical therapists, physicians including allopathic and osteopathic physicians, physician assistants, podiatrists, psychologists, clinical social workers, speech therapists and audiologists or hearing aid dealers and examiners.

[1993, c. 308, §1 (NEW) .]

5. **Health services.** "Health services" means diagnosis, treatment and rehabilitative services for an injured, disabled or sick person.

[1993, c. 308, §1 (NEW) .]

6. **Immediate family member.** "Immediate family member" means a health care practitioner's parent, spouse, child or child's spouse.

[1993, c. 308, §1 (NEW) .]

7. **Investment interest.** "Investment interest" means an equity or debt security issued by a facility, including, without limitation, shares of stock in a corporation, units or other interests in a partnership, bonds, debentures, notes or other equity interests or debt instruments, except that investment interest does not include interest in a hospital licensed under state law.

[1993, c. 308, §1 (NEW) .]

8. **Investor.** "Investor" means an individual who owns, whose immediate family owns or who directly or indirectly owns a controlling interest in another facility that owns an investment interest in a facility that provides health services.

[1993, c. 308, §1 (NEW) .]

9. **Office practice.** "Office practice" includes the facility or facilities at which a health care practitioner, on a regular basis, provides or supervises the provision of professional health services to individuals.

[1993, c. 308, §1 (NEW) .]

10. **Referral.** "Referral" means a referral of a patient for health services, including, without limitation:

A. The forwarding of a patient by one health care practitioner to another health care practitioner or a facility outside the health care practitioner's office practice or group practice that provides health services; or [1993, c. 308, §1 (NEW).]

B. The establishment by a health care practitioner of a plan of care outside the health care practitioner's office practice or group practice that includes the provision of any health services. [1993, c. 308, §1 (NEW).]

[1993, c. 308, §1 (NEW) .]

SECTION HISTORY
1993, c. 308, §1 (NEW).

§2085. PROHIBITED REFERRALS AND CLAIMS FOR PAYMENT

1. **Prohibited referrals.** A health care practitioner may refer a patient to an outside facility in which that health care practitioner is an investor only when that health care practitioner directly provides health services within the facility and will be personally involved with the provision of care to the referred patient.

[1993, c. 308, §1 (NEW) .]

2. **Exemption.** Referrals by a health care practitioner are exempt from this chapter if the bureau determines that there is demonstrated need in the community for the facility and alternative financing is not available. A health care practitioner does not have to demonstrate a need for alternative financing if the practitioner has sufficient financial resources in the provider's practice without seeking financing from outside sources other than conventional bank loans. Demonstrated need in the community for the facility exists when:

A. There is no facility of reasonable quality that provides an appropriate service, or the bureau determines that the quality of health care services would be improved in the community, such as by providing new specialty or subspecialty services without increasing overall health care costs and utilization above levels likely to occur if such an exemption were not granted; [1999, c. 553, §2 (AMD).]

B. Use of existing facilities is onerous or creates too great a hardship for patients; [1993, c. 308, §1 (NEW).]

C. The facility is formed to own or lease medical equipment that replaces obsolete or otherwise inadequate equipment in or under the control of a hospital located in a federally designated health manpower shortage area; or [1993, c. 308, §1 (NEW).]

D. The facility meets other standards established by rule by the bureau, including a standard allowing the bureau to determine whether the fees charged for the health services are competitive with fees charged for those services outside the community. "Community" must be defined by rule by the bureau. The following requirements must be met to be exempt under this section.

(1) Individuals who are not in a position to refer patients to a facility must be given a bona fide opportunity to invest in that facility on the same terms as those offered a referring health care practitioner.

(2) A health care practitioner who invests may not be required or encouraged to make referrals to the facility or otherwise generate business as a condition of becoming or remaining an investor.

(3) The facility shall market or furnish its services to investors who are referring health care practitioners and to other investors on equal terms.

(4) The facility may not loan funds or guarantee loans for health care practitioners who are in a position to refer patients to that facility.

(5) The income on the health care practitioner's investment must be tied to the health care practitioner's equity in the facility rather than to the volume of referrals made.

(6) An investment contract between the facility and the health care practitioner may not include a covenant or noncompetition clause that prevents a health care practitioner from investing in other facilities.

(7) When making a referral, a health care practitioner shall disclose to the patient being referred to the facility that health care practitioner's investment interest in that facility. If alternative facilities are reasonably available, the health care practitioner shall provide the patient with a list of alternative facilities. The health care practitioner shall inform the patient that the patient has the option to use an alternative facility and the patient will not be treated differently by the health care practitioner if the patient chooses to use another facility. This subparagraph applies to all investors who are health care practitioners, including those who provide direct care or services for their patients in facilities outside their office practice.

(8) If a 3rd-party payor requests information regarding a health care practitioner's investment interest, that information must be disclosed.

(9) The facility shall establish an internal utilization review program.

(10) If a health care practitioner's financial interest in a facility is incompatible with a referred patient's interest, the health care practitioner shall make alternative arrangements for that patient's care. [1993, c. 308, §1 (NEW).]

The bureau shall make its determination on a request for an exemption within 90 days of a completed written request.

[1999, c. 553, §1, 2 (AMD) .]

3. **Exception.** It is not a violation of this chapter for a health care practitioner to refer a patient to a publicly traded facility in which that health care practitioner has an investment interest when:

A. The facility is listed for trading on the New York Stock Exchange or on the American Stock Exchange or is a national market system security traded under an automated interdealer quotation system operated by the National Association of Securities Dealers; [1993, c. 308, §1 (NEW).]

B. The facility, at the end of its most recent fiscal year, had total net assets of at least $50,000,000 related to the furnishing of health services; [1993, c. 308, §1 (NEW).]

C. Investment interest obtained after the effective date of this chapter is traded on the exchanges listed in paragraph A; [1993, c. 308, §1 (NEW).]

D. The facility markets or furnishes its services to investors who are referring health care practitioners and to other health care practitioners on equal terms; [1993, c. 308, §1 (NEW).]

E. All stock held in that facility, including stock held in the predecessor privately held facility, is of one class without preferential treatment as to status or remuneration; [1993, c. 308, §1 (NEW).]

F. The facility does not loan funds or guarantee loans for health care practitioners who are in a position to make referrals to a facility; [1993, c. 308, §1 (NEW).]

G. The income on the health care practitioner's investment is tied to the health care practitioner's equity in the facility rather than to the volume of referrals made; and [1993, c. 308, §1 (NEW).]

H. The investment interest does not exceed 1/2 of 1% of the facility's total equity. [1993, c. 308, §1 (NEW).]

[1993, c. 308, §1 (NEW) .]

4. **Compelling practitioner.** A health care practitioner may not compel or coerce, or attempt to compel or coerce, any other health care practitioner to violate any provision of this chapter.

[1993, c. 308, §1 (NEW) .]

5. **Third-party referrals.** A health care practitioner may not participate in any arrangement or plan that is designed to evade the prohibitions in this chapter by using a 3rd party to redirect referrals that are prohibited under subsection 1 if the 3rd party was not involved in the referral.

[1993, c. 308, §1 (NEW) .]

6. **Alternate facilities.** If compliance with the community need and alternative financing criteria is not practical, the health care practitioner shall identify to the patient reasonably available alternative facilities. The bureau, by rule, shall designate when compliance is not practical.

[1993, c. 308, §1 (NEW) .]

7. **Bureau opinion.** Health care practitioners may request that the bureau render an advisory opinion as to whether a referral to an existing or proposed facility under specified circumstances violates the provision of this chapter. The bureau's opinion is presumptively correct as to whether the provisions of this chapter are violated.

[1993, c. 308, §1 (NEW) .]

8. **Health organizations.** Notwithstanding any provision of this chapter, a health care practitioner may refer a patient who is a member of a health maintenance organization or a preferred provider organization licensed in this State for health services to a facility outside that health care practitioner's office or group practice in which that health care practitioner is an investor when the referral is made pursuant to a contract with the organization.

[1993, c. 308, §1 (NEW) .]

SECTION HISTORY
1993, c. 308, §1 (NEW). 1999, c. 553, §§1,2 (AMD).

§2086. PENALTIES

A facility or a health care practitioner that makes or causes to be made a referral prohibited under section 2085 or presents or causes to be presented a bill or claim for service that the facility or health care practitioner knows or should know is prohibited by section 2085 is subject to a civil penalty of no more than $2,000 for each referral, bill or claim. [1993, c. 308, §1 (NEW).]

A violation of this chapter by a health care practitioner or a facility constitutes grounds for disciplinary action by the applicable licensing body. [1993, c. 308, §1 (NEW).]

SECTION HISTORY

1993, c. 308, §1 (NEW).

§2087. RULEMAKING

The bureau shall implement this chapter pursuant to rules adopted in accordance with the Maine Administrative Procedure Act. The rules must include but are not limited to: [1993, c. 308, §1 (NEW).]

1. **Administration.** Standards and procedures for the administration of this chapter;

[1993, c. 308, §1 (NEW) .]

2. **Exceptions.** Procedures and criteria for exceptions to the prohibitions set forth in section 2085;

[1993, c. 308, §1 (NEW) .]

3. **Compliance.** Procedures and criteria for determining practical compliance with the community needs and alternative financing criteria in section 2085;

[1993, c. 308, §1 (NEW) .]

4. **Complete opinion.** Procedures and criteria for determining when a written request for an opinion set forth in section 2085 is complete; and

[1993, c. 308, §1 (NEW) .]

5. **Applicability.** Procedures and criteria for advising health care practitioners of the applicability of this chapter to practices pursuant to written requests.

[1993, c. 308, §1 (NEW) .]

SECTION HISTORY
1993, c. 308, §1 (NEW).

Chapter 415: DENTAL HEALTH

Subchapter 1: GENERAL PROVISIONS

§2091. SHORT TITLE

This chapter may be cited as the 1975 Dental Health Act. [1975, c. 90, §A, §1 (NEW).]

SECTION HISTORY
P&SL 1975, c. 90, §§SEC.A,1 (NEW).

§2092. DEFINITIONS

For the purposes of this chapter, unless the content otherwise indicates, the following words shall have the following meanings: [1975, c. 90, §A, §1 (NEW).]

1. **Commissioner.** "Commissioner" means the Commissioner of Health and Human Services or the commissioner's successor.

[1975, c. 293, §4 (AMD); 2003, c. 689, Pt. B, §7 (REV) .]

2. Council.

[1993, c. 360, Pt. D, §2 (RP) .]

3. Department. "Department" means the Department of Health and Human Services.

[1975, c. 293, §4 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

4. Director. "Director" means the Director, Division of Dental Health.

[1991, c. 152, §1 (AMD) .]

SECTION HISTORY
P&SL 1975, c. 90, §§SEC.A,1 (NEW). 1975, c. 293, §4 (AMD). 1991, c. 152, §1 (AMD). 1993, c. 360, §D2 (AMD). 2003, c. 689, §§B6,7 (REV).

§2093. STATE AGENCIES TO COOPERATE

State agencies shall cooperate fully with the division and council in carrying out this chapter. The division and council are authorized to request such personnel, financial assistance, facilities and data as are reasonably required to assist the division and council to fulfill the division's and council's powers and duties. [1991, c. 152, §2 (AMD).]

State agencies proposing to develop, establish, conduct or administer programs or to assist programs relating to this chapter shall, prior to carrying out such actions, consult with the division. Each agency of State Government shall advise the division of its activities relating to this chapter. [1991, c. 152, §2 (AMD).]

Each state agency, in the implementation of the agency's activities relating to this chapter, shall keep the division fully informed of the agency's status. [1991, c. 152, §2 (AMD).]

SECTION HISTORY
P&SL 1975, c. 90, §§SEC.A,1 (NEW). 1991, c. 152, §2 (AMD).

Subchapter 2: DIVISION OF DENTAL HEALTH

§2094. DIVISION; DIRECTOR

(REPEALED)

SECTION HISTORY
P&SL 1975, c. 90, §§SEC.A,1 (NEW). 1975, c. 293, §4 (AMD). 1985, c. 785, §B87 (AMD). 1991, c. 152, §4 (AMD). 1995, c. 502, §D5 (RP).

§2095. POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
P&SL 1975, c. 90, §§SEC.A,1 (NEW). 1981, c. 470, §§A83,A84 (AMD). 1989, c. 700, §A77 (AMD). 1991, c. 152, §5 (AMD). 1995, c. 502, §D6 (RP).

Subchapter 3: MAINE DENTAL HEALTH COUNCIL

§2096. COUNCIL

(REPEALED)

SECTION HISTORY
P&SL 1975, c. 90, §§SEC.A,1 (NEW). 1975, c. 293, §4 (AMD). 1983, c. 812, §126 (RPR). 1989, c. 503, §B89 (AMD). 1993, c. 360, §D3 (RP).

§2097. MEMBERSHIP

The council shall consist of 9 members appointed by the commissioner. Members shall be appointed for a term of 3 years, except that of the members first appointed by the commissioner, 3 shall be appointed for a term of 2 years and 3 shall be appointed for a term of one year, as designated by the commissioner at the time of appointment, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Any vacancy in the council shall not affect its powers, but shall be filled in the same manner in which the original appointment was made. [1975, c. 90, §A, §1 (NEW).]

Members shall be eligible for reappointment for not more than one full consecutive term and may serve after the expiration of their term until their successors have been appointed, qualified and taken office; except that members initially appointed for a one year term may be reappointed to one full 3-year term. [1975, c. 90, §A, §1 (NEW).]

An official employee, consultant or any other individual employed, retained or otherwise compensated by or representative of the Executive Branch of Maine State Government may not be a member of the council; but shall assist the council if so requested. Membership must include 4 dental health personnel, including 2 staff employed at least 1/2 time by a public or private nonprofit dental clinic program, one of whom must be a registered dental hygienist and one of whom must be a dentist or other professional staff, and 2 dentists employed in private practice, one of whom must be appointed from a list of at least 3 names submitted by the Maine Dental Association and 5 interested citizens representing a balance of diverse socioeconomic groups and geographic locations, who may not be employed in the dental health or medical care professions, or members of the immediate family of any person employed as a dental health or other medical care professional. [1991, c. 78, (AMD).]

The Board of Dental Practice shall serve as a Technical Advisory Committee to the council and the director on matters relating to dental care standards. [1975, c. 90, §A, §1 (NEW); 2015, c. 429, §23 (REV).]

The director of the division or the director's representative shall attend all meetings of the council. [1991, c. 152, §6 (AMD).]

The council shall elect the chairperson and such other officers from its members as it deems appropriate. [1975, c. 90, §A, §1 (NEW).]

SECTION HISTORY
P&SL 1975, c. 90, §§SEC.A,1 (NEW). 1991, c. 78, (AMD). 1991, c. 152, §6 (AMD). 2015, c. 429, §23 (REV).

§2098. ADMINISTRATIVE AUTHORITY

The council shall meet at the call of the chairperson or at the call of 1/4 of the members appointed and currently holding office. The council shall meet at least once every 3 months. The council shall keep minutes of all meetings, including a list of people in attendance. [1975, c. 90, §A, §1 (NEW).]

The department, to the extent feasible and reasonable, shall make available to the council such staff, facilities, equipment, supplies, information and other assistance as it may reasonably require to carry out its activities. [1975, c. 90, §A, §1 (NEW).]

Any reasonable and proper expenses of the council must be borne by the division out of currently available state or federal funds. Each member of the council is entitled to compensation according to the provisions of Title 5, chapter 379. The council is authorized to appoint subcommittees. [1991, c. 152, §7 (AMD).]

A majority of the council members shall constitute a quorum for the purpose of conducting the business of the council and exercising all the powers of the council. A vote of the majority of the members present shall be sufficient for all actions of the council. [1975, c. 90, §A, §1 (NEW).]

SECTION HISTORY
P&SL 1975, c. 90, §§SEC.A,1 (NEW). 1983, c. 812, §127 (AMD). 1991, c. 152, §7 (AMD).

§2099. POWERS AND DUTIES

The council shall have, regarding dental health, the power and duty to: [1975, c. 90, §A, §1 (NEW).]

1. **Assist State Government.** Advise, consult and assist the Executive and Legislative Branches of the State Government on activities of State Government related to dental health. The council shall be solely advisory in nature. The council may make recommendations regarding any function intended to improve the quality of such dental health. The council shall be consulted by the commissioner prior to the appointment or removal of the director.

[1975, c. 90, §A, §1 (NEW) .]

2. **Serve as advocate.** Serve as an advocate on behalf of dental health, promoting and assisting activities designed to meet at the state and community levels the problems of such dental health. The council shall serve as an ombudsman on behalf of individual citizens as a class in matters relating to such dental health under the jurisdiction of State Government.

[1975, c. 90, §A, §1 (NEW) .]

3. **Assist the director.** Assist the director in reviewing and evaluating state and federal policies regarding dental health programs and other activities affecting people, conducted or assisted by any state department or agency; and

[1981, c. 470, Pt. A, §85 (AMD) .]

4. **Provide public forums.** Provide public forums, including the conduct of public hearings, sponsorship of conferences, workshops and other such meetings to obtain information about, discuss and publicize the needs of and solutions to dental health problems.

[1975, c. 90, §A, §1 (NEW) .]

SECTION HISTORY
P&SL 1975, c. 90, §§SEC.A,1 (NEW). 1981, c. 470, §A85 (AMD).

Chapter 416: 1979 DENTAL HEALTH EDUCATION ACT

§2121. SHORT TITLE

This chapter may be cited as the 1979 Dental Health Education Act. [1979, c. 522, §1 (NEW).]

SECTION HISTORY
1979, c. 522, §1 (NEW).

§2122. DEFINITIONS

For the purposes of this chapter, unless the context otherwise indicates, dental health education shall mean the provision of printed curricula, audio-visual aids, toothbrushes, floss, disclosing tablets, topical and systemic fluorides and necessary permanent equipment to maintain oral hygiene. [1979, c. 522, §1 (NEW).]

SECTION HISTORY
1979, c. 522, §1 (NEW).

§2123. ADMINISTRATION

The Department of Health and Human Services shall provide to any public school system or private educational system financial reimbursement for the costs of providing dental health education to children. [1979, c. 522, §1 (NEW); 2003, c. 689, Pt. B, §6 (REV).]

The Division of Dental Health, Department of Health and Human Services, shall administer the program. [1991, c. 152, §8 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY
1979, c. 522, §1 (NEW). 1991, c. 152, §8 (AMD). 2003, c. 689, §B6 (REV).

§2124. RULES AND REGULATIONS

The department shall promulgate rules and regulations outlining procedures for prior approval before materials in the definition of dental health education are purchased. The department may also promulgate rules and regulations to further define terms in this chapter and such other rules and regulations as shall effectuate the purposes of this chapter. [1979, c. 522, §1 (NEW).]

SECTION HISTORY
1979, c. 522, §1 (NEW).

Chapter 416-A: DENTAL SERVICES

§2127. ORAL HEALTH CARE

1. **Access to quality oral health services.** The department shall develop access to quality oral health services for low-income residents with emphasis on underserved areas or populations by encouraging the development or expansion of community-operated, nonprofit oral health care programs that serve persons who are uninsured or underinsured for oral health care and that serve persons whose oral health care is covered by Medicaid.

[1999, c. 401, Pt. MM, §1 (NEW); 1999, c. 401, Pt. MM, §5 (AFF) .]

2. **Development of oral health care programs.** The department shall use funds appropriated for the purposes of this chapter, any available funds from Medicaid or other resources to provide funding for the start-up or expansion of public or nonprofit oral health care programs; to subsidize the provision of oral health care to persons without insurance coverage for that care in accordance with paragraph B; and to provide oral health case management and community oral health education designed to encourage good oral hygiene and to prevent oral diseases and tooth decay. Any oral health care program receiving funds under this chapter must:

A. Serve persons whose oral health care is covered by Medicaid; [1999, c. 401, Pt. MM, §1 (NEW); 1999, c. 401, Pt. MM, §5 (AFF).]

B. Provide oral health care services to persons whose gross income is below 200% of the nonfarm income official federal poverty guidelines for whom insurance coverage is not available for the same payment as provided by Medicaid for the service if the subsidy described in this subsection is available. Persons without insurance to cover the service required and who have an income under 200% of the nonfarm income official federal poverty guidelines must be charged fees for oral health care on a sliding scale. The department shall establish the sliding scale by routine technical rules adopted pursuant to Title 5, chapter 375, subchapter II-A. The difference between the Medicaid rate and the payment made by the patient under the sliding fee arrangement must be paid to the oral health care program by the department. If a Medicaid rate is not established for a particular service provided under this section, the department shall establish a rate for that service.

(1) Persons with gross income less than 100% of the nonfarm official federal poverty guidelines may not be required to pay more than a nominal fee. For the purposes of this section, "nominal fee" has the same meaning as it has under Medicaid.

(2) In determining gross income, the department shall permit the deduction of business-related expenses of those who are self-employed; [1999, c. 401, Pt. MM, §1 (NEW); 1999, c. 401, Pt. MM, §5 (AFF).]

C. Be governed by a board, a majority of whose members are individuals who are or will be served by the program and who, as a group, represent the individuals being served in terms of demographic factors such as residing in the community being served, income, race, ethnicity and gender. The board is responsible for:

(1) The establishment of the policy in the conduct of the program;

(2) Holding regularly scheduled meetings, of which minutes must be kept;

(3) Approval of the selection or dismissal of a program director or chief executive officer of the program;

(4) Establishing personnel policies and procedures, including selection and dismissal procedures, salary and benefit scales, employee grievance procedures and equal opportunity practices;

(5) Adopting policies for financial management practices, including a system to ensure accountability for program resources, approval of the annual program budget, program priorities, eligibility for services, including criteria for partial payment schedules, and long-range financial planning;

(6) Evaluating program activities including services utilization patterns, program productivity, patient satisfaction, achievement of program objectives and development of a process for hearing and resolving patient grievances;

(7) Ensuring that the program is operated in compliance with applicable federal, state and local laws, rules and regulations; and

(8) Adopting health care policies including scope and availability of services, location and hours of services and quality of care audit procedures; [1999, c. 401, Pt. MM, §1 (NEW); 1999, c. 401, Pt. MM, §5 (AFF).]

D. Use any funds provided for the purposes of this chapter to supplement, and not supplant, other funds that are or may be available to the oral health care program; [1999, c. 401, Pt. MM, §1 (NEW); 1999, c. 401, Pt. MM, §5 (AFF).]

E. Implement a patient screening process to determine patient eligibility for Medicaid, the Cub Care program under Title 22, section 3174-T and the sliding fee scale; and [1999, c. 401, Pt. MM, §1 (NEW); 1999, c. 401, Pt. MM, §5 (AFF).]

F. Employ at least one full-time equivalent dentist practicing general dentistry and be open for business at least 20 hours a week, providing at least 4 hours of coverage during evenings or weekends. [1999, c. 401, Pt. MM, §1 (NEW); 1999, c. 401, Pt. MM, §5 (AFF).]

A program may not receive funds under this chapter to serve more than 3 contiguous dental care analysis areas as defined by the Bureau of Health in the department.

[1999, c. 401, Pt. MM, §1 (NEW); 1999, c. 401, Pt. MM, §5 (AFF) .]

3. **Discrimination prohibited.** An oral health care program receiving funds under this chapter may not discriminate among patients within its service area based upon payment source except as specifically authorized in subsection 2, paragraph B.

[1999, c. 401, Pt. MM, §1 (NEW); 1999, c. 401, Pt. MM, §5 (AFF) .]

4. **Vouchers for private dental services.** An oral health program that receives funds under this chapter may establish a voucher system for the purpose of reimbursing private dental providers providing services to patients of the program in accordance with the provisions of this subsection.

A. A voucher may be used only when:

(1) A program chooses to provide specialized oral health services to its patients but can not provide these services directly;

(2) The patient can not be served by the program with reasonable promptness; or

(3) The distance to the program location or transportation problems make access to the program difficult for the patient. [1999, c. 401, Pt. MM, §1 (NEW); 1999, c. 401, Pt. MM, §5 (AFF).]

B. A voucher payment made to a private provider does not exceed the difference between the patient's obligation, if any, under a sliding scale and the rate that Medicaid would reimburse a private provider for that same service. If no fee is established for the particular service in the Medicaid program, the department shall establish a fee. [1999, c. 401, Pt. MM, §1 (NEW); 1999, c. 401, Pt. MM, §5 (AFF).]

C. A voucher payment is made only to a provider enrolled to provide services in the Medicaid program. [1999, c. 401, Pt. MM, §1 (NEW); 1999, c. 401, Pt. MM, §5 (AFF).]

An oral health care program may place reasonable restrictions on a voucher system it establishes if those restrictions are consistent with the purposes of this chapter pursuant to subsection 1.

Even though an oral health care program receives funds under this chapter for the purpose of serving part of its service area through a voucher system, this does not prevent the application of another organization seeking funds under this chapter to provide direct program services to the residents of that area.

[1999, c. 401, Pt. MM, §1 (NEW); 1999, c. 401, Pt. MM, §5 (AFF) .]

5. **Encouraging community support.** The department shall require any entity seeking funds for the start-up or expansion of oral health programs under this chapter to raise matching funds, including in-kind support, sufficient to demonstrate community support.

[1999, c. 401, Pt. MM, §1 (NEW); 1999, c. 401, Pt. MM, §5 (AFF) .]

6. **Coordination with Medicaid and the Cub Care program.** The department shall coordinate assistance under this chapter with Medicaid and the Cub Care program under Title 22, section 3174-T in a manner most likely to obtain and maximize federal matching funds.

[1999, c. 401, Pt. MM, §1 (NEW); 1999, c. 401, Pt. MM, §5 (AFF) .]

6-A. **Monitoring of grants.** The program director or chief executive officer under subsection 2, paragraph C, subparagraph (3) shall monitor contracts resulting from grant awards established by the department concerning community-based dental clinics affiliated with or operated by a school of dentistry.

[2009, c. 645, Pt. E, §1 (NEW); 2009, c. 645, Pt. G, §1 (AFF) .]

7. **Rules.** The department shall adopt rules, which are routine technical rules, pursuant to Title 5, chapter 375, subchapter II-A, to implement this chapter.

[1999, c. 401, Pt. MM, §1 (NEW); 1999, c. 401, Pt. MM, §5 (AFF) .]

SECTION HISTORY
1999, c. 401, §MM1 (NEW). 1999, c. 401, §MM5 (AFF). 2009, c. 645, Pt. E, §1 (AMD). 2009, c. 645, Pt. G, §1 (AFF).

§2128. GRANT PROGRAM TO PROMOTE ORAL HEALTH ASSESSMENTS AND CARE FOR CHILDREN

The commissioner, in consultation with the Commissioner of Education, shall administer a grant program to promote oral health assessments of children entering elementary school and facilitate the provision of care for those students identified as in need of dental services. [2005, c. 653, §2 (NEW).]

1. **Eligibility for grants.** A nonprofit organization may apply for a grant by submitting an application as requested by the commissioner to demonstrate that the applicant:

A. Has entered into a memorandum of understanding with a school administrative unit to provide oral health assessments; [2005, c. 653, §2 (NEW).]

B. Is able to provide dental care or secure dental care through an identified dental care provider to a child identified as needing dental care within 6 months of the assessment date; and [2005, c. 653, §2 (NEW).]

C. Has the capacity to record and compile data identified by the commissioner as necessary to monitor and evaluate the grant program. [2005, c. 653, §2 (NEW).]

[2005, c. 653, §2 (NEW) .]

2. **Children served.** A recipient of a grant shall contract with a school administrative unit to provide oral health assessments to children entering kindergarten or as soon as practicable upon a child's initial enrollment in an elementary school. A recipient of a grant shall provide assessments and necessary dental services to children who are eligible for MaineCare or members of MaineCare and to children who do not have insurance for dental care.

[2005, c. 653, §2 (NEW) .]

3. **Duties of commissioner.** The commissioner, in consultation with the Commissioner of Education, shall develop:

A. A process for reviewing applications and selecting grant recipients; [2005, c. 653, §2 (NEW).]

B. Criteria for prioritizing geographic areas to be served; [2005, c. 653, §2 (NEW).]

C. Standards for oral health assessments conducted under this section, including, but not limited to, the qualifications of the dental professional conducting the assessment and the equipment used and steps included in an assessment; [2005, c. 653, §2 (NEW).]

D. Guidelines for the types of dental disease or abnormality that when detected indicate a need for dental care within 6 months of the assessment date; [2005, c. 653, §2 (NEW).]

E. A prevention and educational component to be incorporated into the assessments; and [2005, c. 653, §2 (NEW).]

F. A program evaluation process and measures for assessing the impact and effectiveness of the grant program. [2005, c. 653, §2 (NEW).]

[2005, c. 653, §2 (NEW) .]

4. **Administration.** The commissioner may contract for administration of the grant program or components of the grant program.

[2005, c. 653, §2 (NEW) .]

5. **Fund established.** The Maine School Oral Health Fund is established as a dedicated, nonlapsing fund within the department. The commissioner may accept funds from any public or private source for the purposes of awarding grants and administering the grant program under this section.

[2005, c. 653, §2 (NEW) .]

6. **Rulemaking.** The commissioner, in consultation with the Commissioner of Education, may adopt rules to implement this section. Rules adopted in accordance with this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 653, §2 (NEW) .]

SECTION HISTORY
2005, c. 653, §2 (NEW).

Chapter 417: TEMPORARY NURSE AGENCIES

§2131. TEMPORARY NURSE AGENCIES

1. **Registration; renewal.** A temporary nurse agency shall register with the department and renew the registration as required by rule thereafter. For purposes of this chapter, unless the context otherwise indicates, "temporary nurse agency" means a business entity or subdivision thereof that provides nurses to another organization on a temporary basis within this State.

[2009, c. 621, §2 (AMD) .]

1-A. **Verifying certified nursing assistant eligibility.** A health care institution, facility or organization, including a temporary nurse agency employing a certified nursing assistant, shall, before hiring a certified nursing assistant, verify that the certified nursing assistant is listed on the Maine Registry of Certified Nursing Assistants and Direct Care Workers established under section 1812-G with no annotations to prohibit the hiring of that individual according to state and federal regulations.

[2011, c. 257, §14 (AMD) .]

2. **Exception.** Entities which are licensed as home health agencies under chapter 419 and temporary nurses not affiliated with an agency are exempt from the registration requirements of this chapter.

[1989, c. 579, §4 (NEW) .]

3. **Fee.** The initial and annual fee for registration is $25.

The department may adopt rules 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.

[2009, c. 590, §3 (AMD) .]

4. **Penalty.** The following penalties apply to violations of this chapter.

A. A person who operates a temporary nurse agency without registering or who fails to verify the inclusion of a certified nursing assistant on the Maine Registry of Certified Nursing Assistants and Direct Care Workers established under section 1812-G before hiring that certified nursing assistant pursuant to subsection 1-A commits a civil violation for which a fine of not less than $500 per day but not more than $10,000 per day may be adjudged. Each day constitutes a separate violation. [2011, c. 257, §15 (AMD).]

B. A person who operates a temporary nurse agency in violation of the employment prohibitions in section 2138 commits a civil violation for which a fine of not less than $500 per day but not more than $10,000 per day may be adjudged. Each day constitutes a separate violation. [2009, c. 621, §3 (NEW).]

[2011, c. 257, §15 (AMD) .]

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

[2009, c. 621, §4 (NEW) .]

SECTION HISTORY
1989, c. 579, §4 (NEW). 2001, c. 494, §§1,2 (AMD). 2009, c. 590, §3 (AMD). 2009, c. 621, §§2-4 (AMD). 2011, c. 257, §§14, 15 (AMD).

Chapter 417-A: BACKGROUND CHECKS FOR TEMPORARY NURSE AGENCIES

§2136. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2009, c. 621, §5 (NEW).]

1. **Hire, employ or place.** "Hire, employ or place" means to recruit, select, train, declare competent, schedule, direct, define the scope of the position of or supervise an individual who provides temporary care pursuant to chapter 417.

[2009, c. 621, §5 (NEW) .]

2. **Temporary nurse agency.** "Temporary nurse agency" means a business entity or subdivision thereof that provides nurses to another organization on a temporary basis within this State.

[2009, c. 621, §5 (NEW) .]

SECTION HISTORY
2009, c. 621, §5 (NEW).

§2137. CRIMINAL BACKGROUND CHECKS

Beginning October 1, 2010, a temporary nurse agency, prior to hiring, employing or placing an individual who will work in direct contact with a consumer or who has direct access to a consumer's property, personally identifiable information, financial information or resources, shall obtain a comprehensive background check in accordance with applicable federal and state laws. The comprehensive background check must include, at a minimum, criminal history record information from the Department of Public Safety, State Bureau of Identification. The temporary nurse agency shall pay for the criminal background check required by this section. [2015, c. 196, §10 (AMD); 2015, c. 299, §18 (AMD).]

The department may adopt rules necessary to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 621, §5 (NEW).]

SECTION HISTORY
2009, c. 621, §5 (NEW). 2015, c. 196, §10 (AMD). 2015, c. 299, §18 (AMD).

§2138. PROHIBITED EMPLOYMENT BASED ON DISQUALIFYING OFFENSES

A temporary nurse agency shall conduct a comprehensive background check for direct access personnel, as defined in section 1717, subsection 1, paragraph A-2, in accordance with state law and rules adopted by the department and is subject to the employment restrictions set out in section 1812-G and other applicable federal and state laws when hiring, employing or placing direct access personnel, including a certified nursing assistant or a direct care worker. [2015, c. 494, Pt. A, §19 (RPR).]

The department may adopt rules necessary to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2015, c. 299, §19 (NEW).]

SECTION HISTORY
2009, c. 621, §5 (NEW). 2011, c. 257, §16 (AMD). 2015, c. 196, §11 (RPR). 2015, c. 299, §19 (RPR). 2015, c. 494, Pt. A, §19 (AMD).

§2139. COMPLAINTS

1. **Complaint investigation.** The department is authorized to investigate complaints against a temporary nurse agency to ensure compliance with this chapter.

[2009, c. 621, §5 (NEW) .]

2. **Injunctive relief.** Notwithstanding any other remedies provided by law, the Attorney General may seek an injunction to require compliance with the provisions of this chapter.

[2009, c. 621, §5 (NEW) .]

3. **Enforcement.** The Attorney General may file a complaint with the District Court seeking civil penalties or injunctive relief or both for violations of this chapter.

[2009, c. 621, §5 (NEW) .]

4. **Jurisdiction.** The District Court has jurisdiction pursuant to Title 4, section 152 for violations of this chapter.

[2009, c. 621, §5 (NEW) .]

5. **Burden of proof.** The burden is on the department to prove, by a preponderance of the evidence, that the alleged violation of this chapter occurred.

[2009, c. 621, §5 (NEW) .]

6. **Right of entry.** This subsection governs the department's right of entry with respect to temporary nurse agencies.

A. An application for registration of a temporary nurse agency constitutes permission for entry and inspection to verify compliance with applicable laws and rules. [2009, c. 621, §5 (NEW).]

B. The department has the right to enter and inspect the premises of a temporary nurse agency registered by the department at a reasonable time and, upon demand, has the right to inspect and copy any books, accounts, papers, records and other documents in order to determine the state of compliance with applicable laws and rules. [2009, c. 621, §5 (NEW).]

C. To inspect a temporary nurse agency that the department knows or believes is being operated without being registered, the department may enter only with the permission of the owner or person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court authorizing entry and inspection. [2009, c. 621, §5 (NEW).]

[2009, c. 621, §5 (NEW) .]

7. **Administrative inspection warrant.** The department and a duly designated officer or employee of the department have the right to enter upon and into the premises of an unregistered temporary nurse agency with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court at a reasonable time and, upon demand, have the right to inspect and copy any books, accounts, papers, records and other documents in order to determine the state of compliance with this chapter. The right of entry and inspection may extend to any premises and documents of a person, firm, partnership, association, corporation or other entity that the department has reason to believe is operating a temporary nurse agency without being registered.

[2009, c. 621, §5 (NEW) .]

8. **Noninterference.** An owner or operator of an unregistered temporary nurse agency may not interfere with, impede or obstruct an investigation by the department, including, but not limited to, interviewing persons receiving services or persons with knowledge of the agency.

[2009, c. 621, §5 (NEW) .]

9. **Violation of injunction.** A person, firm, partnership, association, corporation or other entity that violates the terms of an injunction issued under this chapter shall pay to the State a fine of not less than $500 nor more than $10,000 for each violation. Each day of violation constitutes a separate offense. In any action brought by the Attorney General against a person, firm, partnership, association, corporation or other entity for violating the terms of an injunction under this chapter, the District Court may make the necessary orders or judgments regarding violation of the terms of the injunction.

In an action under this chapter, when a permanent injunction has been issued, the District Court may order the person, firm, partnership, association, corporation or other entity against which the permanent injunction is issued to pay to the General Fund the costs of the investigation of that person, firm, partnership, association, corporation or other entity by the Attorney General and the costs of suit, including attorney's fees.

[2009, c. 621, §5 (NEW) .]

10. **Suspension or revocation of registration.** A temporary nurse agency found to be in violation of this chapter may have its registration to operate as a temporary nurse agency suspended or revoked. The department may file a complaint with the District Court requesting suspension or revocation of a registration to operate a temporary nurse agency.

[2009, c. 621, §5 (NEW) .]

11. **Rules.** The department may 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.

[2009, c. 621, §5 (NEW) .]

SECTION HISTORY
2009, c. 621, §5 (NEW).

Chapter 419: HOME HEALTH SERVICES

§2141. PURPOSE AND INTENT

The Legislature finds that licensure of all agencies and organizations providing home health services is desirable and it is the purpose of this chapter to protect the public and assure that home health services are provided under standards of safety, efficiency and quality. [1983, c. 570, (NEW).]

It is the intent of this chapter to set forth the statutory authorization for home health care licensure, including the standards, start-up procedures and means by which licensure is established. [1983, c. 570, (NEW).]

SECTION HISTORY
1983, c. 570, (NEW).

§2142. DEFINITIONS

As used in this chapter, the following terms have the following meanings. [1983, c. 570, (NEW).]

1. **Commissioner.** "Commissioner" means the Commissioner of Health and Human Services.

[1983, c. 570, (NEW); 2003, c. 689, Pt. B, §7 (REV) .]

2. **Department.** "Department" means the Department of Health and Human Services.

[1983, c. 570, (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

3. **Home health care provider.** "Home health care provider" means any business entity or subdivision thereof, whether public or private, proprietary or not for profit, that is engaged in providing acute, restorative, rehabilitative, maintenance, preventive or health promotion services through professional nursing or another therapeutic service, such as physical therapy, home health aides, nurse assistants, medical social work, nutritionist services or personal care services, either directly or through contractual agreement, in a client's

place of residence. This term does not apply to any sole practitioner providing private duty nursing services or other restorative, rehabilitative, maintenance, preventive or health promotion services in a client's place of residence or to municipal entities providing health promotion services in a client's place of residence. This term does not apply to a federally qualified health center or a rural health clinic as defined in 42 United States Code, Section 1395x, subsection (aa) (1993) that is delivering case management services or health education in a client's place of residence. Beginning October 1, 1991, "home health care provider" includes any business entity or subdivision thereof, whether public or private, proprietary or nonprofit, that is engaged in providing speech pathology services.

[1993, c. 331, §1 (AMD) .]

4. **Registered nurse educator.** "Registered nurse educator" means a registered nurse licensed under Title 32, chapter 31 who provides postprescription training to a patient or caregiver in a patient's place of residence when the registered nurse educator does not provide health care services, does not deliver the prescription drug, does not touch the patient, does not administer the prescription drug to the patient and does not seek payment from the patient, caregiver or any health care payor.

[2013, c. 336, §1 (NEW) .]

SECTION HISTORY
1983, c. 570, (NEW). 1985, c. 189, §1 (AMD). 1989, c. 119, §1 (AMD). 1993, c. 331, §1 (AMD). 2003, c. 689, §§B6,7 (REV). 2013, c. 336, §1 (AMD).

§2143. LICENSE REQUIRED

Effective July 1, 1984, no home health care provider may provide home health services without having, subject to this chapter and to the rules promulgated by the department under this chapter, a written license therefor from the department. [1983, c. 570, (NEW).]

SECTION HISTORY
1983, c. 570, (NEW).

§2144. LICENSURE PROCEDURES

1. **Types of licenses.** The department shall issue the following types of licenses, as follows.

A. A provisional license shall be issued by the department to an applicant who:

(1) Has not previously operated as a home health care provider or is licensed but has not operated during the term of that license;

(2) Complies with all applicable laws and rules, except those which can only be complied with once clients are served by the applicant; and

(3) Demonstrates the ability to comply with all applicable laws and rules by the end of the provisional license term. [1983, c. 570, (NEW).]

B. The department shall issue a full license to an applicant who complies with all applicable laws and rules. [1983, c. 570, (NEW).]

C. A conditional license may be issued by the department, when the provider fails to comply with applicable laws and rules, and in the judgment of the commissioner, the best interest of the public would be so served by issuing a conditional license. The conditional license shall specify when and what corrections shall be made during the term of the conditional license. [1983, c. 570, (NEW).]

D. The commissioner may grant a full, provisional or conditional license under this chapter to those entities otherwise regulated by the State Government or the Federal Government, if he determines that those regulations meet the purpose and intent of this chapter. [1983, c. 570, (NEW).]

[1983, c. 570, (NEW) .]

2. **Licenses not assignable or transferable.** No license may be assignable or transferable. A license shall be immediately void if ownership or control of the provider changes.

[1983, c. 570, (NEW) .]

3. **Term of license; compliance visits.** Licenses shall be issued for the following terms.

A. The provisional license shall be issued for a minimum period of 3 months or a longer period, as deemed appropriate by the department, not to exceed 12 consecutive months. [1983, c. 570, (NEW).]

B. The term of a full license may not exceed 24 months. [2003, c. 548, §1 (RPR).]

C. The conditional license shall be issued for a specific period, not to exceed one year, or the remaining period of the previous full license, whichever the department determines appropriate based on the laws and rules violated. [1983, c. 570, (NEW).]

D. Regardless of the term of the license, the department shall monitor for continued compliance with applicable laws and rules on at least a biennial basis. The department shall adopt rules, which are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, regarding terms of licenses. [2003, c. 548, §2 (AMD).]

[2003, c. 548, §§1, 2 (AMD) .]

4. **Failure to comply with applicable laws and rules.** The following shall apply for failure to comply with applicable laws and rules.

A. When an applicant fails to comply with applicable laws and rules, the department may refuse to issue or renew the license. [1983, c. 570, (NEW).]

B. If, at expiration of a full or provisional license, or during the term of a full license, the facility fails to comply with applicable laws and rules and, in the judgment of the commissioner, the best interest of the public will be so served, the department may issue a conditional license or change a full license to a conditional license. [1983, c. 570, (NEW).]

C. Any license issued under this chapter may be suspended or revoked for violation of applicable laws and rules committing, permitting, aiding or abetting any illegal practices in the operation of the provider of conduct or practices detrimental to the welfare of persons to whom home health care services are provided. When the department believes that a license must be suspended or revoked, it shall file a complaint with the District Court in accordance with Title 4, section 184 or the Maine Administrative Procedure Act, Title 5, chapter 375. [1999, c. 547, Pt. B, §40 (AMD); 1999, c. 547, Pt. B, §80 (AFF).]

D. The department may petition the Superior Court to appoint a receiver to operate a home health agency in accordance with chapter 1666-A. [1995, c. 620, §1 (NEW).]

[1999, c. 547, Pt. B, §40 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

5. **Appeals.** Any person aggrieved by the department's decision to take any of the following actions may request an administrative hearing as provided by the Maine Administrative Procedure Act, Title 5, chapter 375:

A. Issue a conditional license; [1983, c. 570, (NEW).]

B. Amend or modify a license; [1983, c. 570, (NEW).]

C. Refuse to issue or renew a full license; or [1983, c. 570, (NEW).]

D. Refuse to issue a provisional license. [1983, c. 570, (NEW).]

[1983, c. 570, (NEW) .]

SECTION HISTORY
1983, c. 570, (NEW). 1995, c. 620, §1 (AMD). 1999, c. 547, §B40 (AMD). 1999, c. 547, §B80 (AFF). 2003, c. 548, §§1,2 (AMD). 2003, c. 548, §2 (AMD).

§2145. STANDARDS

Standards shall be developed as follows. [1983, c. 570, (NEW).]

1. **Standards for licensing of all home health care entities.** The commissioner shall develop, no later than one year of the date of enactment of this chapter, standards for the licensing of all home health care entities.

[1983, c. 570, (NEW) .]

2. **Variation in standards.** Licensing standards may vary according to the varying means and methods of providing home health care services, but shall be consistent with the purpose and intent of this chapter.

[1983, c. 570, (NEW) .]

3. **Areas to be addressed.** Home health care licensing standards shall address the following areas:

A. General requirements; [1983, c. 570, (NEW).]

B. Qualifications for professional personnel; [1983, c. 570, (NEW).]

C. Qualifications for paraprofessional personnel; [1983, c. 570, (NEW).]

D. Treatment and services and their coordination; [1983, c. 570, (NEW).]

E. Supervision of professional and nonprofessional personnel; [1983, c. 570, (NEW).]

F. Organizational structure, including lines of authority; [1983, c. 570, (NEW).]

G. Clinic records; [1983, c. 570, (NEW).]

H. Business records; and [1983, c. 570, (NEW).]

I. Other aspects of home health care services that may be necessary to protect the public. [1983, c. 570, (NEW).]

[1983, c. 570, (NEW) .]

4. **Review of standards.** All standards shall be subject to review by the joint standing committee of the Legislature having jurisdiction over health and institutional services.

[1983, c. 570, (NEW) .]

SECTION HISTORY
1983, c. 570, (NEW).

§2146. FEES

Each application for a license under this chapter must be accompanied by the fee established by the department. The fee is not refundable. All fees received by the department under this chapter must be paid into the State Treasury to the credit of the department for the purpose of reducing the costs of carrying out this chapter. [1995, c. 620, §2 (AMD).]

SECTION HISTORY
1983, c. 570, (NEW). 1991, c. 528, §J3 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §J3 (AMD). 1995, c. 620, §2 (AMD).

§2147. EXCLUSIONS

The following are exempt from the provisions of this chapter: [1983, c. 570, (NEW).]

1. **Hospice organizations; volunteer services.** Hospice organizations in which services are provided substantially by volunteers;

[1983, c. 570, (NEW) .]

2. **Families, friends and neighbors.** Families, friends and neighbors;

[1983, c. 570, (NEW) .]

3. **Sole practitioners.** Sole practitioners otherwise licensed by the State;

[1983, c. 570, (NEW) .]

4. **Physicians.** Services provided directly by physicians;

[1983, c. 570, (NEW) .]

5. **Elderly nutrition programs.** Elderly nutrition programs;

[1983, c. 570, (NEW) .]

6. **Chore services.** Chore services;

[1983, c. 570, (NEW) .]

7. **Pharmacy or medical supply company.** Any pharmacy or medical supply company which furnishes no home health services to persons in their homes except supplies;

[1983, c. 570, (NEW) .]

8. **Persons or agencies contracting or arranging home health services.** Anyone contracting or arranging for home health services provided by home health care providers licensed or excluded under this chapter;

[1983, c. 570, (NEW) .]

9. **Departments.** Departments of State Government;

[1983, c. 570, (NEW) .]

10. **Facilities licensed pursuant to chapter 405.** Hospitals, intermediate care facilities, skilled nursing facilities or other facilities licensed pursuant to chapter 405 when the services are provided to clients residing in those facilities, or to 6 or fewer clients at any one time in their homes under a plan of care approved by the department or its designee when it is documented in the patient's record that the licensed home health care agency or agencies serving the patient's area:

A. Have indicated that they are unable to provide those services; or [1987, c. 486, §2 (NEW).]

B. Agree that the plan of care is an acceptable plan. [1987, c. 486, §2 (NEW).]

The plan of care must meet standards for staff qualifications and supervision consistent with the standards required of licensed home health care providers;

[1987, c. 486, §2 (AMD) .]

11. **Licensed residential care facilities.** Residential care facilities licensed pursuant to chapters 1663 and 1664 when the services are provided to clients residing in those facilities;

[2001, c. 596, Pt. B, §8 (AMD); 2001, c. 596, Pt. B, §25 (AFF) .]

12. **Municipal entities.** Municipal departments or agencies or other municipal entities in their provision of nontherapeutic preventive and promotional health educational services when persons providing those services are employed by the municipality; and

[1989, c. 119, §3 (AMD) .]

13. **Speech and hearing centers.**

[2013, c. 336, §2 (RP) .]

14. **Registered nurse educators.** Registered nurse educators.

[2013, c. 336, §3 (NEW) .]

SECTION HISTORY
1983, c. 570, (NEW). 1985, c. 189, §§2,3 (AMD). 1987, c. 486, §2 (AMD). 1989, c. 119, §§2-4 (AMD). 2001, c. 596, §B8 (AMD). 2001, c. 596, §B25 (AFF). 2013, c. 336, §§2, 3 (AMD).

§2148. RIGHT OF ENTRY AND INSPECTION

The department and any duly designated officer or employee thereof shall have the right to enter upon and into the premises of any home health care provider who has applied for a license or who is licensed pursuant to this chapter at any reasonable time and, upon demand, have the right to inspect and copy books, accounts, papers, records and other documents in order to determine the state of compliance with this chapter and any rules in force pursuant thereto. The right of entry and inspection shall extend to any premises and documents of providers whom the department has reason to believe are providing home health services without a license, but no such entry or inspection may be unreasonable or made without the permission of the owner or person in charge thereof, unless a warrant is first obtained from the District Court authorizing that entry or inspection. [1983, c. 570, (NEW).]

SECTION HISTORY
1983, c. 570, (NEW).

§2149. COMPENSATION FOR HOME HEALTH CARE PROVIDERS

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

A. "Home health care provider" means an organization designated as a home health agency under rules of the department or certified by Medicare for delivery of home health services. [1987, c. 829, §1 (NEW).]

[1987, c. 829, §1 (NEW) .]

2. **Compensation.** In determining levels of reimbursement in rate structures established for home health care providers, the department shall:

A. Formulate payment rates for various types of care provided based on the service costs attributable to each home health care provider, as determined by such standard methods as the department may establish; [1987, c. 829, §1 (NEW).]

B. Adjust rates accordingly, at least annually, for alternative programs to institutional care for optimal service delivery to eligible clients, but not to exceed the costs of nursing home care; [1987, c. 829, §1 (NEW).]

C. Recognize the provider's reasonable costs of recruiting, training and retaining qualified staff, including registered nurses, licensed practical nurses, certified nurse aides, home health aides and allied personnel; and [1987, c. 829, §1 (NEW).]

D. Implement this subsection in such a manner which does not result in a decrease in numbers of clients or units of service. The monthly limits on costs per individual receiving in-home services as an alternative to institutional care shall be at least $1,878 for skilled level care and $1,361 for intermediate level care. [1987, c. 829, §1 (NEW).]

[1987, c. 829, §1 (NEW) .]

SECTION HISTORY
1987, c. 829, §1 (NEW).

§2149-A. POLICIES AND PROCEDURES; EMPLOYMENT

The requirements of this section apply to home health care providers required to be licensed under this chapter. [2003, c. 634, §4 (NEW).]

1. **Policies and procedures.** A home health care provider shall develop and implement written policies and procedures that prohibit abuse, neglect or misappropriation of a client's property.

[2003, c. 634, §4 (NEW) .]

2. **Prohibited employment based on disqualifying offenses.** A home health care provider shall conduct a comprehensive background check for direct access personnel, as defined in section 1717, subsection 1, paragraph A-2, in accordance with state law and rules adopted by the department and is subject to the employment restrictions set out in section 1812-G and other applicable federal and state laws when hiring, employing or placing direct access personnel, including a certified nursing assistant or a direct care worker.

A. [2015, c. 494, Pt. A, §20 (RP).]

B. [2015, c. 494, Pt. A, §20 (RP).]

C. [2015, c. 494, Pt. A, §20 (RP).]

The department may adopt rules 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.

[2015, c. 494, Pt. A, §20 (RPR) .]

SECTION HISTORY
2003, c. 634, §4 (NEW). 2011, c. 257, §17 (AMD). 2015, c. 196, §12 (AMD). 2015, c. 299, §20 (AMD). 2015, c. 494, Pt. A, §20 (AMD).

§2150. COMPLIANCE

Any home health care provider that provides services for which a license is required without obtaining a license commits a civil violation and is subject to a civil penalty for which a forfeiture of $100 may be adjudged. Each day constitutes a separate violation. [1989, c. 579, §5 (NEW).]

SECTION HISTORY
1989, c. 579, §5 (NEW).

§2150-A. ADVISORY COMMITTEE ON HOME HEALTH

(REPEALED)

SECTION HISTORY
1989, c. 601, §A2 (NEW). 1991, c. 622, §S28 (RP).

§2150-B. STAFF; HIRING; POLICY

(REPEALED)

SECTION HISTORY
1995, c. 620, §3 (NEW). 2003, c. 634, §5 (RP).

Chapter 421: AUTOMATED EXTERNAL DEFIBRILLATORS

§2150-C. AUTOMATED EXTERNAL DEFIBRILLATORS; IMMUNITY FROM CIVIL LIABILITY

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

A. "Automated external defibrillator" or "AED" means a medical device that combines a heart monitor and a defibrillator approved by the United States Food and Drug Administration that:

(1) Is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia;

(2) Is capable of determining, without intervention by an operator, whether defibrillation should be performed on an individual; and

(3) Upon determination that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to an individual's heart. [2007, c. 267, §2 (RPR).]

[2007, c. 267, §2 (RPR) .]

2. **Prohibition.**

[2007, c. 267, §2 (RP) .]

3. **Duties.**

[2007, c. 267, §2 (RP) .]

4. **Penalties.**

[2007, c. 267, §2 (RP) .]

5. **Effect on other law.**

[2007, c. 267, §2 (RP) .]

6. **Immunity.** The following persons and entities are immune from civil liability for damages relating to the use, possession or purchase of an AED and arising out of acts or omissions relating to preparing for and responding to suspected sudden cardiac arrest emergencies absent gross negligence or willful or wanton misconduct:

A. Any person or entity that acquires an AED; [2007, c. 267, §2 (NEW).]

B. Any person or entity that owns, manages or is otherwise responsible for the premises on which an AED is located; [2007, c. 267, §2 (NEW).]

C. Any person who retrieves an AED in response to a perceived sudden cardiac arrest emergency; [2007, c. 267, §2 (NEW).]

D. Any person who uses, attempts to use or fails to use an AED in response to a perceived sudden cardiac arrest emergency; [2007, c. 267, §2 (NEW).]

E. Any physician or other authorized person who issues a prescription for the purchase of an AED; [2007, c. 267, §2 (NEW).]

F. Any person or entity that is involved with the design, management or operation of an AED program; and [2007, c. 267, §2 (NEW).]

G. Any person or entity that provides instruction in the use of an AED. [2007, c. 267, §2 (NEW).]

[2007, c. 267, §2 (NEW) .]

SECTION HISTORY
2001, c. 364, §1 (NEW). 2007, c. 267, §2 (RPR).

Chapter 423: ACCESS TO EPINEPHRINE AUTOINJECTOR

§2150-F. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2015, c. 231, §1 (NEW).]

1. **Administer.** "Administer" means to apply an epinephrine autoinjector directly to a human body.

[2015, c. 231, §1 (NEW) .]

2. **Authorized entity.** "Authorized entity" means any entity, organization or place of employment, other than a school under Title 20-A, section 6305, in connection with or at which allergens capable of causing anaphylaxis may be present, including but not limited to recreation camps, colleges, universities, day care facilities, youth sports leagues, amusement parks, restaurants and sports arenas.

[2015, c. 231, §1 (NEW) .]

3. **Epinephrine autoinjector.** "Epinephrine autoinjector" means a single-use device used for the automatic injection of a premeasured dose of epinephrine into a human body.

[2015, c. 231, §1 (NEW) .]

4. **Health care practitioner.** "Health care practitioner" means an individual who is licensed, registered or otherwise authorized in the appropriate jurisdiction to prescribe and administer drugs in the course of professional practice.

[2015, c. 231, §1 (NEW) .]

SECTION HISTORY
2015, c. 231, §1 (NEW).

§2150-G. EPINEPHRINE AUTOINJECTORS; EMERGENCY ADMINISTRATION

1. **Prescribing to an authorized entity permitted.** A health care practitioner may prescribe epinephrine autoinjectors in the name of an authorized entity for use in accordance with this section, and pharmacists and health care practitioners may dispense epinephrine autoinjectors pursuant to a prescription issued in the name of an authorized entity. A prescription authorized pursuant to this section is valid for 2 years.

[2015, c. 231, §1 (NEW) .]

2. **Authorized entities permitted to maintain supply.** An authorized entity may acquire and stock a supply of epinephrine autoinjectors pursuant to a prescription issued under subsection 1. An epinephrine autoinjector must be stored in a location readily accessible in an emergency and in accordance with the instructions for use for the epinephrine autoinjector and any additional requirements that may be established by the department. An authorized entity shall designate employees or agents who have completed the training required under subsection 4 to be responsible for the storage, maintenance, control and general oversight of epinephrine autoinjectors acquired by the authorized entity.

[2015, c. 231, §1 (NEW) .]

3. **Use of epinephrine autoinjectors.** An employee or agent of an authorized entity who has completed the training required by subsection 4 may use epinephrine autoinjectors prescribed pursuant to subsection 1 to:

A. Provide an epinephrine autoinjector to a person the employee or agent believes in good faith is experiencing anaphylaxis, or the parent, guardian or caregiver of such a person, for immediate administration, regardless of whether the person has a prescription for an epinephrine autoinjector or has previously been diagnosed with an allergy; and [2015, c. 231, §1 (NEW).]

B. Administer an epinephrine autoinjector to a person the employee or agent believes in good faith is experiencing anaphylaxis, regardless of whether the person has a prescription for an epinephrine autoinjector or has previously been diagnosed with an allergy. [2015, c. 231, §1 (NEW).]

[2015, c. 231, §1 (NEW) .]

4. **Training.** An employee or agent of an authorized entity shall complete an anaphylaxis training program and shall complete additional training at least every 2 years thereafter. The training must be conducted by a nationally recognized organization experienced in training nonprofessionals in emergency health treatment or an entity or individual approved by the department. The department may approve specific entities or individuals or may approve classes of entities or individuals to conduct training. Training may be conducted online or in person and, at a minimum, must cover:

A. How to recognize signs and symptoms of severe allergic reactions, including anaphylaxis; [2015, c. 231, §1 (NEW).]

B. Standards and procedures for the storage and administration of an epinephrine autoinjector; and [2015, c. 231, §1 (NEW).]

C. Emergency follow-up procedures. [2015, c. 231, §1 (NEW).]

The entity or individual that conducts the training shall issue a certificate, on a form developed or approved by the department, to each person who successfully completes the anaphylaxis training program.

[2015, c. 231, §1 (NEW) .]

5. **Immunity.** The following entities are not liable for any injuries or related damages that result from any act or omission of the entity committed in good faith pursuant to this section unless it is established that the injuries or related damages were caused willfully, wantonly or recklessly or by gross negligence:

A. A health care practitioner that prescribes epinephrine autoinjectors in accordance with subsection 1; [2015, c. 231, §1 (NEW).]

B. A pharmacist or health care practitioner that dispenses epinephrine autoinjectors in accordance with subsection 1; [2015, c. 231, §1 (NEW).]

C. An authorized entity that acquires and stocks epinephrine autoinjectors or designates employees or agents to be responsible for storage, maintenance, control and general oversight of epinephrine autoinjectors in accordance with subsection 2; [2015, c. 231, §1 (NEW).]

D. An employee or agent of an authorized entity who has completed the training required by subsection 4 who provides an epinephrine autoinjector to a person pursuant to subsection 3, paragraph A or who administers an epinephrine autoinjector to a person in accordance with subsection 3, paragraph B; and [2015, c. 231, §1 (NEW).]

E. An individual or entity that conducts training in accordance with subsection 4. [2015, c. 231, §1 (NEW).]

The administration of an epinephrine autoinjector in accordance with this section is not the practice of medicine or any other profession that otherwise requires licensure.

This subsection does not eliminate, limit or reduce any other immunity or defense that may be available under the laws of this State, including that provided under Title 14, section 164.

An authorized entity located in this State is not liable for any injuries or related damages that result from the provision or administration of an epinephrine autoinjector outside of this State if the authorized entity would not have been liable for such injuries or related damages had the provision or administration occurred within this State.

[2015, c. 231, §1 (NEW) .]

SECTION HISTORY
2015, c. 231, §1 (NEW).

Part 5: FOODS AND DRUGS

Chapter 551: PURE FOODS AND DRUGS GENERALLY

Subchapter 1: FOODS

§2151. SHORT TITLE

This subchapter shall be known and may be cited as the "Maine Food Law."

§2152. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms shall have the following meanings. [1979, c. 541, Pt. A, §146 (AMD).]

1. **Advertisement.** "Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food.

1-A. **Commissioner.** "Commissioner" means the Commissioner of Agriculture, Conservation and Forestry or his duly authorized agents.

[1979, c. 731, §19 (AMD); 2011, c. 657, Pt. W, §6 (REV) .]

2. **Contaminated with filth.** "Contaminated with filth" applies to any food not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

3. **Federal Act.** "Federal Act" means the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. 301 et seq.; 52 Stat. 1040 et seq.).

4. **Food.** "Food" means articles used for food or drink for man or other animals, chewing gum and articles used for components of any such article.

4-A. **Food establishment.** "Food establishment" means a factory, plant, warehouse or store in which food and food products are manufactured, processed, packed, held for introduction into commerce or sold. "Food establishment" includes a primary caregiver, as defined in section 2422, subsection 8-A, and a registered dispensary, as defined in section 2422, subsection 6, that prepare food containing marijuana for medical use by a qualifying patient pursuant to chapter 558-C. The following establishments are not considered food establishments required to be licensed under section 2167:

A. Eating establishments, as defined in section 2491, subsection 7; [1995, c. 331, §1 (NEW).]

B. Fish and shellfish processing establishments inspected under Title 12, section 6101, 6102 or 6856; [2005, c. 434, §13 (AMD).]

C. Storage facilities for native produce; [1995, c. 331, §1 (NEW).]

D. Establishments such as farm stands and farmers' markets primarily selling fresh produce not including dairy and meat products; [1997, c. 96, §1 (AMD).]

E. Establishments engaged in the washing, cleaning or sorting of whole produce, provided the produce remains in essentially the same condition as when harvested. The whole produce may be packaged for sale, provided that packaging is not by a vacuum packaging process or a modified atmosphere packaging process; [2011, c. 407, Pt. A, §2 (AMD).]

F. Establishments that are engaged in the drying of single herbs that are generally recognized as safe under 21 Code of Federal Regulations, Sections 182 to 189. The single herbs may be packaged for sale, provided that packaging is not by a vacuum packaging process or a modified atmosphere packaging process; and [2011, c. 407, Pt. A, §2 (AMD).]

G. A primary caregiver, as defined in section 2422, subsection 8-A, conducting an activity allowed in section 2423-A for a qualifying patient who is a member of the family, as defined in section 2422, subsection 5-A, or member of the household, as defined in section 2422, subsection 5-B, of the primary caregiver. [2011, c. 407, Pt. A, §2 (NEW).]

[2011, c. 407, Pt. A, §2 (AMD) .]

4-B. **Food salvage establishment.** "Food salvage establishment" means a food establishment engaged in reconditioning or by other means salvaging distressed merchandise and includes any food establishment that sells, buys, warehouses or distributes any salvaged merchandise.

[1989, c. 664, §1 (NEW) .]

5. **Immediate container.** "Immediate container" does not include the package liners but in the case of bottles shall include crowns or caps affixed thereto.

5-A. **Irradiated food.**

[1995, c. 276, §1 (RP) .]

6. **Label.** "Label" means a display of written, printed or graphic matter upon the immediate container of any article. A requirement made by or under authority of this subchapter, that any word, statement or other information appear on the label shall not be considered to be complied with unless such word, statement or other information appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

7. **Labeling.** "Labeling" means all labels and other written, printed or graphic matter upon an article or any of its containers or wrappers, or accompanying such article.

If an article is alleged to be misbranded because the labeling is misleading or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound or in any combination thereof, but the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

7-A. **Retail food establishment.** "Retail food establishment" means a food establishment where food and food products are offered for sale to the consumer and intended for off-premise consumption.

[1979, c. 672, Pt. A, §53 (NEW) .]

7-B. **Salvage broker.** "Salvage broker" means a person, firm or corporation engaged in buying, selling, distributing or warehousing any distressed merchandise, whether or not in combination with other merchandise, which does not operate a food salvage establishment.

[1989, c. 664, §1 (NEW) .]

8. **Selling of food.** This subchapter regarding the selling of food shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession and holding of any such article for sale; and the sale, dispensing and giving of any such article, and the supplying or applying of any such articles in the conduct of any food establishment.

SECTION HISTORY

1979, c. 541, §A146 (AMD). 1979, c. 672, §§A51-53 (AMD). 1979, c. 731, §19 (AMD). 1981, c. 705, §C3 (AMD). 1987, c. 174, §1 (AMD). 1989, c. 664, §1 (AMD). 1995, c. 276, §1 (AMD). 1995, c. 331, §1 (AMD). 1997, c. 96, §1 (AMD). 2005, c. 434, §13 (AMD). 2009, c. 631, §4 (AMD). 2009, c. 631, §51 (AFF). 2011, c. 407, Pt. A, §2 (AMD). 2011, c. 657, Pt. W, §6 (REV).

§2153. POWERS OF COMMISSIONER

The authority to promulgate, in a manner consistent with the Maine Administrative Procedure Act, regulations for the efficient enforcement of this subchapter is vested in the Commissioner of Agriculture, Conservation and Forestry. The commissioner is authorized to make the regulations promulgated under said subchapter conform in so far as practicable with those promulgated under the Federal Act. [1979, c. 731, §19 (AMD); 2011, c. 657, Pt. W, §6 (REV).]

Hearings authorized or required by this subchapter shall be conducted by the commissioner or such officer, agent or employee as the commissioner may designate for the purpose. [1977, c. 694, §§ 346, 347 (AMD).]

SECTION HISTORY
1977, c. 694, §§346,347 (AMD). 2011, c. 657, Pt. W, §6 (REV).

§2153-A. CONFIDENTIALITY OF CERTAIN INFORMATION

The following information is confidential and may not be disclosed to the public: [2009, c. 393, §9 (NEW).]

1. **United States Department of Agriculture, Food Safety and Inspection Service.** Information provided to the department or to any employee of the department by the United States Department of Agriculture, Food Safety and Inspection Service pursuant to 9 Code of Federal Regulations, Section 390.9 (2008) to the extent that the regulations designate the information confidential, the information is otherwise identified pursuant to the regulations as confidential or the regulations require the information to be protected from public disclosure; and

[2009, c. 393, §9 (NEW) .]

2. **Food and Drug Administration.** Information provided to the department or to any employee of the department by the United States Food and Drug Administration pursuant to 21 Code of Federal Regulations, Section 20.88 (2008) to the extent that the regulations designate the information confidential, the information is otherwise identified pursuant to the regulations as confidential or the regulations require the information to be protected from public disclosure.

[2009, c. 393, §9 (NEW) .]

SECTION HISTORY
2009, c. 393, §9 (NEW).

§2154. REGULATIONS

Whenever in the judgment of the Commissioner of Agriculture, Conservation and Forestry such action will promote honesty and fair dealing in the interest of consumers, the commissioner shall promulgate regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity, or reasonable standard of quality or fill of container. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the commissioner shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional

ingredients which shall be named on the label. The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated under authority of the Federal Act. [1979, c. 731, §19 (AMD); 2011, c. 657, Pt. W, §6 (REV).]

SECTION HISTORY
1979, c. 731, §19 (AMD). 2011, c. 657, Pt. W, §6 (REV).

§2155. PROHIBITIONS

(REPEALED)

SECTION HISTORY
1981, c. 470, §A86 (AMD). 1987, c. 174, §§2-4 (AMD). 1989, c. 376, (AMD). 1995, c. 276, §2 (AMD). 2003, c. 452, §X2 (AFF). 2003, c. 452, §K12 (RP).

§2155-A. PROHIBITIONS AND PENALTIES

1. **Prohibitions.** A person may not:

A. Manufacture, sell or deliver, hold or offer for sale any food that is adulterated or misbranded; [2003, c. 452, Pt. K, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. Violate paragraph A after having previously violated this subsection; [2003, c. 452, Pt. K, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. Adulterate or misbrand any food; [2003, c. 452, Pt. K, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

D. Violate paragraph C after having previously violated this subsection; [2003, c. 452, Pt. K, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

E. Receive in commerce any food that is adulterated or misbranded, or deliver or proffer delivery of adulterated or misbranded food for pay or otherwise; [2003, c. 452, Pt. K, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

F. Violate paragraph E after having previously violated this subsection; [2003, c. 452, Pt. K, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

G. Disseminate any false advertisement; [2003, c. 452, Pt. K, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

H. Violate paragraph G after having previously violated this subsection; [2003, c. 452, Pt. K, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

I. Refuse to permit entry or inspection, or to permit the taking of a sample as authorized in section 2164; [2003, c. 452, Pt. K, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

J. Violate paragraph I after having previously violated this subsection; [2003, c. 452, Pt. K, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

K. Give a guaranty or undertaking that is false, except if the person relied on a guaranty or undertaking to the same effect signed by and containing the name and address of the person residing in the United States from whom the food was received in good faith; [2003, c. 452, Pt. K, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

L. Violate paragraph K after having previously violated this subsection; [2003, c. 452, Pt. K, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

M. Remove or dispose of a detained or embargoed article in violation of section 2159; [2003, c. 452, Pt. K, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

N. Violate paragraph M after having previously violated this subsection; [2003, c. 452, Pt. K, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

O. Alter, mutilate, destroy, obliterate or remove all or any part of the labeling of or do any other act with respect to a food if the act is done while the article is held for sale and results in the article being misbranded; [2003, c. 452, Pt. K, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

P. Violate paragraph O after having previously violated this subsection; [2003, c. 452, Pt. K, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

Q. Forge, counterfeit, simulate or falsely represent or without proper authority use any mark, stamp, tag, label or other identification device authorized or required by rules adopted under this subchapter; or [2003, c. 452, Pt. K, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

R. Violate paragraph Q after having previously violated this subsection. [2003, c. 452, Pt. K, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. K, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

2. **Penalties.** The penalties for violating subsection 1 are as follows.

A. Except as otherwise provided in this subsection, a person who violates subsection 1, paragraph A, C, E, G, I, K, M, O or Q commits a civil violation for which a fine of not more than $1,000 may be adjudged. [2003, c. 452, Pt. K, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. Except as otherwise provided in this subsection, a person who violates subsection 1, paragraph B, D, F, H, J, L, N, P or R commits a civil violation for which a fine of not more than $2,000 may be adjudged. [2003, c. 452, Pt. K, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. A person who intentionally violates subsection 1, paragraph A, C, E, K, M or O, involving adulterated food, except as adulterated according to section 2156, subsection 2, commits a civil violation for which a fine of not more than $10,000 may be adjudged. [2003, c. 452, Pt. K, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

D. A person who intentionally violates subsection 1, paragraph B, D, F, L, N or P, involving adulterated food, except as adulterated according to section 2156, subsection 2, commits a civil violation for which a fine of not more than $20,000 may be adjudged. [2003, c. 452, Pt. K, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

E. A person who violates subsection 1, paragraph B involving monosodium glutamate pursuant to section 2157, subsection 13 commits a civil violation for which a fine of not more than $100 may be adjudged. [2003, c. 452, Pt. K, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

F. A person who violates subsection 1, paragraph A involving monosodium glutamate pursuant to section 2157, subsection 13 must be issued a warning only. [2003, c. 452, Pt. K, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. K, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

3. **Exceptions.** The following paragraphs are exceptions to the application of this section.

A. Carriers subject to the jurisdiction of the Public Utilities Commission or the Interstate Commerce Commission are not subject to subsection 1, paragraph E or F by reason of their receipt, carriage, holding or delivery of foods in the usual course of business as carriers. [2003, c. 452, Pt. K, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A person is not subject to the penalties prescribed under subsection 2 for having violated subsection 1, paragraph A, B, E or F if the person establishes a guaranty or undertaking signed by, and containing the name and address of, another person residing in this State from whom the person received in good faith the article, to the effect that the article is not adulterated or misbranded within the meaning of this subchapter, citing this subchapter. [2003, c. 452, Pt. K, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. A person who is a publisher, radio-broadcast licensee or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor or seller of the article to which a false advertisement relates, is not liable under this section by reason of the dissemination by the person of the false advertisement, unless the person has refused or neglected on the request of the Commissioner of Agriculture, Conservation and Forestry to furnish the commissioner the name and post office address of the manufacturer, packer, distributor, seller or advertising agency residing in this State who caused the person to disseminate the advertisement. [2003, c. 452, Pt. K, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF); 2011, c. 657, Pt. W, §6 (REV).]

[2003, c. 452, Pt. K, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF); 2011, c. 657, Pt. W, §6 (REV) .]

SECTION HISTORY
2003, c. 452, §K13 (NEW). 2003, c. 452, §X2 (AFF). 2011, c. 657, Pt. W, §6 (REV).

§2156. ADULTERATION

A food shall be deemed to be adulterated:

1. **Poisonous or deleterious substance.**

A. If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such food shall not be considered adulterated under this paragraph if the quantity of such substance in such food does not ordinarily render it injurious to health; or

B. If it bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of section 2158; or

C. If it consists in whole or in part of a diseased, contaminated, filthy, putrid or decomposed substance or if it is otherwise unfit for food; or

D. If it has been produced, prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome or injurious to health; or

E. If it is the product of a diseased animal or an animal which has died otherwise than by slaughter or that has been fed upon the uncooked offal from a slaughterhouse; or

F. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

2. **Substances added or omitted.**

A. If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or

B. If any substance has been substituted wholly or in part therefor; or

C. If damage or inferiority has been concealed in any manner; or

D. If any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is.

3. **Substances in confectionery.** If it is confectionery and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of 4/10 of 1%, harmless natural wax not in excess of 4/10 of 1%, harmless natural gum and pectin. This subsection does not apply to any confectionery by reason of its containing less than 1/2 of 1% by volume of alcohol derived solely from use of flavoring extracts or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances; or

[2009, c. 2, §51 (COR) .]

4. **Coal-tar color.** If it bears or contains a coal-tar color other than one from a batch which has been certified under authority of the Federal Act.

SECTION HISTORY
1981, c. 470, §A87 (AMD). RR 2009, c. 2, §51 (COR).

§2157. MISBRANDED FOOD

A food shall be deemed to be misbranded:

1. **False or misleading label.** If its labeling is false or misleading in any particular;

2. **Sale under another name.** If it is offered for sale under the name of another food or under a name not permitted by Title 12, section 6112, for products containing or consisting of surimi;

[1985, c. 622, §3 (AMD) .]

3. **Imitation of another food.** If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter the name of the food imitated;

4. **Misleading container.** If its container is so made, formed or filled as to be misleading;

5. **Label for package form.** If in package form, unless it bears a label containing:

A. The name and place of business of or sufficient information to identify the manufacturer, packer or distributor;

B. An accurate statement of the quantity of the contents in terms of weight, measure or numerical count. Reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the commissioner;

6. **Statements on label placed conspicuously.** If any word, statement or other information, required by or under authority of this subchapter to appear on the label or labeling, is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

7. **Conformity with prescribed definition and standard.** If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by section 2154, unless it conforms to such definition and standard, and, in so far as may be required by such regulations, the common names of optional ingredients, other than spices, flavoring and coloring, present in such food;

8. **Quality below standard.** If it purports to be or is represented as:

A. A food for which a standard of quality has been prescribed by regulations as provided by section 2154 and its quality falls below such standard, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standards; or

B. A food for which a standard or fill of container has been prescribed by regulations as provided by section 2154, and it falls below the standard or fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

9. **Name of food and ingredients.** If it is not subject to subsection 7, unless it bears labeling clearly giving:

A. The common or usual name of the food, if any there be, and

B. In case it is fabricated from 2 or more ingredients, the common or usual name of each such ingredient, except that spices, flavoring and colorings, other than those sold as such, may be designated as spices, flavoring and colorings without naming each. To the extent that compliance with the requirements of this paragraph is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Commissioner of Agriculture, Conservation and Forestry. The requirements of this paragraph shall not apply to a carbonated beverage, the ingredients of which have been fully and correctly disclosed in an affidavit subscribed and sworn to by the manufacturer or bottler thereof and filed with the commissioner; [1979, c. 731, §19 (AMD); 2011, c. 657, Pt. W, §6 (REV).]

[1979, c. 731, §19 (AMD); 2011, c. 657, Pt. W, §6 (REV) .]

10. **Dietary properties.** If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral and other dietary properties as the Commissioner of Agriculture, Conservation and Forestry determines to be, and by regulation prescribed as necessary in order to fully inform purchasers as to its value for such uses;

[1985, c. 676, §1 (AMD); 2011, c. 657, Pt. W, §6 (REV) .]

11. **Artificial flavoring and coloring.** If it bears or contains any artificial flavoring, artificial coloring or chemical preservative, unless it bears labeling stating the fact. If the artificial flavoring and artificial coloring declaration does not refer to the entire contents of the package, the words "artificial flavoring" and "artificial coloring" must follow immediately each of the ingredients of the package containing one or more of these substances. The common or usual name of any chemical preservative must be immediately followed by the words "chemical preservation." To the extent that compliance with the requirements of this subsection is impracticable, exemptions must be established by rules adopted by the Commissioner ofAgriculture, Conservation and Forestry. This subsection, and subsections 7 and 9, with respect to artificial coloring, do not apply in the case of butter, cheese or ice cream; or

[2011, c. 2, §26 (COR) .]

12. **Sulfite.**

[1985, c. 676, §3 (NEW); T. 12, §2157, sub-§12 (RP) .]

13. **Monosodium glutamate, MSG.** If a person sells, offers for sale or serves in any retail store, hotel, restaurant or other public eating place any food or food product, whether or not in package form, to which that person has added monosodium glutamate directly in crystal form, unless:

A. The package in which that food or food product is offered for sale conspicuously bears a label or stamp indicating that the food or food product contains monosodium glutamate; [1989, c. 115, (NEW).]

B. When the food or food product is offered for consumption and is not packaged, a conspicuous label or sign is placed on the food, immediately next to the food, immediately next to the food's listing on the menu, or in an open manner where the food order or food product is obtained, indicating that the food or food product contains monosodium glutamate; or [1989, c. 115, (NEW).]

C. There is a conspicuously displayed directory to which customers can refer for information on the contents of unpackaged products offered for sale. [1989, c. 115, (NEW).]

[1991, c. 230, §1 (AMD) .]

14. **Post-harvest treatments.** If it is fresh produce that is sold or offered for sale at a retail outlet, whether or not it is packaged or in a container, and has been treated with a post-harvest treatment, without meeting the requirements in paragraphs A to C.

For purposes of this section, "post-harvest treatment" means a treatment added or applied to fresh produce after harvest and identified by rule as a post-harvest treatment and waxes that contain one or more post-harvest treatments.

A. The owner or manager of a retail outlet shall ensure that one conspicuous sign is displayed that reads: "Produce in this store may have been treated after harvest with one or more post-harvest treatments." [1991, c. 506, §5 (AMD).]

B. The owner or manager of a retail outlet shall ensure that information identifying the specific post-harvest treatments used, and the specific items of produce that were treated, is available to the public within 48 hours of a request. [1989, c. 339, §§1, 2 (NEW).]

C. The owner or manager of a retail outlet shall ensure that produce without post-harvest treatment, as determined by the commissioner, is identified by a sign contiguous to the specific produce. [1991, c. 506, §5 (AMD).]

[1991, c. 506, §5 (AMD) .]

SECTION HISTORY
1979, c. 731, §19 (AMD). 1981, c. 470, §A88 (AMD). 1985, c. 622, §5 (AMD). 1985, c. 676, §§1-3 (AMD). 1989, c. 115, (AMD). 1989, c. 339, §§1,2 (AMD). 1991, c. 230, §1 (AMD). 1991, c. 506, §5 (AMD). RR 2011, c. 2, §26 (COR). 2011, c. 657, Pt. W, §6 (REV).

§2158. ADDITION OF CERTAIN SUBSTANCES LIMITED

Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, must be deemed to be unsafe for purposes of the application of section 2156, subsection 1, paragraph B; but when such substance is so required or cannot be avoided, the Commissioner of Agriculture, Conservation and Forestry shall adopt rules limiting the quantity therein or thereon to such extent as the commissioner finds necessary for the protection of public health, and any quantity exceeding the limits so fixed must be deemed to be unsafe for purposes of the application of section 2156, subsection 1, paragraph B. While such a rule is in effect limiting the quantity of any such substance in the case of any food, such food may not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of section 2156, subsection 1, paragraph A. In determining the quantity of such added substance to be tolerated in or on different articles of food, the commissioner shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances. Goods that are prepared by a primary caregiver under section 2152, subsection 4-A, paragraph G or in a food establishment that is a licensed facility under section 2167 and that contain marijuana for medical use by a qualifying patient, pursuant to chapter 558-C, are not considered to be adulterated under this subchapter. [2011, c. 407, Pt. A, §3 (AMD); 2011, c. 657, Pt. W, §6 (REV).]

SECTION HISTORY
1979, c. 731, §19 (AMD). 2009, c. 631, §5 (AMD). 2009, c. 631, §51 (AFF). 2011, c. 407, Pt. A, §3 (AMD). 2011, c. 657, Pt. W, §6 (REV).

§2159. ARTICLES DETAINED, EMBARGOED AND CONDEMNED

Whenever a duly authorized agent of the Commissioner of Agriculture, Conservation and Forestry finds or has reason to believe that any food is adulterated, or so misbranded as to be dangerous or fraudulent, within the meaning of this subchapter, he may issue an order detaining or embargoing that food to any person or persons with possession or control thereof, and may affix or require the person or persons to whom the order is directed to affix to such article a tag or other appropriate marking, giving notice that such article is or is suspected of being adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission. Orders relating to detention and embargo issued pursuant to this chapter shall not be considered licensing or an adjudicatory proceeding, as those terms are defined by the Maine Administrative Procedure Act, Title 5, chapter 375. [1985, c. 49, §1 (AMD); 2011, c. 657, Pt. W, §6 (REV).]

When an article detained or embargoed under the preceding paragraph has been found by such agent to be adulterated or misbranded, he shall petition the proper officer of the District Court or Superior Court in whose jurisdiction the article is detained or embargoed for a libel for condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree, be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent. When the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the commissioner. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article on representation to the court by the commissioner that the article is no longer in violation of this subchapter, and that the expenses of such supervision have been paid.

Whenever the commissioner or any of the commissioner's authorized agents finds in any room, building, vehicle of transportation or other structure any meat, seafood, poultry, vegetable, fruit or other perishable articles that are unsound or contain any filthy, decomposed or putrid substance or that may be poisonous or deleterious to health or otherwise unsafe, the same being declared to be a nuisance, the commissioner or the commissioner's authorized agent shall forthwith condemn or destroy the same, or in any other manner render the same unsalable as human food. In the event that any food found on any vehicle of transportation is detained, embargoed, condemned or destroyed under any of the provisions of this section by the commissioner or the commissioner's authorized agents, the commissioner shall forthwith notify the consignor, consignee and the carrier of the action taken and the amount and kind of goods detained, embargoed, condemned or destroyed. [2009, c. 2, §52 (COR).]

SECTION HISTORY
1977, c. 694, §348 (AMD). 1979, c. 731, §19 (AMD). 1985, c. 49, §1 (AMD). RR 2009, c. 2, §52 (COR). 2011, c. 657, Pt. W, §6 (REV).

§2160. NOTICE

Nothing in this subchapter shall be construed as requiring the Commissioner of Agriculture, Conservation and Forestry to report for the institution of proceedings under said subchapter minor violations of said subchapter, whenever the commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. [1979, c. 731, §19 (AMD); 2011, c. 657, Pt. W, §6 (REV).]

SECTION HISTORY
1979, c. 731, §19 (AMD). 2011, c. 657, Pt. W, §6 (REV).

§2161. STORAGE AND TRANSPORTATION OF FROZEN FOODS

No person, firm or corporation engaged in the business of freezing, storing or transporting frozen foods shall store or transport such foods within this State unless they are stored or transported under suitable refrigeration which shall insure good keeping qualities and under temperatures and holding conditions approved by the Commissioner of Agriculture, Conservation and Forestry. [1979, c. 731, §19 (AMD); 2011, c. 657, Pt. W, §6 (REV).]

The commissioner may, in a manner consistent with the Maine Administrative Procedure Act, after public hearings, make reasonable regulations for the storing and transportation of frozen foods, including temperature control, sanitation and other matters in accordance with recognized standards necessary for the protection of public health and the preservation of such foods in wholesome condition. [1977, c. 694, §349 (AMD).]

Any person, firm or corporation who shall violate this section or any regulation made hereunder shall be punished by a fine of not more than $100 for the first offense, and by a fine of not less than $100 nor more than $500 for each subsequent offense.

Nothing in this section shall be construed to apply to delivery by a retailer to the home of the purchaser.

SECTION HISTORY
1977, c. 694, §349 (AMD). 1979, c. 731, §19 (AMD). 2011, c. 657, Pt. W, §6 (REV).

§2162. PACKING OF FOOD; PERMIT; INSPECTION

The Commissioner of Agriculture, Conservation and Forestry shall, upon application for permit and receipt of such fee as he deems necessary from any food packer or processor, inspect all operations of said packer or processor for compliance with this subchapter and shall cause the same law to be diligently enforced. Each such permit shall cover one group of buildings constituting a packing plant in one location. [1979, c. 731, §19 (AMD); 2011, c. 657, Pt. W, §6 (REV).]

Only the holder of such a permit may mark or label any food so inspected as packed or processed or inspected and passed under this subchapter.

Said commissioner may, in a manner consistent with the Maine Administrative Procedure Act as to adjudicatory proceedings, refuse to renew, and the District Court, in a manner consistent with the Maine Administrative Procedure Act, may revoke and permit whenever there is a lack of compliance with this subchapter. He shall establish such rules and regulations as he deems necessary. He shall make such charges as will be reasonable and as nearly as may be to cover the cost of the service rendered. All such fees and all such money thus collected for services rendered by the commissioner shall be paid by him to the Treasurer of State. Said fees and money are appropriated for the purposes of this section. [1977, c. 694, §350 (AMD); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF).]

The commissioner may employ such agents and assistants, subject to the Civil Service Law, and make such purchases as may be necessary in the performance of his duties. [1985, c. 785, Pt. B, §88 (AMD).]

SECTION HISTORY
1977, c. 694, §350 (AMD). 1979, c. 731, §19 (AMD). 1985, c. 785, §B88 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2011, c. 657, Pt. W, §6 (REV).

§2163. SALE OF HORSEMEAT

No person, firm, corporation or officer, agent or employee thereof within the State shall transport, receive for transportation, sell or offer for sale or distribution any equine meat or food products thereof unless said equine meat is plainly and conspicuously labeled, marked, branded and tagged "horsemeat" or "horsemeat products"; or shall serve, expose or offer for sale or distribution either in any public place or elsewhere, any equine meat or products containing equine meat unless such equine meat is conspicuously branded and labeled and a notice containing the words "horsemeat and horsemeat products sold here" is conspicuously displayed in said place of business to the end that the purchaser may have knowledge of the facts of the article purchased.

Whenever any person, firm or corporation within the State sells, ships or delivers to a purchaser within the State any equine meat or food products thereof, such person, firm or corporation shall deliver to the purchaser an invoice or bill showing thereon the character of such meat. This paragraph shall not apply to sales made at retail.

The Commissioner of Agriculture, Conservation and Forestry shall by adequate inspection see that the requirements of this section are carried out. [1979, c. 731, §19 (AMD); 2011, c. 657, Pt. W, §6 (REV).]

Any person, firm or corporation who shall violate any of the provisions of this section shall be punished by a fine of not more than $100 for the first offense and by a fine of not more than $200 for each subsequent offense, and the District and Superior Courts shall have concurrent jurisdiction of the offense.

SECTION HISTORY
1979, c. 731, §19 (AMD). 2011, c. 657, Pt. W, §6 (REV).

§2164. ACCESS TO BUILDINGS

The Commissioner of Agriculture, Conservation and Forestry or his duly authorized agent shall have free access at all reasonable hours to any factory, warehouse or establishment in which foods are manufactured, processed, packed or held for introduction into commerce, or to enter any vehicle being used to transport or hold such foods in commerce for the purpose: [1979, c. 731, §19 (AMD); 2011, c. 657, Pt. W, §6 (REV).]

1. **Inspection.** Of inspecting such factory, warehouse, establishment or vehicle to determine if any of the provisions of this subchapter are being violated; and

2. **Examination of samples.** To secure samples or specimens of any food after paying or offering to pay for such sample.

It shall be the duty of the commissioner to make or cause to be made examination of samples secured under this section to determine whether or not any provision of this subchapter is being violated.

3. **Notification of samples taken.**

[1981, c. 470, Pt. A, §89 (RP) .]

In the event that any samples or specimens of food are removed from any vehicle of transport, it shall be the duty of the commissioner to notify the consignor, consignee and the carrier of the action taken and of the amount and kind of sample or specimen taken. [1981, c. 470, Pt. A, §90 (NEW).]

SECTION HISTORY
1979, c. 731, §19 (AMD). 1981, c. 470, §§A89,A90 (AMD). 2011, c. 657, Pt. W, §6 (REV).

§2165. INJUNCTIONS

In addition to the remedies provided, the Commissioner of Agriculture, Conservation and Forestry is authorized to apply to the Superior Court and such court has jurisdiction upon hearing and for cause shown to grant a preliminary or permanent injunction restraining any person from violating any provision of section 2155-A. [2003, c. 2, §72 (COR); 2011, c. 657, Pt. W, §6 (REV).]

SECTION HISTORY
RR 2003, c. 2, §72 (COR). 2011, c. 657, Pt. W, §6 (REV).

§2166. PENALTIES

(REPEALED)

SECTION HISTORY
1979, c. 731, §19 (AMD). 1985, c. 49, §2 (AMD). 1991, c. 230, §2 (AMD). 2003, c. 452, §X2 (AFF). 2003, c. 452, §K14 (RP).

§2167. LICENSE REQUIRED

A person, firm, corporation or copartnership may not operate a food establishment or a food salvage establishment or act as a salvage broker unless licensed for that purpose by the commissioner. In the case of retail food establishments, licenses issued must be made available at the retail food establishment for inspection by customers or other persons using the retail food establishment. [2011, c. 535, §2 (AMD).]

In addition to the sanctions authorized in section 2172, a person, firm, corporation or copartnership that violates this licensing requirement or any condition placed on a license commits a civil violation for which a fine of not more than $500 may be adjudged for each offense and, in addition, the commissioner may suspend, revoke or refuse to renew any such license in accordance with Title 5, chapter 375, subchapter 5. [2003, c. 452, Pt. K, §15 (AMD); 2003, c. 452, Pt. X, §2 (AFF).]

SECTION HISTORY
1979, c. 672, §A54 (NEW). 1987, c. 374, (AMD). 1989, c. 664, §2 (AMD). 1991, c. 837, §A47 (AMD). 2003, c. 452, §K15 (AMD). 2003, c. 452, §X2 (AFF). 2011, c. 535, §2 (AMD).

§2168. FEES

1. **Application and renewal.** Each application for, or renewal of, a license to operate a food establishment must be accompanied by a fee determined by the commissioner in accordance with subsection 5.

A. [2007, c. 539, Pt. GGGG, §4 (RP).]

B. [2007, c. 539, Pt. GGGG, §4 (RP).]

C. [2007, c. 539, Pt. GGGG, §4 (RP).]

A license may be issued for a one-year, 2-year or 3-year period. Licenses for a period in excess of one year may only be issued with the agreement of or at the request of the applicant. The fee for a 2-year license is 2 times the annual fee. The fee for a 3-year license is 3 times the annual fee.

[2007, c. 539, Pt. GGGG, §4 (AMD) .]

2. **Food salvage.** Each application for, or renewal of, a license to operate a food salvage establishment or to act as a salvage broker must be accompanied by a fee determined by the commissioner in accordance with subsection 5. A license may be issued for a one-year, 2-year or 3-year period. Licenses for a period in excess of one year may only be issued with the agreement of or at the request of the applicant. The fee for a 2-year license is 2 times the annual fee. The fee for a 3-year license is 3 times the annual fee.

[2007, c. 539, Pt. GGGG, §5 (AMD) .]

3. **Refunds and transfers; General Fund.** No fee is refundable. A license is not assignable or transferable. Fees collected by the commissioner pursuant to this section must be deposited in the General Fund.

[1989, c. 888, §7 (NEW) .]

4. **Reinspection required for violations.** If, upon inspection, the commissioner finds a licensee under this subchapter to be in violation of requirements of this subchapter or rules adopted under this subchapter, the commissioner shall issue a written citation describing the violation, the required corrective action to be taken by the licensee and the date by which the correction must be made. If the corrective action has not been taken within the specified period and a 3rd inspection is required in any one year, the commissioner may charge the licensee a reinspection fee not to exceed $50. The commissioner shall notify the licensee in writing about the reinspection fee at the time the original citation is issued.

[1991, c. 837, Pt. A, §48 (NEW) .]

5. **Rules.** The commissioner shall adopt rules to establish a schedule of fees for licenses issued under this chapter. Fees must be appropriate to the size of the establishment. Notwithstanding Title 5, section 8071, subsection 3, paragraph B, rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 539, Pt. GGGG, §6 (NEW) .]

SECTION HISTORY
1979, c. 672, §A55 (NEW). 1989, c. 664, §3 (AMD). 1989, c. 888, §7 (RPR). 1991, c. 837, §A48 (AMD). 1997, c. 454, §10 (AMD). 2007, c. 539, Pt. GGGG, §§4-6 (AMD).

§2169. ISSUANCE OF LICENSES

The commissioner shall, within 30 days following receipt of application for a license to operate a food establishment or a food salvage establishment or to act as a salvage broker, issue the appropriate license if the applicant is in compliance with this chapter and any rules adopted by the commissioner. When any applicant, upon inspection by the commissioner, is found not to meet the requirements of this chapter or rules adopted under this chapter, the commissioner may issue either a temporary license for a specified period not to exceed 90 days, during which time corrections specified by the commissioner must be made by the applicant for compliance, or a conditional license setting forth conditions that must be met by the applicant to the satisfaction of the commissioner. [1989, c. 664, §4 (AMD).]

A license may be issued for a period of up to 3 years. Licenses for a period in excess of one year may only be issued with the agreement of or at the request of the applicant. The fee for a 2-year license is 2 times the annual fee. The fee for a 3-year license is 3 times the annual fee. The prescribed fee must accompany the application for license. Licenses may be renewed upon application and payment of the fees, subject to the commissioner's rules and regulations. Licenses erroneously issued by the commissioner are considered void and must be returned to the commissioner on demand. [1999, c. 598, §1 (AMD); 1999, c. 598, §4 (AFF).]

Beginning August 1, 2000, each one-, 2- or 3-year license or license renewal issued expires on December 31st of the appropriate year except that, beginning January 1, 2010, each one-year, 2-year or 3-year license or license renewal expires on the date of issuance of the appropriate year. When an initial license is issued or when a license is renewed between August 1, 2000 and August 1, 2003, the license fee is prorated based on the number of months the license is valid and the annual fee. When a license is renewed between January 1, 2010 and January 1, 2011, the period of time that the license is valid may be increased by up to 11 months and the license fee is prorated based on the number of months the license is valid and the annual fee. [2009, c. 393, §10 (AMD).]

The commissioner shall notify license holders not less than 30 days prior to the expiration of their licenses and provide them with any necessary relicensure forms. [1979, c. 672, Pt. A, §56 (NEW).]

SECTION HISTORY
1979, c. 672, §A56 (NEW). 1989, c. 664, §4 (AMD). 1997, c. 454, §11 (AMD). 1999, c. 598, §1 (AMD). 1999, c. 598, §4 (AFF). 2009, c. 393, §10 (AMD).

§2170. EXCEPTION

Any establishment subject to this chapter and chapter 562 shall be required to have only one license and that license shall be issued on the predominate portion of the establishment's business. [1979, c. 672, Pt. A, §57 (NEW).]

SECTION HISTORY
1979, c. 672, §A57 (NEW).

§2171. LICENSING CONDITIONS

Notwithstanding any other provisions of this chapter, the commissioner may issue a license required under section 2167 on the basis of an inspection performed by an inspector who works for and is compensated by the municipality in which the establishment is located, but only if the following conditions have been met. [1979, c. 672, Pt. A, §58 (NEW).]

1. **Adopted rules, regulations; code of standards.** The municipality involved has adopted a set of rules and regulations, ordinances or other code of standards for the establishments, which has been approved by the commissioner and which is consistent with the regulations used by the commissioner for the issuance of the licenses in effect at the time of inspection.

[1979, c. 672, Pt. A, §58 (NEW) .]

2. **Inspection to ascertain intent.** The commissioner may from time to time inspect the municipally-inspected establishments to ascertain that the intent of these statutes is being followed.

[1979, c. 672, Pt. A, §58 (NEW) .]

3. **Inspection reports.** The municipalities shall furnish the commissioner copies of its inspection reports relating to the inspection on a monthly basis.

[1979, c. 672, Pt. A, §58 (NEW) .]

4. **Charge.** Municipalities may not charge the commissioner for performing the inspections.

[1979, c. 672, Pt. A, §58 (NEW) .]

5. **License fee.** When a license is issued on the basis of a municipal inspection as specified in this section, the requirement for payment of a license fee to the commissioner as set forth in section 2168 shall be waived. The licensee shall be required to pay the commissioner a sum not to exceed $5 to support the costs of mailing and handling.

[1979, c. 672, Pt. A, §58 (NEW) .]

6. **Licenses.** Licenses issued under this section shall be displayed, renewed and in every other way treated the same as licenses issued under this subchapter on the basis of inspection by the commissioner.

[1979, c. 672, Pt. A, §58 (NEW) .]

SECTION HISTORY
1979, c. 672, §A58 (NEW).

§2172. FINES AND PENALTIES

1. **Authorization.** The department is authorized to impose one or more of the following sanctions when a violation of this chapter, or rules enacted pursuant to this chapter, occurs and the department determines that a sanction is necessary and appropriate to ensure compliance with state licensing rules or to protect the public health.

A. The department may impose penalties for violations of this chapter, or the rules adopted pursuant to this chapter, on any food establishment or food salvage establishment. The penalties may not be greater than $50 for each violation. Each day that the violation remains uncorrected may be counted as a separate offense. Penalties may be imposed for each violation of the rules. [1991, c. 837, Pt. A, §49 (NEW).]

B. The department may direct a food establishment or food salvage establishment to correct any violations in a manner and within a time frame that the department determines is appropriate to ensure compliance with state rules or to protect the public health. Failure to correct violations within the time frame constitutes a separate violation for which a fine may be imposed. [1991, c. 837, Pt. A, §49 (NEW).]

C. A person, corporation, firm or copartnership may not operate a food establishment or food salvage establishment without first obtaining a license as required by this chapter. Violation of this paragraph is a civil violation for which a fine of not less than $10 and not more than $100 may be adjudged. Each day of operation without a license constitutes a separate offense. [2003, c. 452, Pt. K, §16 (AMD); 2003, c. 452, Pt. X, §2 (AFF).]

C-1. A person, corporation, firm or copartnership may not operate a food establishment or food salvage establishment without first obtaining a license as required by this chapter after having previously violated paragraph C. Violation of this paragraph is a civil violation for which a fine of not less than $100 may be adjudged. Each day of operation without a license constitutes a separate offense. [2003, c. 452, Pt. K, §17 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

D. In the event of any violation of this section or any rule adopted pursuant to this chapter, the Attorney General may seek to enjoin a further violation, in addition to any other remedy. [1991, c. 837, Pt. A, §49 (NEW).]

[2003, c. 452, Pt. K, §§16, 17 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

2. **Schedule of penalties.** The department shall establish a schedule of penalties according to the nature and duration of the violation.

[1991, c. 837, Pt. A, §49 (NEW) .]

3. **Enforcement and appeal.** Enforcement and appeal of this section is as follows.

A. The department may impose any fine in conformity with the Title 5, chapter 375, subchapter IV, if the department has provided the licensee with the opportunity for an administrative hearing. [1991, c. 837, Pt. A, §49 (NEW).]

B. Licensees that are fined pursuant to this chapter are required to pay the department the amount of the penalties. If a licensee has not paid any collectible fine by the time of license renewal, the department may collect the fine by requiring payment prior to the processing of any license renewal application. An appeal of the department's decision to fine a licensee stays the collection of the fine. Interest accrues on a fine at the rate specified in Title 14, section 1602-B prior to the completion of any appeal. After the completion of any appeal process or after any appeal period has passed, interest accrues pursuant to Title 14, section 1602-C. [2003, c. 460, §10 (AMD).]

[2003, c. 460, §10 (AMD) .]

SECTION HISTORY
1991, c. 837, §A49 (NEW). 2003, c. 452, §§K16,17 (AMD). 2003, c. 452, §X2 (AFF). 2003, c. 460, §10 (AMD).

§2173. SALE OF SMOKED ALEWIVES

Smoked alewives offered for sale need not be free of viscera prior to processing. A person who sells or offers for sale alewives smoked with the viscera shall post a clearly legible sign at the point of display of the alewives that states, "This product is not fully cooked. Eating prior to fully cooking poses a health risk." [1997, c. 439, §1 (NEW).]

SECTION HISTORY
1997, c. 439, §1 (NEW).

§2174. SALE OF BAKED GOODS AT FARMERS' MARKETS

Notwithstanding section 2156 and rules adopted under section 2153, a person licensed under this subchapter and offering baked goods for sale at a farmers' market as defined in Title 7, section 415 may display and sell unpackaged baked goods in a manner that allows customers to directly select baked goods for purchase. For the purposes of this section, "baked goods" means breads, rolls, buns, flatbreads, cakes, cookies, pies and other pastries. [2009, c. 547, §3 (NEW).]

SECTION HISTORY
2009, c. 547, §3 (NEW).

§2175. MAINE WILD MUSHROOM HARVESTING CERTIFICATION PROGRAM

1. **Program established; training approval.** The Maine Wild Mushroom Harvesting Certification Program is established to ensure that properly trained persons harvest, broker and sell wild mushrooms in order to protect public health and the safety of the food supply. The program is administered by the Department of Health and Human Services for the purpose of establishing training and certification requirements for persons who commercially harvest, broker or sell wild mushrooms in this State. The Commissioner of Health and Human Services shall approve training programs provided by persons or entities outside the department.

[2013, c. 533, §21 (AMD) .]

2. **Certification of wild mushroom harvesters, brokers or sellers.** The Commissioner of Health and Human Services shall certify persons with appropriate training in mushroom harvesting, brokering or selling to sell, transfer or otherwise deliver wild mushrooms within the State. Certification is valid for a period not to exceed 5 years, unless the Department of Health and Human Services, by rule, establishes another certification period.

[2013, c. 533, §21 (AMD) .]

3. **Refusal to certify; revocation of certification.** The Department of Health and Human Services may decline to certify any person determined to lack the appropriate training to safely harvest, broker or sell wild mushrooms, in accordance with rules adopted by the Department of Health and Human Services pursuant to this section. The Department of Health and Human Services may revoke, in accordance with the Maine Administrative Procedure Act, the certification of any person in accordance with rules adopted by the Department of Health and Human Services pursuant to this section.

[2013, c. 533, §21 (AMD) .]

4. **Registry.** The Department of Health and Human Services shall maintain a registry of all applicants for certification and of all certificates issued by the Department of Health and Human Services under this section.

[2011, c. 412, §2 (NEW) .]

4-A. **Advisory role of Director of the Maine Center for Disease Control and Prevention.** The Director of the Maine Center for Disease Control and Prevention within the Department of Health and Human Services shall advise the Commissioner of Health and Human Services on the following:

A. Certification of individuals who have completed approved training to engage in the harvesting, brokering or selling of wild mushrooms in this State; and [2013, c. 533, §22 (NEW).]

B. Wild mushroom harvesting training programs and certification. [2013, c. 533, §22 (NEW).]

[2013, c. 533, §22 (NEW) .]

5. **Maine Wild Mushroom Harvesting Advisory Committee.**

[2013, c. 533, §23 (RP) .]

6. **Wild Mushroom Harvesting Fund.**

[2011, c. 587, §1 (RP) .]

7. **Fees.** The certification fees may not exceed $20 and must be established by the Department of Health and Human Services by rule. Revenues from applicants for certification pursuant to subsection 2 must be deposited into a special revenue account dedicated to a health inspection program.

[2011, c. 587, §1 (AMD) .]

8. **Rules.** The Department of Health and Human Services may 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.

[2011, c. 412, §2 (NEW) .]

SECTION HISTORY
2011, c. 412, §2 (NEW). 2011, c. 587, §1 (AMD). 2011, c. 657, Pt. W, §5 (REV). 2013, c. 533, §§21-23 (AMD).

Subchapter 2: DRUGS

§2201. REGULATIONS

(REPEALED)

SECTION HISTORY
1975, c. 499, §27 (AMD). 1987, c. 710, §2 (RP).

§2202. EQUIPMENT

(REPEALED)

SECTION HISTORY
1971, c. 282, §13 (AMD). 1987, c. 710, §2 (RP).

§2203. CHEMICAL ANALYSIS

(REPEALED)

SECTION HISTORY
1977, c. 78, §147 (RP).

§2204. SALE OF POISONOUS DRUGS

(REPEALED)

SECTION HISTORY
1987, c. 710, §2 (RP).

§2204-A. LABELING OF PRESCRIPTIONS

(REPEALED)

SECTION HISTORY
1971, c. 282, §1 (NEW). 1987, c. 710, §2 (RP).

§2204-B. POSSESSION OF DRUG SAMPLES

(REPEALED)

SECTION HISTORY

1971, c. 282, §1 (NEW). 1987, c. 710, §2 (RP).

§2204-C. POSSESSION OF HARMFUL DRUGS

(REPEALED)

SECTION HISTORY
1971, c. 282, §1 (NEW). 1971, c. 566, (RP).

§2204-D. ADVERTISING

(REPEALED)

SECTION HISTORY
1975, c. 257, (NEW). 1977, c. 696, §188 (AMD). 1987, c. 710, §2 (RP).

§2204-E. EXCEPTIONS

(REPEALED)

SECTION HISTORY
1975, c. 257, (NEW). 1977, c. 696, §189 (AMD). 1987, c. 710, §2 (RP).

§2204-F. POSTING PRICES

(REPEALED)

SECTION HISTORY
1975, c. 257, (NEW). 1987, c. 710, §2 (RP).

§2205. PREPARATIONS CONTAINING COCAINE

(REPEALED)

SECTION HISTORY
1975, c. 499, §28 (RP).

§2206. SALE OF OPIUM

(REPEALED)

SECTION HISTORY
1967, c. 390, §1 (AMD). 1969, c. 443, §2 (AMD). 1971, c. 487, §1 (RP).

§2207. PRESCRIPTION OF OPIUM TO HABITUAL USERS FORBIDDEN

(REPEALED)

SECTION HISTORY
1975, c. 499, §29 (RP).

§2207-A. PERMISSIVE USE OF DRUGS

(REPEALED)

SECTION HISTORY
1975, c. 499, §30 (NEW). 1977, c. 609, §§1,2 (AMD). 1979, c. 731, §19 (AMD). 1987, c. 710, §2 (RP).

§2208. SALE OF ARTICLES CONTAINING WOOD ALCOHOL, FOR INTERNAL USE

(REPEALED)

SECTION HISTORY
1987, c. 710, §2 (RP).

§2209. LABELING OF WOOD ALCOHOL CONTAINERS

(REPEALED)

SECTION HISTORY
1987, c. 710, §2 (RP).

§2210. SALE OF BARBITURATES

(REPEALED)

SECTION HISTORY
1965, c. 359, §2 (AMD). 1967, c. 390, §2 (AMD). 1971, c. 621, §1 (AMD). 1975, c. 499, §29 (RP).

§2210-A. SALE OF AMPHETAMINES

(REPEALED)

SECTION HISTORY
1971, c. 621, §2 (NEW). 1975, c. 499, §29 (RP).

§2211. ADULTERATING AND SELLING DRUGS

(REPEALED)

SECTION HISTORY
1987, c. 710, §2 (RP).

§2212. USING DRUGS NOT IN PRESCRIPTION

(REPEALED)

SECTION HISTORY
1967, c. 390, §3 (AMD). 1971, c. 282, §12 (AMD). 1975, c. 499, §31 (RPR). 1987, c. 710, §2 (RP).

§2212-A. REFILL PRESCRIPTIONS

(REPEALED)

SECTION HISTORY
1967, c. 390, §4 (NEW). 1971, c. 282, §2 (AMD). 1975, c. 499, §32 (RPR). 1981, c. 221, (AMD). 1987, c. 710, §2 (RP).

§2212-B. POSSESSION OF CERTAIN HALLUCINOGENIC DRUGS

(REPEALED)
(REPEALED)

SECTION HISTORY
1967, c. 390, §5 (NEW). 1969, c. 443, §3 (AMD). 1971, c. 487, §2 (RPR). 1975, c. 499, §33 (RP).

§2212-C. EXCHANGE OR FURNISHINGS OF CERTAIN HALLUCINOGENIC DRUGS

(REPEALED)

SECTION HISTORY
1971, c. 282, §3 (NEW). 1971, c. 487, §3 (NEW). 1971, c. 621, §3 (AMD). 1971, c. 622, §74 (RP). 1975, c. 499, §34 (RP).

§2212-D. RETURN OF DRUGS PROHIBITED

(REPEALED)

SECTION HISTORY
1971, c. 622, §75 (NEW). 1987, c. 710, §2 (RP).

§2212-E. SELLING OF CERTAIN HALLUCINOGENIC DRUGS

(REPEALED)

SECTION HISTORY
1971, c. 621, §4 (NEW). 1975, c. 499, §35 (RP).

§2213. SALE BY CERTAIN METHODS PROHIBITED

(REPEALED)

SECTION HISTORY
1987, c. 710, §2 (RP).

§2214. VIOLATION OF PROVISIONS RELATING TO OPIUM OR COCAINE

(REPEALED)

SECTION HISTORY
1975, c. 499, §36 (RP).

§2215. VIOLATIONS GENERALLY

(REPEALED)

SECTION HISTORY
1965, c. 359, §3 (AMD). 1967, c. 390, §6 (AMD). 1971, c. 282, §13 (AMD). 1971, c. 621, §5 (AMD). 1975, c. 499, §36 (RP).

§2216. PRESCRIPTIONS WRITTEN ON HOSPITAL PRESCRIPTION BLANKS

(REPEALED)

SECTION HISTORY
1983, c. 203, (NEW). 1987, c. 710, §2 (RP).

Chapter 553: FLOUR

§2261. INSPECTORS

(REPEALED)

SECTION HISTORY
1977, c. 83, §3 (RP).

§2262. OATH; CERTIFICATE OF APPOINTMENT

(REPEALED)

SECTION HISTORY
1977, c. 83, §3 (RP).

§2263. INSPECTION; DUTIES; RECORD

(REPEALED)

SECTION HISTORY
1977, c. 83, §3 (RP).

§2264. FRAUDULENT MARKS

(REPEALED)

SECTION HISTORY
1977, c. 83, §3 (RP).

§2265. INTERFERING WITH INSPECTION MARKS

(REPEALED)

SECTION HISTORY
1977, c. 83, §3 (RP).

§2266. PURCHASERS MAY REQUIRE INSPECTION BEFORE DELIVERY

(REPEALED)

SECTION HISTORY
1977, c. 83, §3 (RP).

§2267. INSPECTOR'S DUTY AS TO SAMPLE PACKAGES

(REPEALED)

SECTION HISTORY
1977, c. 83, §3 (RP).

§2268. CONTRACTS FOR SALE OF UNINSPECTED FLOUR

(REPEALED)

SECTION HISTORY
1977, c. 83, §3 (RP).

Chapter 555: INSPECTION AND SALE OF MILK

§2311. INSPECTION OF DAIRY BUILDINGS

(REPEALED)

SECTION HISTORY
1977, c. 83, §4 (RP).

§2312. SALE OR TRANSPORTATION OF INFECTED PRODUCTS

(REPEALED)

SECTION HISTORY
1977, c. 83, §4 (RP).

§2313. SAMPLES TO AID IN INVESTIGATION

(REPEALED)

SECTION HISTORY
1977, c. 83, §4 (RP).

§2314. RULES AND REGULATIONS AS TO DISEASES TRANSMITTED THROUGH MILK

(REPEALED)

SECTION HISTORY
1977, c. 83, §4 (RP).

Chapter 556: MAINE METH WATCH PROGRAM

§2351. MAINE METH WATCH PROGRAM

1. **Establishment; purpose.** The department shall establish the Maine Meth Watch Program to educate retailers, retail employees and the public in order to help curtail suspicious sales and the theft of methamphetamine precursor drugs as defined in Title 17-A, section 1101, subsection 4-A and to identify the location of illicit methamphetamine manufacturing.

[2011, c. 657, Pt. AA, §62 (AMD) .]

2. **Rulemaking.** The department may adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2011, c. 657, Pt. AA, §62 (AMD) .]

SECTION HISTORY
2005, c. 430, §5 (NEW). 2005, c. 430, §10 (AFF). 2011, c. 657, Pt. AA, §62 (AMD).

Chapter 556-A: OPIOIDS

§2353. NALOXONE HYDROCHLORIDE

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

A. "Health care professional" means a person licensed under Title 32 who is authorized to prescribe naloxone hydrochloride. [2013, c. 579, §1 (NEW).]

B. "Immediate family" has the same meaning as set forth in Title 21-A, section 1, subsection 20. [2013, c. 579, §1 (NEW).]

C. "Opioid-related drug overdose" means a condition including, but not limited to, extreme physical illness, decreased level of consciousness, respiratory depression, coma or death resulting from the consumption or use of an opioid, or another substance with which an opioid was combined, or a condition that a reasonable person would believe to be an opioid-related drug overdose that requires medical assistance. [2013, c. 579, §1 (NEW).]

D. "Pharmacist" means a pharmacist authorized to dispense naloxone hydrochloride pursuant to Title 32, section 13815. [2015, c. 508, §1 (NEW).]

[2015, c. 508, §1 (AMD) .]

2. **Prescription; possession; administration.** The prescription, possession and administration of naloxone hydrochloride is governed by this subsection.

A. A health care professional may directly or by standing order prescribe naloxone hydrochloride to an individual at risk of experiencing an opioid-related drug overdose. [2015, c. 351, §1 (AMD).]

A-1. A pharmacist may dispense naloxone hydrochloride in accordance with protocols established under Title 32, section 13815 to an individual at risk of experiencing an opioid-related drug overdose. [2015, c. 508, §2 (NEW).]

B. An individual to whom naloxone hydrochloride is prescribed or dispensed in accordance with paragraph A or A-1 may provide the naloxone hydrochloride so prescribed or dispensed to a member of that individual's immediate family to possess and administer to the individual if the family member believes in good faith that the individual is experiencing an opioid-related drug overdose. [2015, c. 508, §2 (AMD).]

C. A health care professional may directly or by standing order prescribe naloxone hydrochloride to a member of an individual's immediate family or a friend of the individual or to another person in a position to assist the individual if the individual is at risk of experiencing an opioid-related drug overdose. [2015, c. 351, §1 (AMD).]

C-1. A pharmacist may dispense naloxone hydrochloride in accordance with protocols established under Title 32, section 13815 to a member of an individual's immediate family or a friend of the individual or to another person in a position to assist the individual if the individual is at risk of experiencing an opioid-related drug overdose. [2015, c. 508, §2 (NEW).]

D. If a member of an individual's immediate family, friend of the individual or other person is prescribed or provided naloxone hydrochloride in accordance with paragraph C or C-1, that family member, friend or other person may administer the naloxone hydrochloride to the individual if the family member, friend or other person believes in good faith that the individual is experiencing an opioid-related drug overdose. [2015, c. 508, §2 (AMD).]

Nothing in this subsection affects the provisions of law relating to maintaining the confidentiality of medical records.

[2015, c. 508, §2 (AMD) .]

3. **Authorized administration of naloxone hydrochloride by law enforcement officers and municipal firefighters.** A law enforcement agency as defined in Title 25, section 3701, subsection 1 or a municipal fire department as defined in Title 30-A, section 3151, subsection 1 is authorized to obtain a supply of naloxone hydrochloride to be administered in accordance with this subsection. A law enforcement officer as defined in Title 17-A, section 2, subsection 17, in accordance with policies adopted by the law enforcement agency, and a municipal firefighter as defined in Title 30-A, section 3151, subsection 2, in accordance with policies adopted by the municipality, may administer intranasal naloxone hydrochloride as clinically indicated if the officer or firefighter has received medical training in accordance with protocols adopted by the Medical Direction and Practices Board established in Title 32, section 83, subsection 16-B. The Medical Direction and Practices Board shall establish medical training protocols for law enforcement officers and municipal firefighters pursuant to this subsection.

[2015, c. 508, §3 (AMD) .]

4. **Community-based drug overdose prevention programs; standing orders for naloxone hydrochloride.** Acting under standing orders from a licensed health care professional authorized by law to prescribe naloxone hydrochloride, a public health agency that provides services to populations at high risk for a drug overdose may establish an overdose prevention program in accordance with rules adopted by the department and the provisions of this subsection.

A. Notwithstanding any other provision of law, an overdose prevention program established under this subsection may store and dispense naloxone hydrochloride without being subject to the provisions of Title 32, chapter 117 as long as these activities are undertaken without charge or compensation. [2015, c. 351, §2 (NEW).]

B. An overdose prevention program established under this subsection may distribute unit-of-use packages of naloxone hydrochloride and the medical supplies necessary to administer the naloxone hydrochloride to a person who has successfully completed training provided by the overdose prevention program that meets the protocols and criteria established by the department, so that the person may possess and administer naloxone hydrochloride to an individual who appears to be experiencing an opioid-related drug overdose. [2015, c. 351, §2 (NEW).]

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

[2015, c. 1, §19 (COR) .]

5. **Immunity.** The following provisions provide immunity for actions taken in accordance with this section.

A. A health care professional or a pharmacist, acting in good faith and with reasonable care, is immune from criminal and civil liability and is not subject to professional disciplinary action for storing, dispensing or prescribing naloxone hydrochloride in accordance with this section or for any outcome resulting from such actions. [2015, c. 508, §4 (NEW).]

B. A person, acting in good faith and with reasonable care, is immune from criminal and civil liability and is not subject to professional disciplinary action for possessing or providing to another person naloxone hydrochloride in accordance with this section or for administering naloxone hydrochloride in accordance with this section to an individual whom the person believes in good faith is experiencing an opioid-related drug overdose or for any outcome resulting from such actions. [2015, c. 508, §4 (NEW).]

[2015, c. 508, §4 (NEW) .]

SECTION HISTORY
2013, c. 579, §1 (NEW). RR 2015, c. 1, §19 (COR). 2015, c. 351, §§1, 2 (AMD). 2015, c. 508, §§1-4 (AMD).

Chapter 557: NARCOTICS

§2361. DEFINITIONS

(REPEALED)

SECTION HISTORY
1969, c. 443, §§4,5 (AMD). 1971, c. 282, §§12,13 (AMD). 1973, c. 625, §117 (AMD). 1987, c. 710, §3 (RP).

§2362. USES OF NARCOTIC DRUGS

(REPEALED)

SECTION HISTORY
1971, c. 487, §4 (RPR). 1971, c. 621, §6 (AMD). 1975, c. 499, §37 (RP).

§2362-A. HYPODERMIC SYRINGES

(REPEALED)

SECTION HISTORY
1971, c. 296, (NEW). 1971, c. 544, §§77-A (AMD). 1975, c. 499, §38 (RP).

§2362-B. PRESCRIPTIONS

(REPEALED)

SECTION HISTORY
1971, c. 296, (NEW). 1975, c. 499, §39 (RP).

§2362-C. PENALTY

(REPEALED)

SECTION HISTORY
1971, c. 621, §7 (NEW). 1975, c. 499, §40 (RP).

§2362-D. HYPODERMIC SYRINGES; PRESCRIPTIONS

(REPEALED)

SECTION HISTORY
1975, c. 499, §41 (NEW). 1987, c. 710, §3 (RP).

§2363. PROFESSIONAL USE

(REPEALED)

SECTION HISTORY
1977, c. 457, §5 (AMD). 1987, c. 710, §3 (RP).

§2364. PREPARATIONS EXEMPTED

(REPEALED)

SECTION HISTORY
1967, c. 390, §7 (AMD). 1975, c. 499, §§42,43 (AMD). 1987, c. 710, §3 (RP).

§2365. AUTHORIZED POSSESSION BY INDIVIDUALS

(REPEALED)

SECTION HISTORY
1971, c. 282, §12 (AMD). 1987, c. 710, §3 (RP).

§2366. PERSONS AND CORPORATIONS EXEMPTED

(REPEALED)

SECTION HISTORY
1975, c. 499, §44 (RPR). 1987, c. 710, §3 (RP).

§2367. NARCOTIC DRUGS; CONTRABAND; PROCEDURE

(REPEALED)

SECTION HISTORY
1965, c. 431, §16 (RPR). 1987, c. 710, §3 (RP).

§2368. LICENSES FOR MANUFACTURERS AND WHOLESALERS

(REPEALED)

SECTION HISTORY
1975, c. 499, §45 (RPR). 1987, c. 710, §3 (RP).

§2368-A. HALLUCINATORY DRUGS

(REPEALED)

SECTION HISTORY
1967, c. 390, §8 (NEW). 1969, c. 443, §6 (AMD). 1971, c. 487, §5 (RP).

§2369. QUALIFICATIONS FOR LICENSE

(REPEALED)

SECTION HISTORY
1967, c. 390, §9 (AMD). 1971, c. 487, §6 (AMD). 1981, c. 470, §A91 (AMD). 1987, c. 710, §3 (RP).

§2370. SALE ON WRITTEN ORDERS; ORDERS; POSSESSION

(REPEALED)

SECTION HISTORY
1971, c. 282, §12 (AMD). 1975, c. 499, §46 (AMD). 1981, c. 470, §§A92,A93 (AMD). 1987, c. 710, §3 (RP).

§2371. SALES BY PHARMACISTS

(REPEALED)

SECTION HISTORY
1971, c. 282, §12 (AMD). 1987, c. 710, §3 (RP).

§2372. RECORDS KEPT

(REPEALED)

SECTION HISTORY
1967, c. 390, §§10,11 (AMD). 1971, c. 282, §12 (AMD). 1987, c. 710, §3 (RP).

§2373. LABELS

(REPEALED)

SECTION HISTORY
1971, c. 282, §12 (AMD). 1987, c. 710, §3 (RP).

§2374. RECORDS CONFIDENTIAL

(REPEALED)

SECTION HISTORY
1967, c. 390, §12 (AMD). 1979, c. 541, §A147 (AMD). 1987, c. 710, §3 (RP).

§2375. FRAUD OR DECEIT

(REPEALED)

SECTION HISTORY
1967, c. 390, §§13,14 (AMD). 1967, c. 494, §§16-B (AMD). 1971, c. 282, §12 (AMD). 1975, c. 499, §47 (RP).

§2376. FORFEITURE

(REPEALED)

SECTION HISTORY
1987, c. 710, §3 (RP).

§2377. NOTICE OF CONVICTION SENT TO LICENSING BOARD

(REPEALED)

SECTION HISTORY
1987, c. 710, §3 (RP).

§2378. APPLICABILITY OF FORMS USED IN LIQUOR CASES

(REPEALED)

SECTION HISTORY
1987, c. 710, §3 (RP).

§2379. ENFORCEMENT AND COOPERATION

(REPEALED)

SECTION HISTORY
1979, c. 541, §A148 (AMD). 1987, c. 710, §3 (RP).

§2380. VIOLATION OF PROVISIONS

(REPEALED)

SECTION HISTORY
1975, c. 499, §48 (RPR). 1983, c. 287, (AMD). 1987, c. 710, §3 (RP).

Chapter 558: MARIJUANA, SCHEDULED DRUGS, IMITATION SCHEDULED DRUGS AND HYPODERMIC APPARATUSES

§2381. TITLE

(REPEALED)

SECTION HISTORY
1969, c. 443, §7 (NEW). 1975, c. 499, §49 (RP).

§2382. DEFINITIONS

(REPEALED)

SECTION HISTORY
1969, c. 443, §7 (NEW). 1971, c. 472, §1 (AMD). 1971, c. 544, §§77-C (AMD). 1975, c. 499, §50 (RP).

§2383. POSSESSION

1. **Marijuana.** Except as provided in chapter 558-C, a person may not possess marijuana.

A. A person who possesses a usable amount of marijuana commits a civil violation for which a fine of not less than $350 and not more than $600 must be adjudged for possession of up to 1 1/4 ounces of marijuana and a fine of not less than $700 and not more than $1,000 must be adjudged for possession of over 1 1/4 ounces to 2 1/2 ounces of marijuana, none of which may be suspended. [2009, c. 652, Pt. B, §6 (RPR).]

B. [2009, c. 652, Pt. B, §6 (RP).]

[2009, c. 652, Pt. B, §6 (RPR) .]

2. **Butyl nitrite and isobutyl nitrite.** A person who possesses a usable amount of butyl nitrite or isobutyl nitrite commits a civil violation for which a fine of not more than $200 may be adjudged.

[2003, c. 452, Pt. K, §18 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY
1969, c. 443, §7 (NEW). 1969, c. 568, (AMD). 1971, c. 472, §2 (AMD). 1971, c. 622, §§75-A (AMD). 1973, c. 502, (AMD). 1973, c. 546, (AMD). 1975, c. 499, §51 (RPR). 1987, c. 747, §3 (RPR). 1989, c. 344, §3

(AMD). IB 1999, c. 1, §6 (AMD). 2003, c. 452, §K18 (AMD). 2003, c. 452, §X2 (AFF). 2005, c. 386, §DD3 (AMD). IB 2009, c. 1, §3 (AMD). 2009, c. 67, §3 (AMD). 2009, c. 652, Pt. B, §6 (AMD).

§2383-A. POSSESSION OF IMITATION SCHEDULED DRUGS

Possession of fewer than 100 tablets, capsules or other dosage units of imitation scheduled drugs, as defined in Title 17-A, section 1101, subsection 19, constitutes a civil violation for which a forfeiture of not more than $200 may be adjudged. In determining whether the substance is an imitation scheduled drug, the court shall apply Title 17-A, section 1116, subsection 5. An imitation scheduled drug is declared to be contraband and may be seized by the State. [1981, c. 603, §4 (NEW).]

SECTION HISTORY
1981, c. 603, §4 (NEW).

§2383-B. AUTHORIZED POSSESSION BY INDIVIDUALS

1. **Lawfully prescribed drugs.** A person to whom or for whose use any scheduled drug, prescription drug or controlled substance has been prescribed, sold or dispensed for a legitimate medical purpose by a physician, dentist, podiatrist, pharmacist or other person acting in the usual course of professional practice and authorized by law or rule to do so and the owner or the person having the custody or control of any animal for which any scheduled drug, prescription drug or controlled substance has been prescribed, sold or dispensed for a legitimate veterinary medical purpose by a licensed veterinarian acting in the usual course of professional veterinary practice may lawfully possess the drug or substance, except when in use, only in the container in which it was delivered by the person selling or dispensing the drug or substance. For purposes of this subsection, "when in use" includes reasonable repackaging for more convenient legitimate medical use.

[2005, c. 252, §2 (AMD) .]

2. **Others lawfully in possession.** Except as otherwise authorized or restricted, the following persons are authorized to possess, furnish and have control of scheduled or prescription drugs, controlled substances or hypodermic apparatuses:

A. Common carriers or warehouse operators while engaged in lawfully transporting or storing prescription drugs or hypodermic apparatuses or any of their employees acting within the scope of their employment; [1997, c. 340, §5 (AMD).]

B. Employees or agents of persons lawfully entitled to possession who have temporary, incidental possession while acting within the scope of their employment or agency; [1995, c. 499, §3 (AMD); 1995, c. 499, §5 (AFF).]

C. Persons whose possession is for the purpose of aiding public officers in performing their official duties while acting within the scope of their employment or duties; [1995, c. 499, §3 (AMD); 1995, c. 499, §5 (AFF).]

D. Law enforcement officers while acting within the scope of their employment and official duties; [1997, c. 340, §5 (AMD).]

E. Physicians, dentists, podiatrists, pharmacists or other persons authorized by law or rule to administer, dispense, prescribe or sell scheduled or prescription drugs, controlled substances or hypodermic apparatuses while acting within the course of their professional practice; [2013, c. 266, §9 (AMD).]

F. With regard to the possession or furnishing of hypodermic apparatuses, persons authorized by the Bureau of Health pursuant to a hypodermic apparatus exchange program, certified under chapter 252-A while acting within the scope of their employment under such programs; and [2013, c. 266, §9 (AMD).]

G. Persons conducting research at a school of pharmacology that is accredited or is a candidate for accreditation in good standing. [2013, c. 266, §10 (NEW).]

[2013, c. 266, §§9, 10 (AMD) .]

2-A. **Others so authorized.**

[2013, c. 194, §12 (RP) .]

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

A. "Controlled substances" has the same meaning as defined in 21 United States Code, Section 812 (1970) and 21 Code of Federal Regulations, Chapter II, Part 1308. [1995, c. 499, §3 (NEW); 1995, c. 499, §5 (AFF).]

A-1. [2011, c. 420, Pt. A, §13 (RP).]

A-2. [2011, c. 420, Pt. A, §14 (RP).]

B. "Law enforcement officer" has the same meaning as defined in Title 17-A, section 2, subsection 17. [1995, c. 499, §3 (NEW); 1995, c. 499, §5 (AFF).]

B-1. "Physician" means a person licensed as an osteopathic physician by the Board of Osteopathic Licensure pursuant to Title 32, chapter 36 or a person licensed as a physician or surgeon by the Board of Licensure in Medicine pursuant to Title 32, chapter 48. [1999, c. 1, §8 (NEW).]

C. "Prescription drugs" has the same meaning as defined in Title 32, section 13702-A, subsection 30 and includes so-called legend drugs. [2007, c. 695, Pt. B, §4 (AMD).]

D. "Scheduled drug" has the same meaning as defined in Title 17-A, chapter 45. [1995, c. 499, §3 (NEW); 1995, c. 499, §5 (AFF).]

D-1. [2013, c. 194, §13 (RP).]

E. [2011, c. 420, Pt. A, §15 (RP).]

[2013, c. 194, §13 (AMD) .]

4. **Specially restricted drugs and substances.**

[1995, c. 621, §3 (RP) .]

5. **Medical use of marijuana; exemptions.**

[2009, c. 1, §4 (RP) .]

6. **Lawful possession of hypodermic apparatuses by livestock owners; sale to livestock owners.** A person who owns livestock is authorized to possess and have control of hypodermic apparatuses for the purpose of administering antibiotics, vitamins and vaccines to treat medical conditions or promote the health of that person's livestock, and such possession and control are expressly authorized within the meaning of Title 17-A, section 1111, subsection 1, paragraph A. For the purposes of this subsection, "livestock" means cattle, equines, sheep, goats, swine, members of the genus Lama, poultry, rabbits and cervids as defined in Title 7, section 1333, subsection 1.

A. An agricultural supply store authorized to sell hypodermic apparatuses pursuant to Title 32, section 13787-A, subsection 1 may furnish or sell, without limit in number, hypodermic apparatuses to a person authorized to possess and have control of hypodermic apparatuses pursuant to this subsection, and such furnishing or sale is expressly authorized within the meaning of Title 17-A, section 1110, subsection 1-B. [2015, c. 27, §1 (NEW).]

[2015, c. 27, §1 (AMD) .]

SECTION HISTORY
1989, c. 384, §8 (NEW). 1995, c. 499, §3 (AMD). 1995, c. 499, §5 (AFF). 1995, c. 621, §3 (AMD). 1997, c. 340, §5 (AMD). IB 1999, c. 1, §§7-10 (AMD). 1999, c. 127, §A35 (AMD). 2001, c. 308, §2 (AMD). 2001, c. 580, §§1-3 (AMD). 2005, c. 252, §2 (AMD). 2007, c. 695, Pt. B, §4 (AMD). IB 2009, c. 1, §4 (AMD). RR 2009, c. 2, §53 (COR). 2009, c. 631, §6 (AMD). 2009, c. 631, §51 (AFF). 2011, c. 420, Pt. A, §§13-15 (AMD). 2011, c. 465, §§8, 9 (AMD). 2013, c. 194, §§12, 13 (AMD). 2013, c. 266, §§9, 10 (AMD). 2015, c. 27, §1 (AMD).

§2383-C. UNLAWFUL USE OR POSSESSION OF INHALANTS

1. **Prohibited acts.** A person may not intentionally or knowingly:

A. Inhale, ingest, apply or smell the gases, vapors or fumes of any gas, hazardous inhalant, substance containing a volatile chemical or substance containing a chemical material capable of releasing toxic vapors or fumes for the purpose of causing intoxication, euphoria, inebriation, excitement, stupefaction or the dulling of that person's brain or nervous system; or [1997, c. 325, §1 (NEW).]

B. Possess any gas, hazardous inhalant, substance containing a volatile chemical or substance containing a chemical material capable of releasing toxic vapors with the intent to violate paragraph A. [1997, c. 325, §1 (NEW).]

[1997, c. 325, §1 (NEW) .]

2. **Exclusions.** Nothing in this section applies to the inhalation of anesthesia for medical or dental purposes or the inhalation of the vapors or fumes of an alcoholic beverage, the sale and consumption of which is authorized by law.

[1997, c. 325, §1 (NEW) .]

3. **Presumption regarding violations.** Proof that a person intentionally or knowingly inhaled, ingested, applied or used a substance in a manner contrary to the directions for use, cautions or warnings on a label of a container of the substance gives rise to a presumption that the person violated subsection 1.

[1997, c. 325, §1 (NEW) .]

4. **Presumption regarding ingredients.** For the purposes of this section, it is presumed that the ingredients in a container are, in fact, the ingredients listed on a label of the container or the ingredients listed for that substance in databases maintained or relied upon by a poison control center certified by a national association of poison control centers.

[1997, c. 325, §1 (NEW) .]

5. **Penalties.** A person who violates this section commits a civil violation for which a forfeiture, which may not be suspended except as provided in subsection 6, must be adjudged as follows:

A. Not less than $100 or more than $300 for the first offense; [1997, c. 325, §1 (NEW).]

B. Not less than $200 or more than $500 for the 2nd offense; and [1997, c. 325, §1 (NEW).]

C. Five hundred dollars for the 3rd and each subsequent offense. [1997, c. 325, §1 (NEW).]

[1997, c. 325, §1 (NEW) .]

6. **Additional orders.** In addition to the civil forfeitures required by subsection 5, the judge may order the person to perform specified work for the benefit of the State, the municipality or other public entity or charitable institution or to undergo evaluation, education or treatment with a licensed social worker or a licensed substance abuse counselor. If the judge orders the person to perform specified work or to undergo evaluation, education or treatment, the judge may suspend a forfeiture imposed pursuant to subsection 5.

[1997, c. 325, §1 (NEW) .]

SECTION HISTORY
1997, c. 325, §1 (NEW).

§2384. SALE

(REPEALED)

SECTION HISTORY
1969, c. 443, §7 (NEW). 1971, c. 472, §3 (RPR). 1973, c. 510, (RPR). 1975, c. 499, §52 (RP).

§2385. PERSONS EXEMPTED

(REPEALED)

SECTION HISTORY
1969, c. 443, §7 (NEW). 1971, c. 472, §4 (AMD). 1975, c. 499, §53 (RP).

§2386. CANNABIS, MESCALINE AND PEYOTE; CONTRABAND

(REPEALED)

SECTION HISTORY
1969, c. 443, §7 (NEW). 1971, c. 472, §4 (AMD). 1975, c. 499, §53 (RP).

§2387. FORFEITURE OF ALL PROPERTY USED IN DELIVERING ILLEGAL DRUGS

(REPEALED)

SECTION HISTORY
1973, c. 501, (NEW). 1973, c. 524, (NEW). 1973, c. 567, §20 (AMD). 1973, c. 788, §87 (RP). 1975, c. 499, §§53-A,53-B (AMD). 1975, c. 740, §§126-130 (AMD). 1981, c. 46, §§1-6 (AMD). 1981, c. 470, §A94 (AMD). 1981, c. 529, §§3,4 (AMD). 1985, c. 481, §A51 (AMD). 1985, c. 737, §B19 (AMD). 1987, c. 420, §3 (RP).

§2388. COUNTERFEIT SUBSTANCES

(REPEALED)

SECTION HISTORY
1973, c. 788, §88 (NEW). 1975, c. 499, §54 (RP).

§2389. ILLEGAL TRANSPORTATION OF DRUGS BY MINOR

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

A. "Drug" means a schedule W, X, Y or Z drug as defined in Title 17-A, section 1102. [1997, c. 382, §1 (NEW).]

B. "Minor" means a person who has not attained 21 years of age. [1997, c. 382, §1 (NEW).]

[1997, c. 382, §1 (NEW) .]

2. **Minor may not transport drugs.** Unless possession of the drug is expressly authorized by this Title or Title 32, a minor may not:

A. Knowingly transport or knowingly permit to be transported a drug in a motor vehicle under the minor's control; [2003, c. 452, Pt. K, §19 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. Violate paragraph A after having previously violated this subsection; or [2003, c. 452, Pt. K, §19 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. Violate paragraph A after having previously violated this subsection 2 or more times. [2003, c. 452, Pt. K, §19 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. K, §19 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

3. **Violation.** A minor who violates this section commits a civil violation for which a forfeiture of not more than $500 may be adjudged. A forfeiture of not less than $200 must be adjudged for a 2nd offense and a forfeiture of not less than $400 must be adjudged for a 3rd or subsequent offense, none of which may be suspended.

[1997, c. 382, §1 (NEW) .]

4. **License suspension.** The court shall suspend the operator's license or right to operate or right to obtain a license of a minor found in violation of this section as follows:

A. Thirty days for the first offense; [1997, c. 382, §1 (NEW).]

B. Ninety days for the 2nd offense; and [1997, c. 382, §1 (NEW).]

C. One year for any subsequent offense. [1997, c. 382, §1 (NEW).]

The court shall immediately forward the license to the Secretary of State together with the record of adjudication. Immediately upon receipt of the record, the Secretary of State shall suspend the license or right to operate or right to obtain a license of the minor for the required period without further hearing. The Secretary of State shall also assign demerit points according to Title 29-A, section 2458, subsection 3.

[1997, c. 382, §1 (NEW) .]

5. **Execution of suspension stayed during appeal.** If any person adjudicated to be in violation of this section appeals from the judgment of the trial court, the execution of any suspension imposed on that person's license, right to obtain a license or right to operate a motor vehicle in the State must be stayed pending appeal and begins when and if the judgment is upheld or the appeal is withdrawn.

[1997, c. 382, §1 (NEW) .]

6. **Penalty.** If a minor is charged with a violation of this section, the minor may not be charged with a violation of section 2383 or Title 17-A, chapter 45.

[1997, c. 382, §1 (NEW) .]

SECTION HISTORY
1997, c. 382, §1 (NEW). 2003, c. 452, §K19 (AMD). 2003, c. 452, §X2 (AFF).

§2390. UNLAWFUL POSSESSION OF CERTAIN SYNTHETIC HALLUCINOGENIC DRUGS

(REPEALED)

SECTION HISTORY
2011, c. 447, §1 (NEW). 2011, c. 465, §10 (RP).

§2391. UNLAWFUL TRAFFICKING IN CERTAIN SYNTHETIC HALLUCINOGENIC DRUGS

(REPEALED)

SECTION HISTORY
2011, c. 447, §1 (NEW). 2011, c. 465, §10 (RP).

§2392. AGGRAVATED TRAFFICKING IN CERTAIN SYNTHETIC HALLUCINOGENIC DRUGS

(REPEALED)

SECTION HISTORY
2011, c. 447, §1 (NEW). 2011, c. 465, §10 (RP).

§2393. UNLAWFULLY FURNISHING CERTAIN SYNTHETIC HALLUCINOGENIC DRUGS

(REPEALED)

SECTION HISTORY
2011, c. 447, §1 (NEW). 2011, c. 465, §10 (RP).

§2394. AGGRAVATED FURNISHING OF CERTAIN SYNTHETIC HALLUCINOGENIC DRUGS

(REPEALED)

SECTION HISTORY
2011, c. 447, §1 (NEW). 2011, c. 465, §10 (RP).

Chapter 558-A: MARIJUANA THERAPEUTIC RESEARCH PROGRAM

§2401. SHORT TITLE

(REPEALED)

SECTION HISTORY
1979, c. 457, (NEW). MRSA T. 22, §2410 (RP).

§2402. FINDINGS AND PURPOSE

(REPEALED)

SECTION HISTORY
1979, c. 457, (NEW). MRSA T. 22, §2410 (RP).

§2403. DEFINITIONS

(REPEALED)

SECTION HISTORY
1979, c. 457, (NEW). MRSA T. 22, §2410 (RP).

§2404. MARIJUANA THERAPEUTIC RESEARCH PROGRAM

(REPEALED)

SECTION HISTORY
1979, c. 457, (NEW). MRSA T. 22, §2410 (RP).

§2405. PARTICIPATION REVIEW BOARD

(REPEALED)

SECTION HISTORY
1979, c. 457, (NEW). MRSA T. 22, §2410 (RP).

§2406. PARTICIPATION IN THE PROGRAM

(REPEALED)

SECTION HISTORY
1979, c. 457, (NEW). MRSA T. 22, §2410 (RP).

§2407. EXPRESSLY AUTHORIZED POSSESSION, PRESCRIPTION AND DISTRIBUTION

(REPEALED)

SECTION HISTORY
1979, c. 457, (NEW). MRSA T. 22, §2410 (RP).

§2408. CONFIDENTIALITY

(REPEALED)

SECTION HISTORY
1979, c. 457, (NEW). MRSA T. 22, §2410 (RP).

§2409. REPORTS

(REPEALED)

SECTION HISTORY
1979, c. 457, (NEW). MRSA T. 22, §2410 (RP).

§2410. TWO-YEAR SUNSET

(REPEALED)

SECTION HISTORY
1979, c. 457, (NEW). MRSA T. 22, §2410 (RP).

Chapter 558-B: MARIJUANA THERAPEUTIC RESEARCH PROGRAM

§2411. SHORT TITLE

(REPEALED)

SECTION HISTORY
1983, c. 423, (NEW). MRSA T. 22, §2420 (RP).

§2412. FINDINGS AND PURPOSE

(REPEALED)

SECTION HISTORY
1983, c. 423, (NEW). MRSA T. 22, §2420 (RP).

§2413. DEFINITIONS

(REPEALED)

SECTION HISTORY
1983, c. 423, (NEW). MRSA T. 22, §2420 (RP).

§2414. MARIJUANA THERAPEUTIC RESEARCH PROGRAM

(REPEALED)

SECTION HISTORY
1983, c. 423, (NEW). MRSA T. 22, §2420 (RP).

§2415. PARTICIPATION REVIEW BOARD

(REPEALED)

SECTION HISTORY
1983, c. 423, (NEW). 1985, c. 295, §34 (AMD). MRSA T. 22, §2420 (RP).

§2416. PARTICIPATION IN THE PROGRAM

(REPEALED)

SECTION HISTORY
1983, c. 423, (NEW). MRSA T. 22, §2420 (RP).

§2417. EXPRESSLY AUTHORIZED POSSESSION, PRESCRIPTION AND DISTRIBUTION

(REPEALED)

SECTION HISTORY
1983, c. 423, (NEW). MRSA T. 22, §2420 (RP).

§2418. CONFIDENTIALITY

(REPEALED)

SECTION HISTORY
1983, c. 423, (NEW). MRSA T. 22, §2420 (RP).

§2419. REPORTS

(REPEALED)

SECTION HISTORY
1983, c. 423, (NEW). MRSA T. 22, §2420 (RP).

§2420. SUNSET

(REPEALED)

SECTION HISTORY
1983, c. 423, (NEW). MRSA T. 22, §2420 (RP).

Chapter 558-C: MAINE MEDICAL USE OF MARIJUANA ACT

§2421. SHORT TITLE

This chapter may be known and cited as "the Maine Medical Use of Marijuana Act." [2009, c. 631, §7 (AMD); 2009, c. 631, §51 (AFF).]

SECTION HISTORY
IB 2009, c. 1, §5 (NEW). 2009, c. 631, §7 (AMD). 2009, c. 631, §51 (AFF).

§2422. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2009, c. 1, §5 (NEW).]

1. **Cardholder.** "Cardholder" means a qualifying patient, a registered primary caregiver, an employee of a registered primary caregiver or a principal officer, board member or employee of a registered dispensary or a marijuana testing facility who has been issued and possesses a valid registry identification card.

[2015, c. 475, §1 (AMD) .]

1-A. **Collective.** "Collective" means an association, cooperative, affiliation or group of primary caregivers who physically assist each other in the act of cultivation, processing or distribution of marijuana for medical use for the benefit of the members of the collective.

[2011, c. 407, Pt. B, §1 (NEW) .]

1-B. **Certified nurse practitioner.** "Certified nurse practitioner" means a registered professional nurse licensed under Title 32, chapter 31 who has received postgraduate education designed to prepare the nurse for advanced practice registered nursing in a clinical specialty in nursing that has a defined scope of practice and who has been certified in the clinical specialty by a national certifying organization acceptable to the State Board of Nursing.

[2013, c. 516, §1 (NEW) .]

2. **Debilitating medical condition.** "Debilitating medical condition" means:

A. Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, agitation of Alzheimer's disease, nail-patella syndrome or the treatment of these conditions; [2013, c. 361, §1 (AMD).]

B. A chronic or debilitating disease or medical condition or its treatment that produces intractable pain, which is pain that has not responded to ordinary medical or surgical measures for more than 6 months; [2009, c. 1, §5 (NEW).]

C. A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe nausea; or seizures, including but not limited to those characteristic of epilepsy; [2013, c. 361, §1 (AMD).]

D. Any other medical condition or its treatment as provided for in section 2424, subsection 2; or [2013, c. 361, §1 (AMD).]

E. Post-traumatic stress disorder, inflammatory bowel disease, dyskinetic and spastic movement disorders and other diseases causing severe and persistent muscle spasms. [2013, c. 361, §1 (NEW).]

[2013, c. 361, §1 (AMD) .]

3. **Enclosed, locked facility.** "Enclosed, locked facility" means a closet, room, building, greenhouse or other enclosed area that is equipped with locks or other security devices that permit access only by the individual authorized to cultivate the marijuana.

[2011, c. 407, Pt. B, §3 (AMD) .]

3-A. **Extended inventory supply interruption.** "Extended inventory supply interruption" means any circumstance that:

A. Requires a registered dispensary to limit for more than a 2-week period the amount that a patient may purchase to less than 2 1/2 ounces during a 15-day period; or [2013, c. 503, §1 (NEW).]

B. Prevents a registered dispensary from consistently offering for a 2-week period or longer a full range of strains of marijuana, including but not limited to strains rich in cannabidiol, to a patient. [2013, c. 503, §1 (NEW).]

[2013, c. 503, §1 (NEW) .]

4. **Disqualifying drug offense.** "Disqualifying drug offense" means a conviction for a violation of a state or federal controlled substance law that is a crime punishable by imprisonment for one year or more. It does not include:

A. An offense for which the sentence, including any term of probation, incarceration or supervised release, was completed 10 or more years earlier; or [2009, c. 1, §5 (NEW).]

B. An offense that consisted of conduct that would have been permitted under this chapter. [2009, c. 1, §5 (NEW).]

[2009, c. 631, §10 (AMD); 2009, c. 631, §51 (AFF) .]

4-A. **Incidental amount of marijuana.** "Incidental amount of marijuana" means an amount of nonflowering marijuana plants; marijuana seeds, stalks and roots; and harvested, dried unprepared marijuana defined by rules adopted by the department.

[2015, c. 475, §2 (AMD) .]

4-B. **Mature marijuana plant.** "Mature marijuana plant" means a harvestable female marijuana plant that is flowering.

[2011, c. 407, Pt. B, §4 (NEW) .]

4-C. **Medical provider.** "Medical provider" means a physician or a certified nurse practitioner.

[2013, c. 516, §2 (NEW) .]

5. **Medical use.** "Medical use" means the acquisition, possession, cultivation, manufacture, use, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a qualifying patient's debilitating medical condition or symptoms associated with the patient’s debilitating medical condition.

[2011, c. 407, Pt. B, §5 (AMD) .]

5-A. **Member of the family.** "Member of the family" means a person who is a spouse, domestic partner, child, sibling, aunt, uncle, niece, nephew, parent, stepparent, grandparent or grandchild of another person. "Member of the family" includes a person living with a person as a spouse and a natural parent of a child of a person.

[2011, c. 407, Pt. B, §6 (NEW) .]

5-B. **Members of the same household.** "Members of the same household" means 2 or more people who share a dwelling unit.

[2011, c. 407, Pt. B, §6 (NEW) .]

5-C. **Marijuana testing facility.** "Marijuana testing facility" means a public or private laboratory that:

A. Is licensed, certified or otherwise approved by the department in accordance with rules adopted by the department under section 2423-A, subsection 10, paragraph D to analyze contaminants in and the potency and cannabinoid profile of samples; and [2015, c. 475, §3 (NEW).]

B. Is accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization by a 3rd-party accrediting body or is certified, registered or accredited by an organization approved by the department. [2015, c. 475, §3 (NEW).]

[2015, c. 475, §3 (NEW) .]

6. **Registered dispensary.** "Registered dispensary" or "dispensary" means a not-for-profit entity registered under section 2428 that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana or related supplies and educational materials to qualifying patients and the primary caregivers of those patients.

[2011, c. 407, Pt. B, §7 (AMD) .]

6-A. **Onsite assessment.**

[2011, c. 407, Pt. B, §8 (RP) .]

7. **Physician.** "Physician" means a person licensed as an osteopathic physician by the Board of Osteopathic Licensure pursuant to Title 32, chapter 36 or a person licensed as a physician or surgeon by the Board of Licensure in Medicine pursuant to Title 32, chapter 48 who is in good standing and who holds a valid federal Drug Enforcement Administration license to prescribe drugs.

[2009, c. 631, §14 (AMD); 2009, c. 631, §51 (AFF) .]

8. **Primary caregiver.**

[2009, c. 631, §51 (AFF); 2009, c. 631, §15 (RP) .]

8-A. **Primary caregiver.** "Primary caregiver" means a person or an employee of that person, a hospice provider licensed under chapter 1681 or a nursing facility licensed under chapter 405 that provides care for a qualifying patient in accordance with section 2423-A, subsection 2. A person who is a primary caregiver must be at least 21 years of age and may not have been convicted of a disqualifying drug offense.

[2013, c. 396, §1 (AMD) .]

9. **Qualifying patient.** "Qualifying patient" or "patient" means a person who has been diagnosed by a medical provider as having a debilitating medical condition and who possesses a valid written certification regarding medical use of marijuana in accordance with section 2423-B.

[2013, c. 516, §3 (AMD) .]

10. **Registered nonprofit dispensary.** "Registered nonprofit dispensary" means a nonprofit dispensary that is registered by the department pursuant to section 2428, subsection 2, paragraph A.

[2009, c. 1, §5 (NEW) .]

11. **Registered primary caregiver.** "Registered primary caregiver" means a primary caregiver who is registered by the department pursuant to section 2425, subsection 4.

[2011, c. 407, Pt. B, §11 (AMD) .]

12. **Registered patient.** "Registered patient" means a qualifying patient who is registered by the department pursuant to section 2425, subsection 1.

[2011, c. 407, Pt. B, §12 (AMD) .]

13. **Registry identification card.** "Registry identification card" means a document issued by the department that identifies a person as a registered primary caregiver, an employee of a registered primary caregiver or a principal officer, board member or employee of a dispensary or a marijuana testing facility.

[2015, c. 475, §4 (AMD) .]

13-A. **Tamper-resistant paper.** "Tamper-resistant paper" means paper that possesses an industry-recognized feature that prevents copying of the paper, erasure or modification of information on the paper and the use of counterfeit documentation.

[2011, c. 407, Pt. B, §13 (NEW) .]

14. **Prepared marijuana.** "Prepared marijuana" means the dried leaves and flowers and the by-products of the dried leaves and flowers of the marijuana plant that require no further processing and any mixture or preparation of those dried leaves and flowers and by-products, including but not limited to tinctures, ointments and other preparations, but does not include the seeds, stalks, leaves that are disposed of and not

dried for use and roots of the plant and does not include the ingredients, other than marijuana, in tinctures, ointments or other preparations that include marijuana as an ingredient or food or drink prepared with marijuana as an ingredient for human consumption.

[2013, c. 516, §4 (AMD) .]

14-A. **Sample.** "Sample" means any marijuana or product containing marijuana regulated under this chapter that is provided for testing or research purposes to a marijuana testing facility by a qualifying patient, designated primary caregiver or dispensary.

[2015, c. 475, §5 (NEW) .]

15. **Visiting qualifying patient.** "Visiting qualifying patient" means a patient with a debilitating medical condition who is not a resident of this State or who has been a resident of this State less than 30 days.

[2009, c. 1, §5 (NEW) .]

16. **Written certification.** "Written certification" means a document on tamper-resistant paper signed by a medical provider, that expires within one year and that states that in the medical provider's professional opinion a patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition. A written certification may be made only in the course of a bona fide medical provider-patient relationship after the medical provider has completed a full assessment of the qualifying patient's medical history.

[2013, c. 516, §5 (AMD) .]

SECTION HISTORY
IB 2009, c. 1, §5 (NEW). 2009, c. 631, §§8-19 (AMD). 2009, c. 631, §51 (AFF). 2011, c. 407, Pt. B, §§1-15 (AMD). 2013, c. 361, §1 (AMD). 2013, c. 396, §1 (AMD). 2013, c. 503, §1 (AMD). 2013, c. 516, §§1-5 (AMD). 2015, c. 475, §§1-5 (AMD).

§2423. PROTECTIONS FOR THE MEDICAL USE OF MARIJUANA

(REPEALED)

SECTION HISTORY
IB 2009, c. 1, §5 (NEW). 2009, c. 631, §51 (AFF). 2009, c. 631, §20 (RP).

§2423-A. AUTHORIZED CONDUCT FOR THE MEDICAL USE OF MARIJUANA

1. **Qualifying patient.** Except as provided in section 2426, a qualifying patient may:

A. Possess up to 2 1/2 ounces of prepared marijuana and an incidental amount of marijuana as provided in subsection 5; [2009, c. 631, §21 (NEW); 2009, c. 631, §51 (AFF).]

B. Cultivate, or designate a primary caregiver to cultivate under paragraph F, up to a total of 6 mature marijuana plants for that qualifying patient. The total number of mature marijuana plants per qualifying patient, whether cultivated by the patient or by a primary caregiver, may not exceed 6. In addition to the 6 mature marijuana plants, the patient who is cultivating the patient's own marijuana may have harvested marijuana in varying stages of processing in order to ensure the patient is able to maintain supply and meet personal needs. Two or more qualifying patients who are members of the same household and cultivating their own marijuana may share one enclosed, locked facility for cultivation; [2011, c. 407, Pt. B, §16 (AMD).]

C. Possess marijuana paraphernalia; [2009, c. 631, §21 (NEW); 2009, c. 631, §51 (AFF).]

D. Furnish or offer to furnish to another qualifying patient for that patient's medical use of marijuana up to 2 1/2 ounces of prepared marijuana if nothing of value is offered or transferred in return; [2011, c. 407, Pt. B, §16 (AMD).]

E. Designate one person, hospice provider or nursing facility as a primary caregiver to assist with the qualifying patient's medical use of marijuana in a standardized written document, developed by the department, signed and dated by the qualifying patient, including a one-year expiration and the signed acknowledgment of the primary caregiver that the primary caregiver may be contacted to confirm the designation of the primary caregiver. A 2nd person or hospice provider or nursing facility may be designated as a 2nd primary caregiver if the patient is under 18 years of age. The primary caregivers for a patient are determined solely by the patient's preference except that a parent, guardian or person having legal custody shall serve as a primary caregiver for a minor child ; [2011, c. 407, Pt. B, §16 (AMD).]

F. Designate one primary caregiver or a registered dispensary to cultivate marijuana for the medical use of the patient, except that a hospice provider or a nursing facility that is designated as a primary caregiver by a patient and the staff of the provider or facility may not be designated to cultivate marijuana for the patient. The qualifying patient must designate the primary caregiver or registered dispensary to cultivate for the patient in a standardized written document, developed by the department, signed and dated by the qualifying patient, which must include a one-year expiration, the total number of mature plants the primary caregiver is designated to cultivate and the signed acknowledgment of the primary caregiver that the primary caregiver may be contacted to confirm the designation of the primary caregiver to cultivate for the patient and the number of mature plants to be cultivated and being cultivated for the patient or the signed acknowledgment of a person on behalf of the registered dispensary that the registered dispensary may be contacted to confirm the designation of the dispensary to cultivate for the patient and the number of mature plants to be cultivated and being cultivated for the patient; [2013, c. 396, §2 (AMD).]

G. Be in the presence or vicinity of the medical use of marijuana and assist any qualifying patient with using or administering marijuana; [2015, c. 475, §6 (AMD).]

H. Accept excess prepared marijuana from a primary caregiver in accordance with subsection 2, paragraph H if nothing of value is provided to the primary caregiver; and [2015, c. 475, §7 (AMD).]

I. Provide samples to a marijuana testing facility for testing and research purposes. [2015, c. 475, §8 (NEW).]

[2015, c. 475, §§6-8 (AMD) .]

2. **Primary caregiver.** Except as provided in section 2426, a primary caregiver, for the purpose of assisting a qualifying patient who has designated the primary caregiver as provided in subsection 1, may:

A. Possess up to 2 1/2 ounces of prepared marijuana and an incidental amount of marijuana as provided in subsection 5 for each qualifying patient who has designated the person as a primary caregiver; [2011, c. 407, Pt. B, §16 (AMD).]

B. Cultivate up to 6 mature marijuana plants for each qualifying patient who has designated the primary caregiver to cultivate marijuana on the patient's behalf, subject to the limitation in subsection 1, paragraph B on the total number of plants authorized per qualifying patient. A primary caregiver may not cultivate marijuana for a patient unless the patient has designated the primary caregiver for that purpose and the patient has not designated a registered dispensary to cultivate marijuana for the patient's medical use. In addition to the marijuana plants otherwise authorized under this paragraph, a primary caregiver may have harvested marijuana plants in varying stages of processing in order to ensure the primary caregiver is able to meet the needs of the primary caregiver's qualifying patients; [2011, c. 407, Pt. B, §16 (AMD).]

C. Assist a maximum of 5 patients who have designated the primary caregiver to cultivate marijuana for their medical use; [2013, c. 516, §6 (AMD).]

D. Receive reasonable monetary compensation for costs associated with assisting a qualifying patient who designated the primary caregiver; [2011, c. 407, Pt. B, §16 (AMD).]

E. Receive reasonable monetary compensation for costs associated with cultivating marijuana for a patient who designated the primary caregiver to cultivate marijuana; [2011, c. 407, Pt. B, §16 (AMD).]

F. Be in the presence or vicinity of the medical use of marijuana and assist any patient with the medical use, administration or preparation of marijuana; [2011, c. 407, Pt. B, §16 (AMD).]

G. Prepare food as defined in section 2152, subsection 4 containing marijuana, including tinctures of marijuana, for medical use by a qualifying patient pursuant to section 2152, subsection 4-A and section 2167; [2013, c. 516, §7 (AMD).]

H. For the purpose of disposing of excess prepared marijuana, transfer prepared marijuana to a registered dispensary, a qualifying patient or another primary caregiver if nothing of value is provided to the primary caregiver. A primary caregiver who transfers prepared marijuana pursuant to this paragraph does not by virtue of only that transfer qualify as a member of a collective; [2013, c. 588, Pt. A, §25 (RPR).]

I. Employ one person to assist in performing the duties of the primary caregiver; [2013, c. 588, Pt. A, §26 (AMD).]

(Paragraph I as enacted by PL 2013, c. 371, §3 is REALLOCATED TO TITLE 22, SECTION 2423-A, SUBSECTION 2, PARAGRAPH J) (Paragraph I as enacted by PL 2013, c. 393, §3 is REALLOCATED TO TITLE 22, SECTION 2423-A, SUBSECTION 2, PARAGRAPH K)

J. (REALLOCATED FROM T. 22, §2423-A, sub-§2, ¶I) Use a pesticide in the cultivation of marijuana if the pesticide is used consistent with federal labeling requirements, is registered with the Department of Agriculture, Conservation and Forestry, Board of Pesticides Control pursuant to Title 7, section 607 and is used consistent with best management practices for pest management approved by the Commissioner of Agriculture, Conservation and Forestry. A registered primary caregiver may not in the cultivation of marijuana use a pesticide unless the registered primary caregiver or the registered primary caregiver's employee is certified in the application of the pesticide pursuant to section 1471-D and any employee who has direct contact with treated plants has completed safety training pursuant to 40 Code of Federal Regulations, Section 170.130. An employee of the registered primary caregiver who is not certified pursuant to section 1471-D and who is involved in the application of the pesticide or handling of the pesticide or equipment must first complete safety training described in 40 Code of Federal Regulations, Section 170.230; [2015, c. 475, §9 (AMD).]

K. (REALLOCATED FROM T. 22, §2423-A, sub-§2, ¶I) For the purpose of disposing of excess prepared marijuana, transfer prepared marijuana to a registered dispensary for reasonable compensation. The transfer of prepared marijuana by a primary caregiver to one or more dispensaries under this paragraph is limited to a registered primary caregiver. A registered primary caregiver may not transfer more than 2 pounds of excess prepared marijuana for reasonable compensation under this paragraph in a calendar year. A primary caregiver who transfers prepared marijuana pursuant to this paragraph does not by virtue of only that transfer qualify as a member of a collective; [2015, c. 475, §10 (AMD).]

L. If the primary caregiver is a registered primary caregiver, provide samples to a marijuana testing facility for testing and research purposes; and [2015, c. 475, §11 (NEW).]

M. If the primary caregiver is a registered primary caregiver, conduct marijuana testing at the request of anyone authorized to possess marijuana under this chapter for research and development purposes only. [2015, c. 475, §11 (NEW).]

[2015, c. 475, §§9-11 (AMD) .]

3. **Cultivation of marijuana.** The following provisions apply to the cultivation of marijuana by a qualifying patient under subsection 1 and a primary caregiver under subsection 2.

A. A patient who elects to cultivate marijuana plants must keep the plants in an enclosed, locked facility unless the plants are being transported because the patient is moving or taking the plants to the patient's own property in order to cultivate them. Access to the cultivation facility is limited to the patient, except that emergency services personnel, an employee of a marijuana testing facility or a person who needs to gain access to the cultivation facility in order to perform repairs or maintenance or to do construction may access the cultivation facility to provide those professional services while under the direct supervision of the patient. [2015, c. 475, §12 (AMD).]

B. A primary caregiver who has been designated by a patient to cultivate marijuana for the patient's medical use must keep all plants in an enclosed, locked facility unless the plants are being transported because the primary caregiver is moving or taking the plants to the primary caregiver's own property in order to cultivate them. The primary caregiver shall use a numerical identification system to enable the primary caregiver to identify marijuana plants cultivated for a patient. Access to the cultivation facility is limited to the primary caregiver, except that an elected official invited by the primary caregiver for the purpose of providing education to the elected official on cultivation by the primary caregiver, emergency services personnel, an employee of a marijuana testing facility or a person who needs to gain access to the cultivation facility in order to perform repairs or maintenance or to do construction may access the cultivation facility to provide those professional services while under the direct supervision of the primary caregiver. [2015, c. 475, §13 (AMD).]

C. A primary caregiver designated to cultivate marijuana for a qualifying patient is required to register with the department, except that the following primary caregivers are not required to register:

(1) A primary caregiver designated to cultivate for a qualifying patient if that qualifying patient is a member of the household of that primary caregiver;

(2) Two primary caregivers who are qualifying patients, if those primary caregivers are members of the same household and assist one another with cultivation; and

(3) A primary caregiver who cultivates for a qualifying patient if that qualifying patient is a member of the family of that primary caregiver. [2011, c. 407, Pt. B, §16 (NEW).]

D. Two primary caregivers who are members of the same family or household may share the same enclosed, locked facility. [2011, c. 407, Pt. B, §16 (NEW).]

E. A person who is authorized to cultivate marijuana under subsection 1 or 2 and who is employed by a primary caregiver pursuant to subsection 2, paragraph I may not cultivate that person's own marijuana in the location used for cultivation by the primary caregiver who employs that person. [2013, c. 396, §8 (NEW).]

[2015, c. 475, §§12, 13 (AMD) .]

4. **Hospice provider or nursing facility.** A registered patient may name a hospice provider licensed under chapter 1681 or a nursing facility licensed under chapter 405 to serve as a registered primary caregiver. If a hospice provider or nursing facility is named as a primary caregiver, the provider or facility shall complete the registration process with the department and obtain a primary caregiver registration card and the staff of the provider or facility shall obtain registry identification cards. To be issued a registry identification card, a staff person of a hospice provider or nursing facility that has been named as a primary caregiver must be at least 21 years of age and may not have been convicted of a disqualifying drug offense. The hospice provider or nursing facility and the staff of the provider or facility may not cultivate marijuana for the patient.

[2009, c. 631, §21 (NEW); 2009, c. 631, §51 (AFF) .]

4-A. **Use and storage in inpatient hospice facility or nursing facility permitted.** A qualifying patient who is a resident of a hospice provider facility licensed under chapter 1681 or nursing facility licensed under chapter 405, while in the hospice provider facility or nursing facility, may use forms of prepared marijuana

that are not smoked, including, but not limited to, vaporized marijuana, edible marijuana and tinctures and salves of marijuana. A qualifying patient who uses a form of prepared marijuana pursuant to this subsection may store the prepared marijuana in the qualifying patient's room and is not required to obtain a registry identification card or to designate the hospice provider or nursing facility as a primary caregiver under subsection 4. A hospice provider or nursing facility is not required to be named as a primary caregiver by a qualifying patient who uses prepared marijuana pursuant to this subsection. This subsection does not limit the ability of a hospice provider or nursing facility to prohibit or restrict the use or storage of prepared marijuana by a qualifying patient.

[2013, c. 520, §1 (NEW) .]

5. **Incidental amount of marijuana.** For purposes of this section, any incidental amount of marijuana is lawful for a qualifying patient or a primary caregiver to possess and is not included in the amounts of prepared marijuana specified in this section.

[2011, c. 407, Pt. B, §16 (AMD) .]

6. **Onsite assessments by the department.**

[2011, c. 407, Pt. B, §16 (RP) .]

7. **Excess marijuana; forfeiture.** A person who possesses marijuana seedlings, marijuana plants or prepared marijuana in excess of the limits provided in this section and rules adopted under this section must forfeit the excess amounts to a law enforcement officer. The law enforcement officer is authorized to remove all excess marijuana seedlings, marijuana plants and prepared marijuana in order to catalog the amount of excess marijuana. Possession of marijuana in excess of the limits provided in this section and rules adopted under this section is a violation as follows:

A. Possession of marijuana in an excess amount up to 2 1/2 ounces is a violation of section 2383; and [2011, c. 383, §1 (NEW).]

B. Possession of marijuana in an excess amount over 2 1/2 ounces is a violation of Title 17-A, chapter 45. [2011, c. 383, §1 (NEW).]

(Subsection 7 as enacted by PL 2011, c. 407, Pt. B, §16 is REALLOCATED TO TITLE 22, SECTION 2423-A, SUBSECTION 9)

[2011, c. 383, §1 (NEW) .]

8. **Repeat forfeiture.** If a cardholder has previously forfeited excess marijuana pursuant to subsection 7 and a subsequent forfeiture occurs, the department shall revoke the registry identification card of the cardholder and the entire amount of marijuana seedlings, marijuana plants and prepared marijuana must be forfeited to a law enforcement officer. The department shall adopt rules to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2011, c. 383, §1 (NEW) .]

9. (REALLOCATED FROM T. 22, §2423-A, sub-§7) **Collectives prohibited.** Collectives are prohibited under this chapter. A person may not form or participate in a collective.

[2011, c. 1, §31 (RAL) .]

10. **Marijuana testing facility.** The following provisions apply to a marijuana testing facility.

A. A marijuana testing facility may receive and possess samples from qualifying patients, designated primary caregivers and dispensaries to provide testing for the cannabinoid profile and potency of the samples and for contaminants in the samples, including but not limited to mold, mildew, heavy metals, plant regulators and illegal pesticides. For the purposes of this paragraph, "plant regulator" has the same meaning as in Title 7, section 604, subsection 26. [2015, c. 475, §14 (NEW).]

B. An employee of a marijuana testing facility may have access to cultivation facilities pursuant to subsection 3, paragraphs A and B and section 2428, subsection 6, paragraph I. [2015, c. 475, §14 (NEW).]

C. A marijuana testing facility shall:

(1) Properly dispose of marijuana residue in compliance with department rules;

(2) House and store marijuana in the facility's possession or control during the process of testing, transport or analysis in a manner to prevent diversion, theft or loss;

(3) Label marijuana being transported to and from the facility with the following statement: "For Testing Purposes Only";

(4) Maintain testing results as part of the facility's business books and records; and

(5) Operate in accordance with rules adopted by the department. [2015, c. 475, §14 (NEW).]

D. The department shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A governing marijuana testing facilities, including but not limited to:

(1) Marijuana testing facility director qualification requirements;

(2) Required security for marijuana testing facilities; and

(3) Requirements for the licensing, certifying or other approval of marijuana testing facilities. [2015, c. 475, §14 (NEW).]

[2015, c. 475, §14 (NEW) .]

11. **Immunity.** The immunity provisions in this subsection apply to a marijuana testing facility's principal officers, board members, agents and employees. Any immunity provision in this chapter in conflict with this subsection does not apply to a marijuana testing facility.

A. A marijuana testing facility is not subject to prosecution, search, seizure or penalty in any manner, including but not limited to a civil penalty or disciplinary action by a business or an occupational or professional licensing board or entity, and may not be denied any right or privilege solely for acting in accordance with this chapter. [2015, c. 475, §14 (NEW).]

B. A principal officer, board member, agent or employee of a marijuana testing facility is not subject to arrest, prosecution, search, seizure or penalty in any manner, including but not limited to a civil penalty or disciplinary action by a business or an occupational or professional licensing board or entity, and may not be denied any right or privilege solely for working for or with a marijuana testing facility to test marijuana provided by a qualifying patient, registered primary caregiver or dispensary. [2015, c. 475, §14 (NEW).]

[2015, c. 475, §14 (NEW) .]

12. **Interest.** A principal officer, board member or employee of a registered dispensary or primary caregiver may not have a financial or other interest in a marijuana testing facility providing services associated with product labeling for that dispensary or primary caregiver.

[2015, c. 475, §14 (NEW) .]

SECTION HISTORY

2009, c. 631, §21 (NEW). 2009, c. 631, §51 (AFF). RR 2011, c. 1, §31 (COR). 2011, c. 383, §1 (AMD). 2011, c. 407, Pt. B, §16 (AMD). RR 2013, c. 1, §§39, 40 (COR). 2013, c. 371, §§1-3 (AMD). 2013, c. 374, §1 (AMD). 2013, c. 393, §§1-3 (AMD). 2013, c. 396, §§2-8 (AMD). 2013, c. 424, Pt. G, §1 (AMD). 2013, c. 424, Pt. G, §2 (AFF). 2013, c. 498, §1 (AMD). 2013, c. 501, §1 (AMD). 2013, c. 516, §§6, 7 (AMD). 2013, c. 520, §1 (AMD). 2013, c. 588, Pt. A, §§25, 26 (AMD). 2013, c. 588, Pt. D, §3 (AMD). 2015, c. 475, §§6-14 (AMD).

§2423-B. AUTHORIZED CONDUCT BY A MEDICAL PROVIDER

A medical provider may provide a written certification for the medical use of marijuana under this chapter and, after having done so, may otherwise state that in the medical provider's professional opinion a qualifying patient is likely to receive therapeutic benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition. [2013, c. 516, §8 (AMD).]

1. **Adult qualifying patient.** Prior to providing written certification for the medical use of marijuana under this section, a medical provider shall inform an adult qualifying patient of the risks and benefits of the medical use of marijuana and that the patient may benefit from the medical use of marijuana.

[2013, c. 516, §8 (AMD) .]

2. **Minor qualifying patient.** Prior to providing written certification for the medical use of marijuana by a minor qualifying patient under this section, a medical provider, referred to in this subsection as "the treating medical provider," shall inform the minor qualifying patient and the parent or legal guardian of the patient of the risks and benefits of the medical use of marijuana and that the patient may benefit from the medical use of marijuana. Except with regard to a minor qualifying patient who is eligible for hospice care, prior to providing a written certification under this section, the treating medical provider shall consult with a qualified physician, referred to in this paragraph as "the consulting physician," from a list of physicians who may be willing to act as consulting physicians maintained by the department that is compiled by the department after consultation with statewide associations representing licensed medical professionals. The consultation between the treating medical provider and the consulting physician may consist of examination of the patient or review of the patient's medical file. The consulting physician shall provide an advisory opinion to the treating medical provider and the parent or legal guardian of the minor qualifying patient concerning whether the patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition. If the department or the consulting physician does not respond to a request by the treating medical provider within 10 days of receipt of the request, the treating medical provider may provide written certification for treatment without consultation with a physician.

[2013, c. 516, §8 (AMD) .]

3. **Expiration.** A written certification form for the medical use of marijuana under this section expires within one year after issuance by the qualifying patient's medical provider.

[2013, c. 516, §8 (AMD) .]

4. **Form; content.** A written certification under this section must be in the form required by rule adopted by the department and may not require a qualifying patient's medical provider to state the patient's specific medical condition.

[2013, c. 516, §8 (AMD) .]

5. **Possible sanctions.** Nothing in this chapter prevents a professional licensing board from sanctioning a medical provider for failing to properly evaluate or treat a patient's medical condition or otherwise violating the applicable standard of care for evaluating or treating medical conditions.

[2013, c. 516, §8 (AMD) .]

6. **Certification issued based on debilitating condition.** A medical provider may not condition the issuance of a certification for the medical use of marijuana on any requirements other than the patient's debilitating medical condition. Nothing in this section may be construed to prevent a medical provider from exercising professional judgment in declining to issue a certification for the medical use of marijuana.

[2015, c. 475, §15 (NEW) .]

7. **Patient referral disclosure of interest.** Prior to providing a referral to a qualifying patient for goods and services associated with a certification for the medical use of marijuana to an entity in which the medical provider has a direct or indirect financial interest, a medical provider shall provide written disclosure to the qualifying patient regarding any direct or indirect financial interest the medical provider has or may have in the resulting referral and shall maintain a copy of this disclosure in the qualifying patient's record.

[2015, c. 475, §15 (NEW) .]

SECTION HISTORY
2009, c. 631, §22 (NEW). 2009, c. 631, §51 (AFF). 2011, c. 407, Pt. B, §17 (RPR). 2013, c. 516, §8 (AMD). 2015, c. 475, §15 (AMD).

§2423-C. AUTHORIZED CONDUCT

A person may provide a qualifying patient or a primary caregiver with marijuana paraphernalia for purposes of the qualifying patient's medical use of marijuana in accordance with this chapter and be in the presence or vicinity of the medical use of marijuana as allowed under this chapter. [2011, c. 407, Pt. B, §18 (AMD).]

SECTION HISTORY
2009, c. 631, §23 (NEW). 2009, c. 631, §51 (AFF). 2011, c. 407, Pt. B, §18 (AMD).

§2423-D. AUTHORIZED CONDUCT BY A VISITING QUALIFYING PATIENT

A qualifying patient who is visiting the State from another jurisdiction that authorizes the medical use of marijuana pursuant to a law recognized by the department who possesses a valid written certification as described in section 2423-B from the patient's treating medical provider and a valid medical marijuana certification from that other jurisdiction and photographic identification or a driver's license from that jurisdiction may engage in conduct authorized for a qualifying patient under this chapter. [2013, c. 516, §9 (AMD).]

SECTION HISTORY
2009, c. 631, §24 (NEW). 2009, c. 631, §51 (AFF). 2011, c. 407, Pt. B, §19 (AMD). 2013, c. 516, §9 (AMD).

§2423-E. REQUIREMENTS

1. **Rights of persons or entities acting pursuant to this chapter.** A person whose conduct is authorized under this chapter may not be denied any right or privilege or be subjected to arrest, prosecution, penalty or disciplinary action, including but not limited to a civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for lawfully engaging in conduct involving the medical use of marijuana authorized under this chapter.

[2011, c. 407, Pt. B, §20 (AMD) .]

1-A. **Legal protection for hospitals.** The immunity provisions in this subsection apply to a hospital licensed under chapter 405 and to principal officers, board members, agents and employees of the hospital. Any immunity provision in this chapter in conflict with this subsection does not apply to a hospital. The legal protection for hospitals applies in accordance with the following.

A. If the use of forms of prepared marijuana that are not smoked or vaporized, including but not limited to edible marijuana and tinctures and salves of marijuana, by admitted patients who have been certified under section 2423-B occurs in a hospital, that hospital is not subject to prosecution, search, seizure or penalty in any manner, including but not limited to a civil penalty or disciplinary action by an occupational or professional licensing board or entity, and may not be denied any license, registration, right or privilege solely because the admitted patient lawfully engages in conduct involving the medical use of marijuana authorized under this chapter. [2015, c. 475, §16 (NEW).]

B. A principal officer, board member or employee of a hospital where the use of forms of prepared marijuana that are not smoked or vaporized, including but not limited to edible marijuana and tinctures and salves of marijuana, by admitted patients who have been certified under section 2423-B occurs is not subject to arrest, prosecution, search, seizure or penalty in any manner, including but not limited to a civil penalty or disciplinary action by an occupational or professional licensing board or entity, and may not be denied any license, registration, right or privilege solely because the admitted patient lawfully engages in conduct involving the medical use of marijuana authorized under this chapter. [2015, c. 475, §16 (NEW).]

[2015, c. 475, §16 (NEW) .]

2. **School, employer or landlord may not discriminate.** A school, employer or landlord may not refuse to enroll or employ or lease to or otherwise penalize a person solely for that person's status as a qualifying patient or a primary caregiver unless failing to do so would put the school, employer or landlord in violation of federal law or cause it to lose a federal contract or funding. This subsection does not prohibit a restriction on the administration or cultivation of marijuana on premises when that administration or cultivation would be inconsistent with the general use of the premises. A landlord or business owner may prohibit the smoking of marijuana for medical purposes on the premises of the landlord or business if the landlord or business owner prohibits all smoking on the premises and posts notice to that effect on the premises.

[2011, c. 407, Pt. B, §20 (AMD) .]

3. **Person may not be denied parental rights and responsibilities or contact with a minor child.** A person may not be denied parental rights and responsibilities with respect to or contact with a minor child as a result of acting in accordance with this chapter, unless the person's conduct is contrary to the best interests of the minor child as set out in Title 19-A, section 1653, subsection 3.

[2009, c. 631, §25 (NEW); 2009, c. 631, §51 (AFF) .]

4. **Prohibition on seizure and retention.** Except when necessary for an ongoing criminal or civil investigation, a law enforcement officer may not seize marijuana that is in the possession of a qualifying patient, primary caregiver, marijuana testing facility or registered dispensary as authorized by this chapter. A law enforcement officer in possession of marijuana in violation of this subsection must return the marijuana within 7 days after receiving a written request for return by the owner of the marijuana. Notwithstanding the provisions of Title 14, chapter 741, if the law enforcement officer fails to return marijuana possessed in violation of this subsection within 7 days of receiving a written request for return of the marijuana under this subsection, the owner of the marijuana may file a claim in the District Court in the district where the owner lives or where the law enforcement officer is employed.

[2015, c. 475, §17 (AMD) .]

5. **Requirements for protection.** To receive protection under this section for conduct authorized under this chapter, a person must:

A. If the person is a qualifying patient, present upon request of a law enforcement officer the original written certification for the patient and the patient's driver's license as described under Title 29-A, section 1401 or a nondriver identification card as described under Title 29-A, section 1410 or, if the person is a visiting patient under section 2423-D, the equivalent proof of identity from the visiting patient's state of residence; and [2011, c. 407, Pt. B, §20 (NEW).]

B. If the person is a primary caregiver, present upon request of a law enforcement officer the original written document designating the person as a primary caregiver by the qualifying patient under section 2423-A, subsection 1, paragraph E or F and the primary caregiver's driver's license described under Title 29-A, section 1401 or a nondriver identification card as described under Title 29-A, section 1410. [2011, c. 407, Pt. B, §20 (NEW).]

[2011, c. 407, Pt. B, §20 (NEW) .]

6. **Excess marijuana; forfeiture.** A person who possesses marijuana in excess of the limits provided in section 2423-A and rules adopted under that section must forfeit the excess amounts to a law enforcement officer. The law enforcement officer is authorized to remove all excess marijuana seedlings, marijuana plants and prepared marijuana in order to catalog the amount of excess marijuana. Possession of marijuana in excess of the limits provided in section 2423-A and rules adopted under that section is a violation as follows:

A. Possession of prepared marijuana in an excess amount up to 2 1/2 ounces is a violation of section 2383; and [2011, c. 407, Pt. B, §20 (NEW).]

B. Possession of marijuana in an excess amount over 2 1/2 ounces is a violation of Title 17-A, chapter 45. [2011, c. 407, Pt. B, §20 (NEW).]

[2011, c. 407, Pt. B, §20 (NEW) .]

7. **Repeat forfeiture.** If a cardholder has previously forfeited excess marijuana pursuant to subsection 6 and a subsequent forfeiture occurs, the department shall revoke the registry identification card of the cardholder and the entire amount of marijuana seedlings, marijuana plants and prepared marijuana must be forfeited to a law enforcement officer. The department shall adopt rules to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2011, c. 407, Pt. B, §20 (NEW) .]

8. **Defense for possession of excess marijuana.** Except as provided in section 2426, a qualifying patient may assert the medical purpose for using marijuana as a defense to any prosecution involving marijuana possession and may present evidence in court that the patient's necessary medical use or cultivation circumstances warranted exceeding the amount of marijuana allowed under section 2423-A and was

reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of treating or alleviating the patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition.

[2011, c. 407, Pt. B, §20 (NEW) .]

9. **Labels.** If a registered primary caregiver affixes a label on the packaging of any marijuana or product containing marijuana provided to a qualifying patient and that label includes information about contaminants, the cannabinoid profile or potency of the marijuana or product containing marijuana, the label must be verified by a marijuana testing facility that is not owned by the caregiver if there is a marijuana testing facility licensed, certified or approved in accordance with this chapter.

[2015, c. 475, §18 (NEW) .]

SECTION HISTORY
2009, c. 631, §25 (NEW). 2009, c. 631, §51 (AFF). 2011, c. 407, Pt. B, §20 (AMD). 2015, c. 475, §§16-18 (AMD).

§2424. RULES

1. **Rulemaking.** The department may adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 1, §5 (NEW) .]

2. **Adding debilitating medical conditions.** The department in accordance with section 2422, subsection 2, paragraph D shall adopt rules regarding the consideration of petitions from the public to add medical conditions or treatments to the list of debilitating medical conditions set forth in section 2422, subsection 2. In considering those petitions, the department shall provide an opportunity for public hearing of, and an opportunity to comment on those petitions. After the hearing, the commissioner shall approve or deny a petition within 180 days of its submission. The approval or denial of such a petition constitutes final agency action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the Superior Court.

A. [2011, c. 407, Pt. B, §21 (RP).]

B. [2011, c. 407, Pt. B, §21 (RP).]

C. [2011, c. 407, Pt. B, §21 (RP).]

D. [2011, c. 407, Pt. B, §21 (RP).]

[2011, c. 407, Pt. B, §21 (RPR) .]

3. **Registry identification cards.** The department shall adopt rules governing the manner in which it considers applications for and renewals of registry identification cards for registered patients, registered primary caregivers, principal officers, board members and employees of dispensaries and staff of hospice providers and nursing facilities designated as primary caregivers. The department's rules must require the submission of an application, must require replacement of a registry identification card that has been lost, destroyed or stolen or that contains information that is no longer accurate and must establish application and renewal fees that generate revenues sufficient to offset all expenses of implementing and administering this chapter and that are consistent with the provisions of section 2425, subsection 12. The department may

establish a sliding scale of application and renewal fees based upon a registered patient's family income and status as a veteran of the Armed Forces of the United States. The department may accept donations from private sources in order to reduce the application and renewal fees.

[2013, c. 394, §1 (AMD) .]

SECTION HISTORY
IB 2009, c. 1, §5 (NEW). 2009, c. 631, §§26, 27 (AMD). 2009, c. 631, §51 (AFF). 2011, c. 407, Pt. B, §§21, 22 (AMD). 2013, c. 394, §1 (AMD).

§2425. REGISTRY IDENTIFICATION CARDS

1. **Application for patient registry identification card; qualifications.** The department shall register and issue registry identification cards to qualifying patients who submit the documents and information described in this subsection, in accordance with the department's rules:

A. Written certification; [2009, c. 1, §5 (NEW).]

B. [2013, c. 394, §2 (RP).]

C. Name, address and date of birth of the qualifying patient, except that if the applicant is homeless no address is required; [2009, c. 631, §28 (AMD); 2009, c. 631, §51 (AFF).]

D. Name, address and telephone number of the qualifying patient's medical provider; [2013, c. 516, §10 (AMD).]

E. Name, address and date of birth of each primary caregiver, if any, named by the qualifying patient; [2009, c. 631, §28 (AMD); 2009, c. 631, §51 (AFF).]

F. If the qualifying patient names one or 2 primary caregivers, an indication of which person, if any, is designated to cultivate marijuana for the qualifying patient's medical use. Only one primary caregiver, including an employee of that caregiver, is allowed to cultivate marijuana for a registered patient; and [2013, c. 396, §9 (AMD).]

G. If the qualifying patient elects to cultivate marijuana for the qualifying patient's own medical use, the qualifying patient shall indicate that choice on the application. [2009, c. 631, §28 (NEW); 2009, c. 631, §51 (AFF).]

[2013, c. 516, §10 (AMD) .]

1-A. **Criminal history record check.** An applicant for a registry identification card who is a primary caregiver or an employee of a primary caregiver or who is a principal officer, board member or employee of a registered dispensary or a marijuana testing facility must undergo a criminal history record check annually.

[2015, c. 475, §19 (AMD) .]

2. **Issuing patient registry identification card to minor child.** The department may not register and issue a registry identification card to a qualifying patient who is under 18 years of age unless:

A. The qualifying patient's medical provider has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient and to a parent, guardian or person having legal custody of the qualifying patient; [2013, c. 516, §11 (AMD).]

B. The parent, guardian or person having legal custody consents in writing to:

(1) The qualifying patient's medical use of marijuana;

(2) Serving as one of the qualifying patient's primary caregivers; and

(3) Controlling the acquisition of the marijuana and the dosage and the frequency of the medical use of marijuana by the qualifying patient; and [2011, c. 407, Pt. B, §23 (AMD).]

C. [2011, c. 407, Pt. B, §23 (RP).]

D. The requirements of section 2423-B, subsection 2 have been met. [2011, c. 407, Pt. B, §23 (NEW).]

[2013, c. 516, §11 (AMD) .]

3. **Department approval or denial.** The department shall verify the information contained in an application or renewal submitted pursuant to this section and shall approve or deny an application or renewal within 30 days of receiving it. The department may deny an application or renewal only if the applicant did not provide the information required pursuant to this section or the department determines that the applicant does not qualify for a registry identification card or that the information provided was falsified. Rejection of an application or renewal is considered a final agency action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the Superior Court.

[2013, c. 394, §4 (AMD) .]

3-A. **Department revocation.** The department may revoke a registry identification card for violation of this chapter and the rules adopted under this chapter. Revocation is considered a final agency action, subject to judicial review under Title 5, chapter 375, subchapter 7.

[2009, c. 631, §30 (NEW); 2009, c. 631, §51 (AFF) .]

4. **Primary caregiver registry identification card.** The department shall issue a registry identification card to each registered primary caregiver, if any, who is named in a registered patient's approved application pursuant to subsection 1, paragraph E and, if the registered primary caregiver employs an employee pursuant to section 2423-A, subsection 2, paragraph I, to that employee.

[2013, c. 396, §10 (AMD) .]

4-A. **Marijuana testing facility identification card.** The department shall issue registry identification cards to principal officers, board members and employees of a marijuana testing facility within 5 business days of approving an application or renewal under this section in accordance with department rules. Registry identification cards expire one year after the date of issuance. Registry identification cards must contain:

A. The name of the cardholder; [2015, c. 475, §20 (NEW).]

B. The date of issuance and expiration date of the registry identification card; and [2015, c. 475, §20 (NEW).]

C. A random identification number that is unique to the cardholder. [2015, c. 475, §20 (NEW).]

[2015, c. 475, §20 (NEW) .]

5. **Registry identification card issuance.** The department shall issue registry identification cards to registered patients, to registered primary caregivers, to employees of registered caregivers and to staff of hospice providers and nursing facilities designated by registered patients as primary caregivers within 5 days of approving an application or renewal under this section. Registry identification cards expire one year after the date of issuance except that the date of issuance and expiration date of a registered primary caregiver's registry identification card must be the same as the issuance and expiration dates on the patient's registry identification card. Registry identification cards must contain:

A. The name of the cardholder; [2011, c. 691, Pt. A, §21 (RPR).]

B. [2011, c. 383, §2 (RP); 2011, c. 407, Pt. B, §24 (RP).]

C. The date of issuance and expiration date of the registry identification card; [2011, c. 691, Pt. A, §21 (RPR).]

D. A random identification number that is unique to the cardholder; and [2011, c. 691, Pt. A, §21 (RPR).]

E. [2011, c. 383, §2 (RP); 2011, c. 407, Pt. B, §24 (RP).]

F. A clear designation showing whether the cardholder is allowed under this chapter to cultivate marijuana. [2011, c. 691, Pt. A, §21 (RPR).]

[2013, c. 396, §11 (AMD) .]

6. **Notification of changes in status or loss of card.** This subsection governs notification of changes in status or the loss of a registry identification card.

A. A registered qualifying patient shall notify the department within 10 days of any change in the registered qualifying patient's name, address, primary caregiver or preference regarding who may cultivate marijuana for the registered qualifying patient, if the registry identification card is no longer accurate, if the change renders the registry identification card inaccurate or if the registered qualifying patient ceases to have a debilitating medical condition. [2013, c. 394, §5 (AMD).]

B. A registered qualifying patient who fails to notify the department as required under paragraph A commits a civil violation for which a fine of not more than $150 may be adjudged. If the registered qualifying patient's certifying medical provider notifies the department in writing that the registered qualifying patient has ceased to suffer from a debilitating medical condition, the registered qualifying patient's registry identification card becomes void upon notification by the department to the qualifying patient. [2013, c. 516, §12 (AMD).]

C. A registered primary caregiver shall notify the department if the card of the registered primary caregiver is no longer accurate within 10 days of the event that caused the inaccuracy and of any change in the caregiver's name or address within 10 days of such change. A registered primary caregiver who fails to notify the department of any of these changes commits a civil violation for which a fine of not more than $150 may be adjudged. [2013, c. 394, §5 (AMD).]

D. When a registered qualifying patient or registered primary caregiver notifies the department of any changes listed in this subsection, the department shall issue the registered qualifying patient and each registered primary caregiver a new registry identification card within 10 days of receiving the updated information and the fee required by subsection 12, paragraph E. [2013, c. 394, §5 (AMD).]

E. When a registered qualifying patient changes the patient's registered primary caregiver, the department shall notify the old primary caregiver within 10 days. The old primary caregiver's protections as provided in this chapter expire 10 days after notification by the department. [2009, c. 1, §5 (NEW).]

F. If a cardholder loses the cardholder's registry identification card, the cardholder shall notify the department and submit the fee required by subsection 12, paragraph E within 10 days of losing the card. Within 5 days after such notification, the department shall issue a new registry identification card with a new random identification number. [2013, c. 394, §5 (AMD).]

[2013, c. 516, §12 (AMD) .]

7. **Possession of certain documents; application for registry identification card.** Possession of a registry identification card by a cardholder, the act of applying for such a registry identification card, possession of a written certification issued under section 2423-B or possession of a designation form executed under section 2423-A, subsection 1, paragraph E or F is not evidence of unlawful conduct and may not be used to support the search of that person or that person's property. The possession of or application for a registry identification card or possession of a written certification does not prevent the issuance of a warrant if probable cause exists on other grounds.

[2011, c. 407, Pt. B, §25 (RPR) .]

8. **Confidentiality.** This subsection governs confidentiality.

A. Applications and supporting information submitted by qualifying patients and registered patients under this chapter, including information regarding their primary caregivers and medical providers, are confidential. [2013, c. 516, §13 (AMD).]

B. Applications and supporting information submitted by primary caregivers and medical providers operating in compliance with this chapter are confidential. [2013, c. 516, §13 (AMD).]

C. The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list are confidential, exempt from the freedom of access laws, Title 1, chapter 13, and not subject to disclosure except as provided in this subsection and to authorized employees of the department as necessary to perform official duties of the department. [2009, c. 631, §34 (AMD); 2009, c. 631, §51 (AFF).]

D. The department shall verify to law enforcement personnel whether a registry identification card is valid without disclosing more information than is reasonably necessary to verify the authenticity of the registry identification card. [2009, c. 1, §5 (NEW).]

E. [2009, c. 631, §51 (AFF); 2009, c. 631, §34 (RP).]

F. Applications, supporting information and other information regarding a registered dispensary are not confidential except that information that is contained within dispensary information that identifies a qualifying patient, a registered patient, the registered patient's medical provider and the primary caregiver of the qualifying patient or registered patient is confidential. [2013, c. 516, §13 (AMD).]

G. Records maintained by the department pursuant to this chapter that identify applicants for a registry identification card, registered patients, registered primary caregivers and registered patients' medical providers are confidential and may not be disclosed except as provided in this subsection and as follows:

(1) To department employees who are responsible for carrying out this chapter;

(2) Pursuant to court order or subpoena issued by a court;

(3) With written permission of the registered patient or the patient's guardian, if the patient is under guardianship, or a parent, if the patient has not attained 18 years of age;

(4) As permitted or required for the disclosure of health care information pursuant to section 1711-C;

(5) To a law enforcement official for verification purposes. The records may not be disclosed further than necessary to achieve the limited goals of a specific investigation; and

(6) To a registered patient's treating medical provider and to a registered patient's registered primary caregiver for the purpose of carrying out this chapter. [2013, c. 516, §13 (AMD).]

H. This subsection does not prohibit a medical provider from notifying the department if the medical provider acquires information indicating that a registered patient or qualifying patient is no longer eligible to use marijuana for medical purposes or that a registered patient or qualifying patient falsified information that was the basis of the medical provider's certification of eligibility for use. [2013, c. 516, §13 (AMD).]

I. The department may disclose to an agency of State Government designated by the commissioner and employees of that agency any information necessary to produce registry identification cards or manage the identification card program and may disclose data for statistical or research purposes in such a manner that individuals cannot be identified. [2009, c. 631, §34 (NEW); 2009, c. 631, §51 (AFF).]

J. A hearing concerning the revocation of a registry identification card under subsection 3-A is confidential. [2011, c. 407, Pt. B, §27 (AMD).]

K. Except as otherwise provided in this subsection, a person who knowingly violates the confidentiality of information protected under this chapter commits a civil violation for which a fine of up to $1,000 may be imposed. This paragraph does not apply to a medical provider or staff of a hospice provider or nursing facility named as a primary caregiver or any other person directly associated with a medical provider or a hospice provider or nursing facility that provides services to a registered patient. [2013, c. 516, §13 (AMD).]

L. Notwithstanding any provision of this subsection to the contrary, the department shall comply with Title 36, section 175. Information provided by the department pursuant to this paragraph may be used by the Department of Administrative and Financial Services, Bureau of Revenue Services only for the administration and enforcement of taxes imposed under Title 36. [2013, c. 2, §33 (COR).]

[2013, c. 2, §33 (COR) .]

9. **Revocation of registry identification card.** The department shall revoke the registry identification card of a cardholder who sells, furnishes or gives marijuana to a person who is not allowed to possess marijuana for medical purposes under this chapter. A cardholder who sells, furnishes or gives marijuana to a person who is not allowed to possess marijuana for medical purposes under this chapter is liable for any other penalties for selling, furnishing or giving marijuana to a person. The department may revoke the registry identification card of any cardholder who violates this chapter, and the cardholder is liable for any other penalties for the violation.

[2009, c. 631, §35 (AMD); 2009, c. 631, §51 (AFF) .]

9-A. **Registration requirement.** Registration under this section is voluntary for a qualifying patient and for a primary caregiver who is exempt under section 2423-A, subsection 3, paragraph C. Failure to register under this section does not affect authorized conduct for a qualifying patient or for a primary caregiver who is exempt under section 2423-A, subsection 3, paragraph C.

[2011, c. 407, Pt. B, §28 (NEW) .]

10. **Annual report.** The department shall submit to the Legislature an annual report by April 1st each year that does not disclose any identifying information about cardholders or physicians, but does contain, at a minimum:

A. The number of applications and renewals filed for registry identification cards; [2009, c. 1, §5 (NEW).]

B. The number of qualifying patients and primary caregivers approved in each county; [2009, c. 1, §5 (NEW).]

C. [2011, c. 407, Pt. B, §29 (RP).]

D. The number of registry identification cards revoked; [2009, c. 1, §5 (NEW).]

E. The number of medical providers providing written certifications for qualifying patients; [2013, c. 516, §14 (AMD).]

F. The number of registered dispensaries; and [2009, c. 631, §36 (AMD); 2009, c. 631, §51 (AFF).]

G. The number of principal officers, board members and employees of dispensaries. [2009, c. 631, §36 (AMD); 2009, c. 631, §51 (AFF).]

[2013, c. 516, §14 (AMD) .]

11. **Valid identification.** A registered patient, registered primary caregiver or a principal officer, board member or employee of a registered dispensary who has been issued a valid registry identification card pursuant to this section must also possess a valid Maine-issued driver's license with a photo or other Maine-issued photo identification in order to establish proof of authorized participation in the medical use of marijuana under this chapter.

[2011, c. 383, §4 (NEW) .]

12. **Registration and related fees.** The department by rule shall establish fees in accordance with this subsection. The fees must be credited to the Medical Use of Marijuana Fund pursuant to section 2430. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

A. There is no annual fee to register a qualifying patient. [2013, c. 394, §6 (NEW).]

B. Primary caregiver fees are as follows.

(1) There is no annual fee to register a primary caregiver who does not cultivate marijuana for a qualifying patient.

(2) There is an annual fee to register a primary caregiver who has been designated to cultivate marijuana under subsection 2423-A, subsection 1, paragraph F. The fee must be not less than $50 and not more than $300 for each qualifying patient who has designated the primary caregiver.

(3) There is no fee for a registered primary caregiver to register for the remainder of the registration period a new qualifying patient in place of a former qualifying patient who has revoked the designation of the primary caregiver. [2013, c. 394, §6 (NEW).]

C. There is an annual fee to register a dispensary of not less than $5,000 and not more than $15,000. There is a fee to change the location of a registered dispensary or the location at which a registered dispensary cultivates marijuana of not less than $3,000 and not more than $5,000. [2013, c. 394, §6 (NEW).]

D. There is an annual fee to register a principal officer, board member or employee of a registered dispensary of not less than $25 and not more than $50. The fee must be paid by the registered dispensary. [2013, c. 394, §6 (NEW).]

E. There is a fee to replace a registry card that has been lost, stolen or destroyed or a card that contains information that is no longer accurate of not less than $10 and not more than $20. [2013, c. 394, §6 (NEW).]

F. There is an annual fee for a criminal history record check for a primary caregiver or a principal officer, board member or employee of a registered dispensary of not less than $31 and not more than $60. The fee must be paid by the primary caregiver or by the registered dispensary for a principal officer, board member or employee of the registered dispensary. [2013, c. 394, §6 (NEW).]

G. There is a fee for laboratory testing of marijuana that is cultivated, harvested, processed, prepared or provided by a registered primary caregiver or registered dispensary of not less than $50 and not more than $300 per test specimen. [2015, c. 475, §21 (AMD).]

Beginning January 2014 and every 2 years thereafter, the department shall review the balance in the Medical Use of Marijuana Fund established under section 2430. If the balance in the Medical Use of Marijuana Fund exceeds $400,000, the department shall reduce the fees established under paragraphs B and C for a 2-year period beginning with the calendar year following the review.

[2015, c. 475, §21 (AMD) .]

SECTION HISTORY

IB 2009, c. 1, §5 (NEW). 2009, c. 631, §§28-36 (AMD). 2009, c. 631, §51 (AFF). 2011, c. 383, §§2-4 (AMD). 2011, c. 407, Pt. B, §§23-29 (AMD). 2011, c. 691, Pt. A, §§21, 22 (AMD). RR 2013, c. 2, §33 (COR). 2013, c. 394, §§2-6 (AMD). 2013, c. 396, §§9-11 (AMD). 2013, c. 516, §§10-14 (AMD). 2013, c. 595, Pt. J, §1 (AMD). 2013, c. 595, Pt. J, §4 (AFF). 2015, c. 475, §§19-21 (AMD).

§2426. SCOPE

1. **Limitations.** This chapter does not permit any person to:

A. Undertake any task under the influence of marijuana when doing so would constitute negligence or professional malpractice or would otherwise violate any professional standard; [2009, c. 631, §37 (AMD); 2009, c. 631, §51 (AFF).]

B. Except as provided in subsection 1-A, possess marijuana or otherwise engage in the medical use of marijuana:

(1) In a school bus;

(2) On the grounds of any preschool or primary or secondary school; or

(3) In any correctional facility; [2015, c. 369, §2 (AMD).]

C. Smoke marijuana:

(1) On any form of public transportation; or

(2) In any public place; [2009, c. 1, §5 (NEW).]

D. Operate, navigate or be in actual physical control of any motor vehicle, aircraft, motorboat, snowmobile or all-terrain vehicle while under the influence of marijuana; or [2009, c. 631, §38 (AMD); 2009, c. 631, §51 (AFF).]

E. Use or possess marijuana if that person is not a qualifying patient, primary caregiver, registered dispensary or other person authorized to use or possess marijuana under this chapter. [2011, c. 407, Pt. B, §30 (AMD).]

[2015, c. 369, §2 (AMD) .]

1-A. **School exceptions.** Notwithstanding subsection 1, paragraph B, a primary caregiver designated pursuant to section 2423-A, subsection 1, paragraph E may possess and administer marijuana in a nonsmokeable form in a school bus and on the grounds of the preschool or primary or secondary school in which a minor qualifying patient is enrolled only if:

A. A medical provider has provided the minor qualifying patient with a current written certification for the medical use of marijuana under this chapter; and [2015, c. 369, §3 (NEW).]

B. Possession of marijuana in a nonsmokeable form is for the purpose of administering marijuana in a nonsmokeable form to the minor qualifying patient. [2015, c. 369, §3 (NEW).]

[2015, c. 369, §3 (NEW) .]

2. **Construction.** This chapter may not be construed to require:

A. A government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana; or [2009, c. 1, §5 (NEW).]

B. An employer to accommodate the ingestion of marijuana in any workplace or any employee working while under the influence of marijuana. [2009, c. 1, §5 (NEW).]

[2009, c. 1, §5 (NEW) .]

3. **Penalty for fraudulent representation.**

[2009, c. 631, §51 (AFF); 2009, c. 631, §39 (RP) .]

3-A. **Penalty for fraud.** Fraudulent misrepresentation regarding lawful possession or medical use of marijuana and fraudulent procurement under this chapter are governed by this subsection.

A. A person who misrepresents to a law enforcement official any fact or circumstance relating to the possession or medical use of marijuana under this chapter to avoid arrest or prosecution commits a civil violation for which a fine of $200 must be adjudged. [2011, c. 407, Pt. B, §31 (NEW).]

B. A qualifying patient who obtains marijuana from more than one source with the result that the person receives more than 2 1/2 ounces of prepared marijuana in a 15-day period commits a civil violation for which a fine of $200 must be adjudged. [2011, c. 407, Pt. B, §31 (NEW).]

[2011, c. 407, Pt. B, §31 (NEW) .]

SECTION HISTORY
IB 2009, c. 1, §5 (NEW). 2009, c. 631, §§37-39 (AMD). 2009, c. 631, §51 (AFF). 2011, c. 407, Pt. B, §§30, 31 (AMD). 2015, c. 369, §§2, 3 (AMD).

§2427. AFFIRMATIVE DEFENSE AND DISMISSAL FOR MEDICAL MARIJUANA *(REPEALED)*

SECTION HISTORY
IB 2009, c. 1, §5 (NEW). 2009, c. 631, §§40, 41 (AMD). 2009, c. 631, §51 (AFF). MRSA T. 22, §2427, sub-§4 (RP).

§2428. REGISTERED DISPENSARIES

1. **Provisions pertaining to primary caregiver apply to nonprofit dispensary.**

[2009, c. 631, §51 (AFF); 2009, c. 631, §42 (RP) .]

1-A. **Provisions pertaining to registered dispensary.** For the purpose of assisting a qualifying patient who has designated a registered dispensary to cultivate marijuana for the patient's medical use, a registered dispensary may in accordance with rules adopted by the department:

A. Possess and dispense up to 2 1/2 ounces of prepared marijuana and possess an incidental amount of marijuana for each qualifying patient who has designated the dispensary. For the purposes of this chapter, any incidental amount of marijuana is lawful for a registered dispensary to possess and is not included in the amounts of prepared marijuana specified in this paragraph; [2011, c. 407, Pt. B, §32 (AMD).]

B. Cultivate up to 6 mature marijuana plants for each patient who has designated the dispensary to cultivate the plants on the patient's behalf subject to the limit of 6 mature plants total for a patient who also cultivates marijuana; [2011, c. 407, Pt. B, §32 (AMD).]

C. Receive reasonable monetary compensation for costs associated with assisting or for cultivating marijuana for a patient who designated the dispensary; [2011, c. 407, Pt. B, §32 (AMD).]

D. Assist any patient who designated the dispensary to cultivate marijuana with the medical use or administration of marijuana; and [2011, c. 407, Pt. B, §32 (AMD).]

E. Obtain prepared marijuana from a primary caregiver under section 2423-A, subsection 2, paragraph H or from another registered dispensary for the purposes of addressing an extended inventory supply interruption under subsection 6, paragraph G. [2013, c. 503, §2 (AMD).]

[2013, c. 503, §2 (AMD) .]

2. **Registration requirements.** Subject to limitations on the number and location of dispensaries in subsection 11 and rules adopted pursuant to this section, this subsection governs the registration of a dispensary.

A. The department shall register a dispensary and issue a registration certificate or renew a registration certificate within 30 days to any person or entity that provides:

(1) An annual fee paid to the department as set by rule pursuant to section 2425, subsection 12, paragraph C;

(2) The legal name of the dispensary, evidence of incorporation under Title 13-B and evidence that the corporation is in good standing with the Secretary of State;

(3) The physical address of the dispensary and the physical address of a maximum of one additional location, if any, where marijuana will be cultivated for patients who have designated the dispensary to cultivate for them. If a registered dispensary changes the physical location of the dispensary or the location at which it cultivates marijuana, the dispensary shall notify the department on a location change form provided by the department, pay a change fee as established in section 2425, subsection 12, paragraph C and obtain a new registration certificate from the department;

(4) The name, address and date of birth of each principal officer and board member of the dispensary; and

(5) The name, address and date of birth of any person who is employed by the dispensary. [2013, c. 394, §7 (AMD).]

B. The department shall track the number of registered patients who designate a dispensary to cultivate marijuana for them and issue to each dispensary a written statement of the number of patients who have designated the dispensary to cultivate marijuana for them. This statement must be updated each time a new registered patient designates the dispensary or ceases to designate the dispensary. The statement may be transmitted electronically if the department's rules so provide. The department may provide by rule that the updated written statements may not be issued more frequently than once each week. [2009, c. 631, §42 (AMD); 2009, c. 631, §51 (AFF).]

C. The department shall issue each principal officer, board member and employee of a dispensary a registry identification card within 10 days of receipt of the person's name, address and date of birth under paragraph A and a fee in an amount established by the department. Each card must specify that the cardholder is a principal officer, board member or employee of a dispensary and must contain:

(1) The name, address and date of birth of the principal officer, board member or employee;

(2) The legal name of the dispensary with which the principal officer, board member or employee is affiliated;

(3) A random identification number that is unique to the cardholder;

(4) The date of issuance and expiration date of the registry identification card; and

(5) A photograph if required by the department. [2009, c. 631, §42 (AMD); 2009, c. 631, §51 (AFF).]

D. The department may not issue a registry identification card to any principal officer, board member or employee of a dispensary who has been convicted of a disqualifying drug offense. The department shall conduct a criminal history record check of each principal officer, board member or employee on an annual basis in order to carry out this provision. If the department determines not to issue a registry

identification card for a principal officer, board member or employee, the department shall notify the dispensary in writing of the reason for denying the registry identification card. [2013, c. 394, §8 (AMD).]

[2013, c. 394, §§7, 8 (AMD) .]

3. **Rules.** The department shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A governing the manner in which it considers applications for and renewals of registration certificates for dispensaries, including rules governing:

A. The form and content of registration and renewal applications; [2009, c. 1, §5 (NEW).]

B. Minimum oversight requirements for dispensaries and the one permitted additional location at which the dispensary cultivates marijuana for medical use by qualifying patients who have designated the dispensary to cultivate for them; [2011, c. 407, Pt. B, §32 (AMD).]

C. Minimum record-keeping requirements for dispensaries, including recording the disposal of marijuana that is not distributed by the dispensary to qualifying patients who have designated the dispensary to cultivate for them; [2011, c. 407, Pt. B, §32 (AMD).]

D. Minimum security requirements for dispensaries and any additional location at which the dispensary cultivates marijuana for medical use by qualifying patients who have designated the dispensary to cultivate for them; and [2011, c. 407, Pt. B, §32 (AMD).]

E. Procedures for suspending or terminating the registration of dispensaries that violate the provisions of this section or the rules adopted pursuant to this subsection. [2009, c. 631, §42 (AMD); 2009, c. 631, §51 (AFF).]

[2011, c. 407, Pt. B, §32 (AMD) .]

4. **Expiration.** A dispensary registration certificate and the registry identification card for each principal officer, board member or employee expire one year after the date of issuance. The department shall issue a renewal dispensary registration certificate and renewal registry identification cards within 10 days to any person who complies with the requirements contained in subsection 2. A registry identification card of a principal officer, board member or employee expires 10 days after notification by a dispensary that such person ceases to work at the dispensary.

[2009, c. 631, §42 (AMD); 2009, c. 631, §51 (AFF) .]

5. **Inspection.** A dispensary and any additional location at which the dispensary cultivates marijuana for medical use by a qualifying patient who has designated the dispensary to cultivate for the patient are subject to reasonable inspection by the department. The department may enter the dispensary and the one permitted additional location at which the dispensary cultivates marijuana at any time, without notice, to carry out an inspection under this subsection.

[2011, c. 407, Pt. B, §32 (AMD) .]

6. **Registered dispensary requirements.** This subsection governs the operations of registered dispensaries.

A. A dispensary must be operated on a not-for-profit basis for the mutual benefit of qualifying patients who have designated the dispensary to cultivate marijuana. The bylaws of a dispensary and its contracts with qualifying patients must contain such provisions relative to the disposition of revenues and receipts as may be necessary and appropriate to establish and maintain its not-for-profit status. A dispensary need not be recognized as a tax-exempt organization under 26 United States Code, Section 501(c)(3) but is required to incorporate pursuant to Title 13-B and to maintain the corporation in good standing with the Secretary of State. [2011, c. 407, Pt. B, §32 (AMD).]

B. A dispensary may not be located within 500 feet of the property line of a preexisting public or private school. [2009, c. 631, §42 (AMD); 2009, c. 631, §51 (AFF).]

C. A dispensary shall notify the department within 10 days of when a principal officer, board member or employee ceases to work at the dispensary. [2009, c. 631, §42 (AMD); 2009, c. 631, §51 (AFF).]

D. A dispensary shall notify the department in writing of the name, address and date of birth of any new principal officer, board member or employee and shall submit a fee in an amount established by the department for a new registry identification card before the new principal officer, board member or employee begins working at the dispensary. [2009, c. 631, §42 (AMD); 2009, c. 631, §51 (AFF).]

E. A dispensary shall implement appropriate security measures to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana at the dispensary and the one permitted additional location at which the dispensary cultivates marijuana for medical use by qualifying patients who have designated the dispensary to cultivate for them. [2011, c. 407, Pt. B, §32 (AMD).]

F. The operating documents of a dispensary must include procedures for the oversight of the dispensary and procedures to ensure accurate record keeping. [2009, c. 631, §42 (AMD); 2009, c. 631, §51 (AFF).]

G. A dispensary is prohibited from acquiring, possessing, cultivating, manufacturing, delivering, transferring, transporting, supplying or dispensing marijuana for any purpose except to assist qualifying patients who have designated the dispensary to cultivate marijuana for them for the medical use of marijuana directly or through the qualifying patients' primary caregivers, to obtain prepared marijuana as provided in subsection 1-A, paragraph E or to provide prepared marijuana as provided in paragraph L and subsection 9, paragraph B. [2013, c. 503, §3 (AMD).]

H. All principal officers and board members of a dispensary must be residents of this State. [2009, c. 631, §42 (AMD); 2009, c. 631, §51 (AFF).]

I. All cultivation of marijuana must take place in an enclosed, locked facility unless the marijuana plants are being transported between the dispensary and a location at which the dispensary cultivates the marijuana plants, as disclosed to the department in subsection 2, paragraph A, subparagraph (3). The dispensary shall use a numerical identification system to enable the dispensary to track marijuana plants from cultivation to sale and to track prepared marijuana obtained pursuant to section 2423-A, subsection 2, paragraph H from acquisition to sale. Access to the cultivation facility is limited to a cardholder who is a principal officer, board member or employee of the dispensary when acting in that cardholder's official capacity, except that an elected official invited by a principal officer, board member or employee for the purpose of providing education to the elected official on cultivation by the dispensary, emergency services personnel, an employee of a marijuana testing facility or a person who needs to gain access to the cultivation facility in order to perform repairs or maintenance or to do construction may access the cultivation facility to provide professional services while under the direct supervision of a cardholder who is a principal officer, board member or employee of the dispensary. [2015, c. 475, §22 (AMD).]

J. A dispensary that is required to obtain a license for the preparation of food pursuant to section 2167 shall obtain the license prior to preparing goods containing marijuana, including tinctures of marijuana, for medical use by a qualifying patient. [2013, c. 516, §15 (AMD).]

K. A dispensary shall display the dispensary's registration certificate issued under subsection 2, paragraph A in a publicly visible location in the dispensary. [2011, c. 407, Pt. B, §32 (NEW).]

L. A dispensary may provide excess prepared marijuana to another dispensary that is experiencing an extended inventory supply interruption. [2013, c. 503, §4 (NEW).]

M. A dispensary may provide samples to a marijuana testing facility for testing and research purposes. [2015, c. 475, §23 (NEW).]

N. A dispensary may conduct marijuana testing at the request of anyone authorized to possess marijuana under this chapter for research and development purposes only. [2015, c. 475, §23 (NEW).]

[2015, c. 475, §§22, 23 (AMD) .]

7. **Maximum amount of marijuana to be dispensed.** A dispensary or a principal officer, board member or employee of a dispensary may not dispense more than 2 1/2 ounces of prepared marijuana to a qualifying patient who has designated the dispensary or to a primary caregiver on behalf of a qualifying patient who has designated the dispensary during a 15-day period.

[2011, c. 407, Pt. B, §32 (AMD) .]

8. **Immunity.**

[2009, c. 631, §51 (AFF); 2009, c. 631, §42 (RP) .]

8-A. **Immunity.** The immunity provisions in this subsection apply to a registered dispensary and officers, board members, agents and employees of the dispensary.

A. A registered dispensary is not subject to prosecution, search, seizure or penalty in any manner, including but not limited to a civil penalty or disciplinary action by a business or an occupational or professional licensing board or entity, and may not be denied any right or privilege solely for acting in accordance with this section to assist qualifying patients with the medical use of marijuana in accordance with this chapter. [2011, c. 407, Pt. B, §32 (NEW).]

B. A principal officer, board member, agent or employee of a registered dispensary is not subject to arrest, prosecution, search, seizure or penalty in any manner, including but not limited to a civil penalty or disciplinary action by a business or an occupational or professional licensing board or entity, and may not be denied any right or privilege solely for working for or with a registered dispensary to provide prepared marijuana to qualifying patients or to otherwise assist qualifying patients with the medical use of marijuana in accordance with this chapter. [2011, c. 407, Pt. B, §32 (NEW).]

[2011, c. 407, Pt. B, §32 (NEW) .]

9. **Prohibitions.** The prohibitions in this subsection apply to a registered dispensary.

A. A dispensary may not possess more than 6 mature marijuana plants for each qualifying patient who has designated the dispensary to cultivate marijuana for the qualifying patient's medical use subject to a limit of 6 mature plants total for a patient who also cultivates marijuana. [2011, c. 407, Pt. B, §32 (AMD).]

B. A dispensary may not dispense, deliver or otherwise transfer marijuana to a person other than a qualifying patient who has designated the dispensary to cultivate marijuana for the patient, to the patient's primary caregiver or to a dispensary as provided in subsection 6, paragraphs G and L. [2013, c. 503, §5 (AMD).]

C. The department shall immediately revoke the registry identification card of a principal officer, board member or employee of a dispensary who is found to have violated paragraph B, and such a person is disqualified from serving as a principal officer, board member or employee of a dispensary. [2009, c. 631, §42 (AMD); 2009, c. 631, §51 (AFF).]

D. A person who has been convicted of a disqualifying drug offense may not be a principal officer, board member or employee of a dispensary.

(1) A person who is employed by or is a principal officer or board member of a dispensary in violation of this paragraph commits a civil violation for which a fine of not more than $1,000 may be adjudged.

(2) A person who is employed by or is a principal officer or board member of a dispensary in violation of this paragraph and who at the time of the violation has been previously found to have violated this paragraph commits a Class D crime. [2009, c. 631, §42 (AMD); 2009, c. 631, §51 (AFF).]

E. A dispensary may acquire prepared marijuana only from a primary caregiver in accordance with section 2423-A, subsection 2, paragraph H or K, through the cultivation of marijuana by that dispensary either at the location of the dispensary or at the one permitted additional location at which the dispensary cultivates marijuana for medical use by qualifying patients who have designated the dispensary to cultivate for them or from a dispensary as provided in subsection 1-A, paragraph E. [2013, c. 503, §6 (AMD).]

F. A dispensary may not contract for the cultivation of seeds, seedlings or small plants or the cultivation, production or preparation of marijuana or food containing marijuana for medical use. [2009, c. 631, §42 (NEW); 2009, c. 631, §51 (AFF).]

G. A registered dispensary may not use a pesticide on marijuana except a pesticide that is used consistent with federal labeling requirements, is registered with the Department of Agriculture, Conservation and Forestry, Board of Pesticides Control pursuant to Title 7, section 607 and is used consistent with best management practices for pest management approved by the Commissioner of Agriculture, Conservation and Forestry. A registered dispensary may not in the cultivation of marijuana use a pesticide unless at least one registered dispensary employee involved in the application of the pesticide is certified pursuant to section 1471-D and all other registered dispensary employees who have direct contact with treated plants have completed safety training pursuant to 40 Code of Federal Regulations, Section 170.130. A registered dispensary employee who is not certified pursuant to section 1471-D and who is involved in the application of the pesticide or handling of the pesticide or equipment must first complete safety training described in 40 Code of Federal Regulations, Section 170.230. [2013, c. 498, §2 (AMD).]

[2013, c. 498, §2 (AMD); 2013, c. 503, §§5, 6 (AMD) .]

10. **Local regulation.** This chapter does not prohibit a political subdivision of this State from limiting the number of dispensaries that may operate in the political subdivision or from enacting reasonable regulations applicable to dispensaries. A local government may not adopt an ordinance that is duplicative of or more restrictive than the provisions of this Act. An ordinance that violates this subsection is void and of no effect.

[2011, c. 407, Pt. B, §32 (AMD) .]

11. **Limitation on number of dispensaries.** The department shall adopt rules limiting the number and location of registered dispensaries. During the first year of operation of dispensaries the department may not issue more than one registration certificate for a dispensary in each of the 8 public health districts of the department, as defined in section 411. After review of the first full year of operation of dispensaries and periodically thereafter, the department may amend the rules on the number and location of dispensaries; however, the number of dispensaries may not be less than 8.

[2011, c. 407, Pt. B, §32 (AMD) .]

12. **Labels.** If a dispensary affixes a label on the packaging of any marijuana or product containing marijuana provided to a qualifying patient and that label includes information about contaminants, the cannabinoid profile or potency of the marijuana or product containing marijuana, the label must be verified by a marijuana testing facility that is not owned by the dispensary if there is a marijuana testing facility licensed, certified or approved in accordance with this chapter.

[2015, c. 475, §24 (NEW) .]

SECTION HISTORY
IB 2009, c. 1, §5 (NEW). 2009, c. 631, §42 (AMD). 2009, c. 631, §51 (AFF). 2011, c. 407, Pt. B, §32 (AMD). RR 2013, c. 1, §41 (COR). 2013, c. 371, §4 (AMD). 2013, c. 374, §2 (AMD). 2013, c. 393, §4 (AMD). 2013, c. 394, §§7, 8 (AMD). 2013, c. 498, §2 (AMD). 2013, c. 501, §2 (AMD). 2013, c. 503, §§2-6 (AMD). 2013, c. 516, §15 (AMD). 2015, c. 475, §§ 22-24 (AMD).

§2429. ENFORCEMENT

1. **Department fails to adopt rules.**

[2011, c. 407, Pt. B, §33 (RP) .]

2. **Department fails to issue a valid registry identification card.** If the department fails to issue a valid registry identification card or a registration certificate in response to a valid application or renewal submitted pursuant to this chapter within 45 days of its submission, the registry identification card or registration certificate is deemed granted, and a copy of the registry identification application or renewal is deemed a valid registry identification card.

[2009, c. 1, §5 (NEW) .]

3. **Department fails to accept applications.**

[2011, c. 407, Pt. B, §34 (RP) .]

SECTION HISTORY
IB 2009, c. 1, §5 (NEW). 2009, c. 631, §§43, 44 (AMD). 2009, c. 631, §51 (AFF). 2011, c. 407, Pt. B, §§33, 34 (AMD).

§2430. MEDICAL USE OF MARIJUANA FUND ESTABLISHED

1. **Fund established.** The Medical Use of Marijuana Fund, referred to in this section as "the fund," is established as an Other Special Revenue Funds account in the Department of Health and Human Services for the purposes specified in this section.

[2009, c. 631, §45 (NEW); 2009, c. 631, §51 (AFF) .]

2. **Sources of fund.** The State Controller shall credit to the fund:

A. All money received as a result of applications and reapplications for registration as a qualifying patient, primary caregiver and dispensary; [2009, c. 631, §45 (NEW); 2009, c. 631, §51 (AFF).]

B. All money received as a result of applications and reapplications for registry identification cards for registered patients, primary caregivers and dispensaries and board members, officers and employees of dispensaries or marijuana testing facilities; [2015, c. 475, §25 (AMD).]

C. All penalties and fines assessed for violations of this chapter; [2009, c. 631, §45 (NEW); 2009, c. 631, §51 (AFF).]

D. All money from any other source, whether public or private, designated for deposit into or credited to the fund; and [2009, c. 631, §45 (NEW); 2009, c. 631, §51 (AFF).]

E. Interest earned or other investment income on balances in the fund. [2009, c. 631, §45 (NEW); 2009, c. 631, §51 (AFF).]

[2015, c. 475, §25 (AMD) .]

3. **Uses of the fund.** The fund may be used for expenses of the department to administer this chapter, as allocated by the Legislature.

[2009, c. 631, §45 (NEW); 2009, c. 631, §51 (AFF) .]

SECTION HISTORY
2009, c. 631, §45 (NEW). 2009, c. 631, §51 (AFF). 2015, c. 475, §25 (AMD).

§2430-A. COMPLIANCE

The department may take action necessary to ensure compliance with this chapter, including, but not limited to, collecting, possessing, transporting and performing laboratory testing on soil and marijuana plant specimens and portions of products containing marijuana from registered primary caregivers and registered dispensaries to determine compliance with this chapter and for evidence purposes. [2015, c. 475, §26 (AMD).]

SECTION HISTORY
2009, c. 631, §46 (NEW). 2009, c. 631, §51 (AFF). 2013, c. 516, §16 (RPR). 2015, c. 475, §26 (AMD).

§2430-B. ADMISSIBILITY OF RECORDS

A certificate, signed by the commissioner or the commissioner's designee, stating what the records of the department show on any given matter related to this chapter is admissible in evidence in all courts of this State to prove what the records of the department are on that matter. Upon testimony of a law enforcement officer that the certificate and records were obtained by that law enforcement officer from the department, the court shall admit that certificate and those records as evidence without any further foundation or testimony. If the department stores records in a computer or similar device, a printout or other output readable by sight of information stored in the department's computer or similar device, certified by the commissioner or the commissioner's designee as an accurate reflection of the stored information, is admissible in evidence to prove the content of the records. [2011, c. 383, §5 (NEW); 2011, c. 407, Pt. B, §35 (NEW).]

SECTION HISTORY
2011, c. 383, §5 (NEW). 2011, c. 407, Pt. B, §35 (NEW).

Chapter 559: WATER FOR HOMES OR SCHOOLS

§2431. SAMPLES FOR EXAMINATION; POLLUTED; COST

(REPEALED)

SECTION HISTORY

1965, c. 207, §2 (AMD). 1975, c. 751, §2 (RP).

§2432. PENALTIES

(REPEALED)

SECTION HISTORY
1975, c. 751, §2 (RP).

§2433. SAMPLES OF WATER FOR SCHOOL USE; EXAMINATION

(REPEALED)

SECTION HISTORY
1975, c. 751, §2 (RP).

§2434. FLUORIDATION

(REPEALED)

SECTION HISTORY
1975, c. 751, §2 (RP).

§2435. -AUTHORIZATION

(REPEALED)

SECTION HISTORY
1975, c. 751, §2 (RP).

§2436. PROTECTION OF SOURCE OF PUBLIC WATER SUPPLY

(REPEALED)

SECTION HISTORY
1967, c. 341, (AMD). 1973, c. 157, §1 (RPR). 1975, c. 751, §2 (RP).

§2437. PROTECTION OF INTAKE OF PUBLIC WATER SUPPLY

(REPEALED)

SECTION HISTORY
1967, c. 283, (NEW). 1975, c. 751, §2 (RP).

§2437-A. SOURCE OF PUBLIC WATER SUPPLY DEFINED; MUNICIPAL REGULATIONS; PENALTY

(REPEALED)

SECTION HISTORY
1975, c. 534, (NEW). 1975, c. 751, §2 (RP).

§2438. DISINFECTION OF PUBLIC WATER SUPPLY

(REPEALED)

SECTION HISTORY
1973, c. 157, §2 (NEW). 1975, c. 751, §2 (RP).

Chapter 560: WATER TREATMENT PLANTS AND WATER DISTRIBUTION SYSTEMS

§2441. DEFINITIONS

(REPEALED)

SECTION HISTORY
1969, c. 209, §1 (NEW). 1975, c. 751, §3 (RP).

§2442. CLASSIFICATION

(REPEALED)

SECTION HISTORY
1969, c. 209, §1 (NEW). 1975, c. 751, §3 (RP).

§2443. CERTIFICATION

(REPEALED)

SECTION HISTORY
1969, c. 209, §1 (NEW). 1975, c. 751, §3 (RP).

§2444. BOARD OF CERTIFICATION

(REPEALED)

SECTION HISTORY
1969, c. 209, §1 (NEW). 1975, c. 751, §3 (RP).

§2445. CERTIFICATES

(REPEALED)

SECTION HISTORY
1969, c. 209, §1 (NEW). 1975, c. 751, §3 (RP).

§2446. CERTIFICATE FROM OUTSIDE MAINE

(REPEALED)

SECTION HISTORY
1969, c. 209, §1 (NEW). 1975, c. 751, §3 (RP).

§2447. CERTIFICATE FROM OWNER OF PARTICULAR SYSTEM

(REPEALED)

SECTION HISTORY
1969, c. 209, §1 (NEW). 1973, c. 625, §118 (AMD). 1975, c. 751, §3 (RP).

§2448. RULES AND REGULATIONS

(REPEALED)

SECTION HISTORY
1969, c. 209, §1 (NEW). 1975, c. 751, §3 (RP).

§2449. FEES

(REPEALED)

SECTION HISTORY
1969, c. 209, §1 (NEW). 1975, c. 751, §3 (RP).

§2450. CERTIFICATION; TEMPORARY

(REPEALED)

SECTION HISTORY
1969, c. 209, §1 (NEW). 1971, c. 54, (AMD). 1973, c. 625, §119 (AMD).
1975, c. 751, §3 (RP).

§2451. PENALTIES

(REPEALED)

SECTION HISTORY
1969, c. 209, §1 (NEW). 1975, c. 751, §3 (RP).

Chapter 561: CAMPS AND ROADSIDE PLACES

§2481. DEFINITIONS

(REPEALED)

SECTION HISTORY
1975, c. 496, §2 (RP).

§2482. LICENSE; REQUIRED

(REPEALED)

SECTION HISTORY
1975, c. 496, §2 (RP).

§2483. -TERMS AND FEES

(REPEALED)

SECTION HISTORY
1975, c. 496, §2 (RP).

§2484. -DURATION; NOT TRANSFERABLE

(REPEALED)

SECTION HISTORY
1965, c. 221, (AMD). 1967, c. 494, §17 (AMD). 1975, c. 496, §2 (RP).

§2485. -SUSPENSION OR REVOCATION; APPEALS

(REPEALED)

SECTION HISTORY
1975, c. 496, §2 (RP).

§2486. EXCEPTIONS

(REPEALED)

SECTION HISTORY
1973, c. 197, (AMD). 1975, c. 496, §2 (RP).

§2487. PENALTIES

(REPEALED)

SECTION HISTORY
1975, c. 496, §2 (RP).

Chapter 562: CAMPGROUNDS, RECREATIONAL CAMPS, YOUTH CAMPS AND EATING ESTABLISHMENTS

§2491. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings. [1975, c. 496, §3 (NEW).]

1. **Campground.** "Campground" means, in addition to the generally accepted definitions, camping areas, recreational vehicle parks, seashore resorts, lakeshore places, picnic and lunch grounds or other premises where tents, recreational vehicles, rental cabins and cottages are permitted on 5 or more sites for compensation either directly or indirectly. "Campground" includes, but is not limited to, sites intended for recreational purposes rather than permanent residency. "Campground" does not include parking lots or areas where camping is not authorized.

[2011, c. 193, Pt. A, §1 (AMD) .]

2. **Catering establishments.** "Catering establishments" means any kitchen, commissary or similar place in which food or drink is prepared for sale or service elsewhere or for service on the premises during special catered events.

[1975, c. 496, §3 (NEW) .]

2-A. **Calories per serving.** "Calories per serving" means the caloric information for a food or beverage item being offered for consumption by one person, as usually prepared and as offered for sale on the menu, menu board or food display tag.

[2009, c. 395, §1 (NEW); 2009, c. 395, §8 (AFF) .]

2-B. **Chain restaurant.** "Chain restaurant" means an eating establishment that does business under the same trade name in 20 or more locations, at least one of which is located in the State, that offers predominantly the same type of meals, food, beverages or menus, regardless of the type of ownership of an individual location. "Chain restaurant" does not include a grocery store. "Chain restaurant" does not include

a hotel or motel that provides a separately owned eating establishment but does include the separately owned eating establishment if the eating establishment meets the criteria of this subsection. "Chain restaurant" does not include a movie theater.

[2009, c. 395, §2 (NEW); 2009, c. 395, §8 (AFF) .]

3. **Commissioner.** "Commissioner" means the Commissioner of Health and Human Services.

[1975, c. 293, §4 (AMD); 2003, c. 689, Pt. B, §7 (REV) .]

4. **Cottage.** "Cottage" means a single structure where sleeping accommodations are furnished to the public as a business for a day, week or month, but not for longer than an entire season, for temporary occupancy for recreational purposes only and not for permanent residency.

[2011, c. 193, Pt. A, §2 (AMD) .]

5. **Department.** "Department" means the Department of Health and Human Services.

[1975, c. 293, §4 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

6. **Eating and lodging place.** "Eating and lodging place" means every building or structure or any part thereof kept, used as, maintained as, advertised as or held out to the public to be a place where eating and sleeping accommodations are furnished to the public as a business, such as hotels, motels, guest homes and cottages.

[2011, c. 193, Pt. A, §3 (AMD) .]

7. **Eating establishment.** "Eating establishment" means any place where food or drink is prepared and served, or served to the public for consumption on the premises, or catering establishments, or establishments dispensing food from vending machines, or establishments preparing foods for vending machines dispensing foods other than in original sealed packages, such as hotels, motels, boarding homes, restaurants, take-out restaurants, mobile eating places, coffee shops, cafeterias, short order cafes, luncheonettes, grills, tearooms, sandwich shops, soda fountains, bars, cocktail lounges, night clubs, roadside stands, industrial feeding establishments, private or public institutions routinely serving foods such as schools, retail frozen dairy product establishments, airports, parks, theaters, recreational camps, youth camps or any other catering or nonalcoholic drinking establishments or operations where food is prepared and served or served for consumption on the premises, or catering establishments where food is prepared, or where foods are prepared for vending machines dispensing food other than in original sealed packages.

[2013, c. 264, §3 (AMD) .]

7-A. **Food display tag.** "Food display tag" means a written or printed description of a food or beverage item, such as a label or placard, placed in the vicinity of the food or beverage item identifying the type or price of the food or beverage.

[2009, c. 395, §3 (NEW); 2009, c. 395, §8 (AFF) .]

7-B. **Grocery store.** "Grocery store" means a store primarily engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, fresh meats, fish and poultry. "Grocery store" includes a convenience store, but does not include a separately owned eating establishment located within a grocery store.

[2009, c. 395, §4 (NEW); 2009, c. 395, §8 (AFF) .]

7-C. **Menu.** "Menu" means a written or printed list describing food or beverage items offered for sale at an eating establishment that may be distributed on or off the premises, but does not include a menu board.

[2009, c. 395, §5 (NEW); 2009, c. 395, §8 (AFF) .]

7-D. **Menu board.** "Menu board" means a list of food or beverage items offered for sale at an eating establishment that is posted in a public area for viewing by multiple customers, including a backlit marquee sign, chalkboard or drive-through menu sign.

[2009, c. 395, §6 (NEW); 2009, c. 395, §8 (AFF) .]

7-E. **Health inspector.** "Health inspector" means a person whose education and experience in the biological and sanitary sciences qualify that person to engage in the promotion and protection of the public health and who applies technical knowledge to solve problems of a sanitary nature and develops methods and carries out procedures for the control of those factors of the environment that affect the health, safety and well-being of others.

[2011, c. 193, Pt. A, §5 (NEW) .]

7-F. **Lodging place.** "Lodging place" means a building or structure, or any part of a building or structure, used, maintained, advertised or held out to the public as a place where sleeping accommodations are furnished to the public for business purposes. "Lodging place" includes, but is not limited to, hotels, motels, bed and breakfasts and inns where the owner or managing entity maintains the lodging facilities and the structures are located in the same general physical location. "Lodging place" includes a property under common management where 4 or more rooms, cottages or condominium units are rented to the public. "Lodging place" does not include vacation rentals, youth camps, dormitories of charitable, educational or philanthropic institutions, fraternity or sorority houses affiliated with educational institutions, permanent residences, rooming houses, tenancies at will or rental properties with tenant and landlord relationships.

[2013, c. 264, §4 (AMD) .]

8. **Mobile eating place.** "Mobile eating place" means a mobile vehicle designed and constructed to transport, prepare, sell or serve food at a number of sites and capable of being moved from its serving site at any time.

[1975, c. 496, §3 (NEW) .]

9. **Mobile home.**

[1983, c. 553, §18 (RP) .]

10. **Mobile home park.**

[1983, c. 553, §18 (RP) .]

10-A. **Public pool.** "Public pool" means any constructed or prefabricated pool other than a residential pool or medical facility pool that is intended to be used for swimming, recreational bathing or wading and is operated by an owner, lessee, tenant or concessionaire or by a person licensed by the department whether or not a fee is charged for use. "Public pool" includes a pool on the premises of a child care facility that is licensed or required to be licensed under section 8301-A.

[2011, c. 193, Pt. A, §7 (NEW) .]

10-B. **Public spa.** "Public spa" means any constructed spa other than a residential spa or medical facility spa.

[2011, c. 193, Pt. A, §8 (NEW) .]

11. **Recreational camp or sporting camp.** "Recreational camp" or "sporting camp" means a building or group of buildings devoted primarily to the offering of primitive lodging for a fee to persons who want primitive recreation, snowmobiling, hunting, fishing and similar camps, not including summer sports programs overseen by employees or volunteers of municipalities and educational institutions when the activities generally take place at municipal or institutional properties and buildings.

[2011, c. 193, Pt. A, §9 (RPR) .]

12. **Sanitarian.**

[2011, c. 193, Pt. A, §10 (RP) .]

13. **Vending machine establishment.**

[2011, c. 193, Pt. A, §11 (RP) .]

14. **Vending machine.** "Vending machine" means any self-service device offered for public use that, upon insertion of money or by other similar means, dispenses unit servings of food other than in original sealed packages without the necessity of replenishing the device between vending operations.

[2011, c. 193, Pt. A, §12 (AMD) .]

15. **Retail frozen dairy product establishment.** "Retail frozen dairy product establishment" means any place, premise or establishment and any part thereof where frozen dairy products, such as ice cream, frozen custard, ice milk, sherbert, ices and related food products are prepared for consumption on or off premises.

[1979, c. 672, Pt. A, §60 (NEW) .]

16. **Youth camp.** "Youth camp" means a combination of program and facilities established for the primary purpose of providing an outdoor group living experience for children with social, recreational, spiritual and educational objectives and operated and used for 5 or more consecutive days during one or more seasons of the year. "Youth camp" includes day camps, residential camps and trip and travel camps. "Youth camp" does not include summer sports programs overseen by employees or volunteers of municipalities and educational institutions when the activities generally take place at municipal or institutional properties and buildings.

[2011, c. 193, Pt. A, §13 (AMD) .]

17. **Vacation rental.** "Vacation rental" means a residential property that is rented for vacation, leisure or recreation purposes for a day, a week or a month, and typically under 30 days but not for more than an entire summer or winter season, to a person who has a place of permanent residence to which the person intends to return.

[2013, c. 264, §5 (NEW) .]

SECTION HISTORY

1975, c. 293, §4 (AMD). 1975, c. 496, §3 (NEW). 1979, c. 30, §1 (AMD). 1979, c. 672, §§A59,60 (AMD). 1983, c. 553, §18 (AMD). 2003, c. 689, §§B6,7 (REV). 2009, c. 211, Pt. A, §§1-3 (AMD). 2009, c. 395, §§1-6 (AMD). 2009, c. 395, §8 (AFF). 2011, c. 193, Pt. A, §§1-13 (AMD). 2013, c. 264, §§3-5 (AMD).

§2492. LICENSE REQUIRED

1. **License required.** A person, corporation, firm or copartnership may not conduct, control, manage or operate the following establishments for compensation, directly or indirectly, without a license issued by the department:

A. An eating establishment; [2003, c. 452, Pt. K, §20 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. An eating and lodging place; [2003, c. 452, Pt. K, §20 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. A lodging place; [2003, c. 452, Pt. K, §20 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

D. A recreational camp or sporting camp; [2011, c. 193, Pt. A, §14 (AMD).]

E. A campground; [2011, c. 193, Pt. A, §14 (AMD).]

F. A youth camp; [2011, c. 193, Pt. A, §14 (AMD).]

G. A public pool; or [2011, c. 193, Pt. A, §14 (NEW).]

H. A public spa. [2011, c. 193, Pt. A, §14 (NEW).]

Licenses issued must be displayed in a place readily visible to customers or other persons using a licensed establishment.

[2011, c. 193, Pt. A, §14 (AMD) .]

2. **Violation.** A person, corporation, firm or copartnership may not:

A. Violate subsection 1; or [2003, c. 452, Pt. K, §20 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. Violate subsection 1 after having previously violated subsection 1. [2003, c. 452, Pt. K, §20 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. K, §20 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

3. **Campground; presumption.** If a campground consists of 5 or more tents or recreational vehicles on a commercial lot, it is presumed that the owner or renter of the lot is receiving compensation for the use of a campground. The owner or renter may rebut the presumption if the owner or renter presents a preponderance of evidence to the contrary.

[2011, c. 193, Pt. A, §15 (AMD) .]

SECTION HISTORY
1975, c. 496, §3 (NEW). 1979, c. 30, §2 (AMD). 1983, c. 553, §19 (AMD). 2003, c. 452, §X2 (AFF). 2003, c. 452, §K20 (RPR). 2009, c. 211, Pt. A, §§4-6 (AMD). 2011, c. 193, Pt. A, §§14, 15 (AMD).

§2493. APPLICANT

Any person, corporation, firm or copartnership desiring a license shall submit satisfactory evidence of his, her or its ability to comply with the minimum standards of this chapter and all regulations adopted thereunder. [1975, c. 496, §3 (NEW).]

SECTION HISTORY
1975, c. 496, §3 (NEW).

§2494. FEES

Each application for, or for renewal of, a license to operate an eating establishment, eating and lodging place, lodging place, recreational camp, youth camp or campground within the meaning of this chapter must be accompanied by a fee, appropriate to the size of the establishment, place, camp or area of the licensee, determined by the department and not to exceed the fees listed below. All fees collected by the department must be deposited into a special revenue account established for this purpose. No such fee may be refunded. No license may be assignable or transferable. The fees may not exceed: [2011, c. 193, Pt. B, §1 (AMD).]

1. **One hundred dollars.** One hundred dollars for:

A. Public schools governed by a school board of an administrative unit; [1987, c. 838, §1 (NEW).]

B. Private secondary schools approved for tuition when school enrollments are at least 60% publicly funded students as determined by the previous school year's October to April average enrollment; and [1987, c. 838, §1 (NEW).]

C. Schools operated by an agency of State Government for the education of children in unorganized territories; [1987, c. 838, §1 (NEW).]

[2003, c. 673, Pt. X, §1 (AMD) .]

2. **Sixty dollars.** Sixty dollars for each inspection for any establishment that is located in a municipality that requires local inspections of establishments; and

[2011, c. 193, Pt. B, §2 (AMD) .]

3. **Three hundred dollars.** Three hundred dollars for all other establishments, places and camps not included in subsection 1 or 2.

[2009, c. 589, §2 (AMD) .]

All such fees are for the license, one licensure inspection and one follow-up inspection. When additional inspections are required to determine an applicant's eligibility for licensure, the department is authorized through its rules to charge an additional fee not to exceed $100 to cover the costs of each additional inspection or visit. Failure to pay such charges within 30 days of the billing date constitutes grounds for revocation of the license, unless an extension for a period not to exceed 60 days is granted in writing by the commissioner. [2011, c. 375, §1 (AMD).]

SECTION HISTORY
1975, c. 496, §3 (NEW). 1981, c. 703, §§A17,A18 (AMD). 1983, c. 553, §20 (AMD). 1987, c. 838, §1 (AMD). 2003, c. 673, §X1 (AMD). 2007, c. 539, Pt. F, §1 (AMD). 2009, c. 211, Pt. A, §7 (AMD). 2009, c. 589, §2 (AMD). 2011, c. 193, Pt. B, §§1, 2 (AMD). 2011, c. 375, §1 (AMD).

§2495. ISSUANCE OF LICENSES

The department shall, within 30 days following receipt of application, issue an annual license to operate any eating establishment, eating and lodging place, lodging place, recreational camp, youth camp or campground that is found to comply with this chapter and the rules adopted by the department. [2011, c. 193, Pt. B, §3 (AMD).]

When any initial applicant is found, based upon an inspection by the department or by municipal inspection made according to section 2499, not in compliance with the requirements of this chapter or departmental regulations adopted and approved pursuant to section 2496 or 2499, subsection 1, the department may refuse issuance of the initial license, but shall issue a conditional license, except when conditions are found that present a serious danger to the health and safety of the public. A conditional license may not exceed 90 days. Failure by the conditional licensee to meet the conditions specified by the department permits the department to void the conditional license. [2003, c. 673, Pt. X, §2 (AMD).]

The conditional license shall be void when the department has delivered in hand or by certified mail a written notice to the conditional licensee or, if the licensee cannot be reached for service in hand or by certified mail, has left notice thereof at the facility. [1981, c. 203, §1 (RPR).]

The department may redistribute expiration dates for new and renewed licenses to provide for comparable distribution of licenses on a quarterly basis throughout the year and shall prorate the fees for licenses with a term less or more than one year. The prescribed fee shall accompany the application for a new license, or the renewal of a license. [1981, c. 203, §1 (RPR).]

Licenses shall be renewed upon application therefor and upon payment of the prescribed fee and subject to compliance with regulations of the department and with this chapter. The department shall provide licensees with notice of the need for renewal and necessary forms no less than 30 days prior to the expiration of the license. [1981, c. 203, §1 (RPR).]

The issuance of the license provided for in this chapter does not provide exemption from other state or local laws, ordinances or regulations, notwithstanding any other provision of law. [1981, c. 203, §1 (RPR).]

Licenses erroneously issued by the department are void and shall be returned to the department on demand in a notice delivered by hand or by certified mail to the licensee. For cause, the department may revoke or suspend any license pursuant to section 2500. [1981, c. 203, §1 (RPR).]

SECTION HISTORY
1975, c. 496, §3 (NEW). 1977, c. 459, (AMD). 1981, c. 203, §1 (RPR). 1983, c. 553, §21 (AMD). 2003, c. 673, §X2 (AMD). 2009, c. 211, Pt. A, §8 (AMD). 2011, c. 193, Pt. B, §3 (AMD).

§2496. RULES AND POLICIES

1. **Department rulemaking.** The department is authorized and empowered to make and enforce all necessary rules and regulations for the administration of this chapter, and may rescind or modify such rules and regulations from time to time as may be in the public interest, insofar as such action is not in conflict with any of the provisions of this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 140, §1 (NEW) .]

2. **Youth camps; emergency medication.** A youth camp must have a written policy authorizing campers to self-administer emergency medication, including, but not limited to, an asthma inhaler or an epinephrine pen. The written policy must include the following requirements:

A. A camper who self-administers emergency medication must have the prior written approval of the camper's primary health care provider and the camper's parent or guardian; [2005, c. 140, §1 (NEW).]

B. The camper's parent or guardian must submit written verification to the youth camp from the camper's primary health care provider confirming that the camper has the knowledge and the skills to safely self-administer the emergency medication in camp; [2009, c. 211, Pt. A, §9 (AMD).]

C. The youth camp health staff must evaluate the camper's technique to ensure proper and effective use of the emergency medication in camp; and [2009, c. 211, Pt. A, §9 (AMD).]

D. The emergency medication must be readily available to the camper. [2005, c. 140, §1 (NEW).]

[2009, c. 211, Pt. A, §9 (AMD) .]

SECTION HISTORY
1975, c. 496, §3 (NEW). 1977, c. 694, §351 (AMD). 1999, c. 727, §1 (AMD). 2005, c. 140, §1 (RPR). 2009, c. 211, Pt. A, §9 (AMD). MRSA T.22 ., §2496 (AMD).

§2497. RIGHT OF ENTRY, INSPECTION AND DETERMINATION OF COMPLIANCE

The department and any duly designated officer or employee of the department have the right, without an administrative inspection warrant, to enter upon and into the premises of any establishment licensed pursuant to this chapter at any reasonable time in order to determine the state of compliance with this chapter and any rules in force pursuant to this chapter. Such right of entry and inspection extends to any premises that the department has reason to believe is being operated or maintained without a license but no such entry and inspection of any premises may be made without the permission of the owner or person in charge unless a search warrant is obtained authorizing entry and inspection. The department and any duly designated officer or employee of the department do not have the right to enter, for inspection under this chapter, upon and into the premises of any establishment that is licensed under chapter 551, subchapter 1. [2011, c. 375, §2 (AMD).]

Determination of compliance with this chapter and any rules adopted pursuant to this chapter must be made at least once every 2 years by inspection or other method as determined by the department. [2011, c. 375, §2 (AMD).]

SECTION HISTORY
1975, c. 496, §3 (NEW). 1979, c. 672, §A61 (AMD). 1985, c. 771, §5 (AMD). 1987, c. 838, §2 (AMD). 1991, c. 528, §J4 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §J4 (AMD). 2011, c. 375, §2 (AMD).

§2498. FINES AND PENALTIES

1. **Authorization.** The department is authorized to impose one or more of the following sanctions when a violation of this chapter, or rules enacted pursuant to this chapter, occurs and the department determines that a sanction is necessary and appropriate to ensure compliance with state licensing rules or to protect the public health.

A. The department may impose penalties for violations of this chapter, or the rules adopted pursuant to this chapter, on any eating establishment, eating and lodging place, lodging place, recreational camp, youth camp, public pool or public spa or campground. The penalties may not be greater than $100 for each violation. Each day that the violation remains uncorrected may be counted as a separate offense. Penalties may be imposed for each violation of the rules. [2013, c. 264, §6 (AMD).]

B. The department may direct an eating establishment, eating and lodging place, lodging place, recreational camp, youth camp, public pool or public spa or campground to correct any violations in a manner and within a time frame that the department determines is appropriate to ensure compliance with state rules or to protect the public health. Failure to correct violations within the time frames constitutes a separate finable violation. [2013, c. 264, §6 (AMD).]

C. Any person, corporation, firm or copartnership that operates any eating establishment, eating and lodging place, lodging place, recreational camp, youth camp, public pool or public spa or campground without first obtaining a license as required by this chapter must be punished, upon adjudication of unlicensed operation, by a fine of not less than $25 nor more than $200, and upon a 2nd or subsequent adjudication of unlicensed operation must be punished by a fine of not less than $200 nor more than $500. Each day any such person, corporation, firm or copartnership operates without obtaining a license constitutes a separate offense. [2013, c. 264, §6 (AMD).]

D. In the event of any violation of this section or any rule pursuant to this chapter, the Attorney General may seek to enjoin a further violation, in addition to any other remedy. [1991, c. 528, Pt. J, §5 (NEW); 1991, c. 528, Pt. RRR, (AFF); 1991, c. 591, Pt. J, §5 (NEW).]

E. A person, corporation, firm or copartnership that fails to pay a penalty imposed pursuant to this chapter:

(1) May be referred to the Attorney General for appropriate enforcement action; and

(2) In addition to all fines and penalties imposed pursuant to this chapter, is liable for any interest, costs and fees incurred by the department, including attorney's fees. [2013, c. 264, §6 (NEW).]

[2013, c. 264, §6 (AMD) .]

2. **Schedule of penalties.** The department shall establish a schedule of penalties according to the nature and duration of the violation.

[1991, c. 528, Pt. J, §5 (NEW); 1991, c. 528, Pt. RRR, (AFF); 1991, c. 591, Pt. J, §5 (NEW) .]

3. **Enforcement and appeal.** Enforcement and appeal of this section is as follows.

A. The department may impose any fine in conformity with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, providing the licensee the opportunity for an administrative hearing. [1991, c. 528, Pt. J, §5 (NEW); 1991, c. 528, Pt. RRR, (AFF); 1991, c. 591, Pt. J, §5 (NEW).]

B. Licensees that are fined pursuant to this chapter are required to pay the department the amount of the penalties. If a licensee has not paid any collectible fines by the time of its license renewal, the department may collect such fines by requiring their payment prior to the processing of any license renewal application. An appeal of the department's decision to fine a licensee stays the collection of any fine. Interest must accrue on fines at a rate described in Title 14, section 1602-B prior to the completion of any appeal. After the completion of any appeal process or after any appeal period has passed, interest must accrue pursuant to Title 14, section 1602-C. [2003, c. 460, §11 (AMD).]

[2003, c. 460, §11 (AMD) .]

SECTION HISTORY

1975, c. 496, §3 (NEW). 1983, c. 553, §22 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 528, §J5 (RPR). 1991, c. 591, §J5 (RPR). 2003, c. 460, §11 (AMD). 2003, c. 673, §X3 (AMD). RR 2005, c. 2, §17 (COR). 2005, c. 481, §1 (AMD). 2009, c. 211, Pt. A, §§10-12 (AMD). 2011, c. 193, Pt. B, §§4-6 (AMD). 2013, c. 264, §6 (AMD).

§2499. MUNICIPAL INSPECTIONS

Notwithstanding any other provisions of this chapter, in order to ensure statewide uniformity in health standards, health inspector certification and the maintenance of inspection report records, a municipality must have been delegated authority by the department to conduct inspections and demonstrated adherence to requirements under this section prior to performing any municipal inspections under such authority. Any municipal inspection of an establishment under this section conducted by a municipality that has not been delegated authority is void. The department may issue a license to an establishment as defined in section 2491 on the basis of an inspection performed by a health inspector who works for and is compensated by the municipality in which such an establishment is located, but only if the following conditions have been met. [2011, c. 589, §1 (RPR).]

1. **Adopted rules; code of standards.** The municipality involved has adopted ordinances or a code of standards for the establishments that has been approved by the department and that is consistent with the rules used by the department for the issuance of licenses in effect at the time of inspection.

[2011, c. 295, §2 (AMD) .]

2. **Qualified to make inspections.** A municipally employed health inspector may not make inspections under the provisions of this chapter unless certified as qualified by the Commissioner of Health and Human Services.

[2011, c. 193, Pt. B, §7 (AMD) .]

3. **Inspection to ascertain intent.** The department may from time to time inspect such municipally inspected establishments to ascertain that the intent of these statutes is being followed.

[1975, c. 496, §3 (NEW) .]

4. **Inspection reports.** The municipalities shall furnish electronic copies of its inspection reports in a format and on a schedule determined by the department.

[2011, c. 193, Pt. A, §16 (AMD) .]

5. **Charge.** Municipalities may not charge the department for performing such inspections.

[1975, c. 496, §3 (NEW) .]

6. **License fee.** When a license is issued to an establishment, as described in section 2492, subsection 1, located in a municipality to which authority to conduct inspection has been delegated by the department as specified in this section, the requirement for payment of a license fee by the establishment to the department as set forth in section 2494 must be waived. However, the licensee is required to pay the department a sum not to exceed $100 to support the costs of mailing and handling.

[2011, c. 193, Pt. A, §17 (AMD) .]

7. **Licenses.** Licenses issued under this section must be displayed, renewed and in every other way treated the same as licenses issued under this chapter on the basis of inspection by the department.

[2003, c. 673, Pt. X, §5 (AMD) .]

8. **Certification.** Certification of municipally employed health inspectors must be in accordance with standards set by the commissioner and be for a period of 3 years.

[2011, c. 193, Pt. B, §8 (AMD) .]

9. **Delegation renewal.** Beginning January 1, 2005, and every 3 years thereafter, the department shall review the inspection program of the municipalities to which authority to conduct inspections has been delegated. The process for the delegation of this authority and other such provisions describing the assignment of and removal of this delegation of authority must be established by rule and must include, but not be limited to, staff competency, enforcement and compliance history, inspection practices and reporting practices. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

[2011, c. 193, Pt. A, §18 (AMD) .]

SECTION HISTORY
1975, c. 293, §4 (AMD). 1975, c. 496, §3 (NEW). 1981, c. 703, §A19 (AMD). 2003, c. 673, §§X4-6 (AMD). 2003, c. 689, §B7 (REV). 2011, c. 193, Pt. A, §§16-18 (AMD). 2011, c. 193, Pt. B, §§7-9 (AMD). 2011, c. 295, §§1, 2 (AMD). 2011, c. 589, §1 (AMD).

§2500. SUSPENSION OR REVOCATION; APPEALS

When the department believes a license should be suspended or revoked, it shall file a complaint with the District Court in conformity with the Maine Administrative Procedure Act. A person aggrieved by the refusal of the department to issue a license may request a hearing in conformity with the Maine Administrative Procedure Act. [1977, c. 694, §352 (AMD); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF).]

Whenever, upon inspection, conditions are found which violate this chapter or regulations adopted thereunder, or which may endanger the life, health or safety of persons living in or attending any licensed establishment under this chapter, the department may request an emergency suspension of license of the District Court pursuant to Title 4, section 184, subsection 6, and the court may grant suspension subject to reinstatement following a hearing before the court if cause is not shown. [1999, c. 547, Pt. B, §41 (AMD); 1999, c. 547, Pt. B, §80 (AFF).]

SECTION HISTORY
1975, c. 496, §3 (NEW). 1977, c. 694, §352 (AMD). 1981, c. 203, §2 (AMD). 1999, c. 547, §§B41,78 (AMD). 1999, c. 547, §B80 (AFF).

§2500-A. MENU LABELING FOR CHAIN RESTAURANTS

The provisions of this section apply to chain restaurants that are located in the State. [2009, c. 395, §7 (NEW); 2009, c. 395, §8 (AFF).]

1. **Caloric information.** A chain restaurant shall state on a food display tag, menu or menu board the total amount of calories per serving of each food and beverage item listed for sale on the food display tag, menu or menu board. The statement of calories required in this subsection must be:

A. Clear and conspicuous; [2009, c. 395, §7 (NEW); 2009, c. 395, §8 (AFF).]

B. Adjacent to or in close proximity and clearly associated with the item to which the statement refers; and [2011, c. 691, Pt. D, §9 (AMD).]

C. Printed in a font and format at least as prominent in size and appearance as the name or the price of the item to which the statement refers. [2011, c. 691, Pt. D, §9 (AMD).]

D. [2011, c. 691, Pt. D, §9 (RP).]

As the statement of calories pertains to beer, wine and spirits, the statement must also meet the requirements of subsection 6.

[2011, c. 691, Pt. D, §9 (AMD) .]

2. **Determining caloric content.** The caloric content information required by subsection 1 must be determined on a reasonable basis and may be determined only once per standard menu item if the eating establishment follows a standardized recipe, trains to a consistent method of preparation and maintains a reasonably consistent portion size. For the purposes of this subsection a reasonable basis for determining caloric content means use of a recognized method for determining calorie content, including, but not limited to, nutrient databases, laboratory testing and other reliable methods of analysis. Caloric content may be rounded to the nearest 10 calories for caloric content above 50 calories and to the nearest 5 calories for caloric content of 50 calories and below.

[2009, c. 395, §7 (NEW); 2009, c. 395, §8 (AFF) .]

3. **Required statement.** A menu or menu board or written nutrition information provided to a customer by a chain restaurant must contain the following statement in a clear and conspicuous manner and in a prominent location: "To maintain a healthy weight, a typical adult should consume approximately 2,000 calories per day; however, individual calorie needs may vary." A menu, menu board or written nutrition information provided to a customer by a chain restaurant may include the following statement or a statement similar to the following: "Nutrition information is based upon standard recipes and product formulations; however, modest variations may occur due to differences in preparation, serving sizes, ingredients or special orders."

[2009, c. 395, §7 (NEW); 2009, c. 395, §8 (AFF) .]

4. **Different varieties.** For a food or beverage item that is listed as a single item but includes more than one variety, the caloric information required under subsection 1 for that item must be the median value of calories for all varieties offered for that item if the caloric information for each variety of the item is within 20% of the median for that item. If the caloric information required by subsection 1 for a variety of a food or beverage item is not within 20% of the median for that item, then the caloric information must be stated for each variety of that item. If a food display tag is used to identify a specific variety of a food or beverage item, the caloric information required by subsection 1 must be for that specific variety of the item.

[2009, c. 395, §7 (NEW); 2009, c. 395, §8 (AFF) .]

5. **Exceptions.** A chain restaurant is not required to provide information pursuant to subsection 1 for:

A. Food items served at a self-service salad bar or buffet; [2009, c. 395, §7 (NEW); 2009, c. 395, §8 (AFF).]

B. An item offered for a limited time that appears on a menu, menu board or food display tag for less than 90 days per year; [2009, c. 395, §7 (NEW); 2009, c. 395, §8 (AFF).]

C. A condiment or other item offered to a customer for general use without charge; [2009, c. 395, §7 (NEW); 2009, c. 395, §8 (AFF).]

D. An item sold to a customer in a manufacturer's original sealed package that contains nutrition information as required by federal law; or [2009, c. 395, §7 (NEW); 2009, c. 395, §8 (AFF).]

E. A custom order for a food or beverage item that does not appear on a menu, menu board or food display tag. [2009, c. 395, §7 (NEW); 2009, c. 395, §8 (AFF).]

[2009, c. 395, §7 (NEW); 2009, c. 395, §8 (AFF) .]

6. **Alcoholic beverages.** A chain restaurant shall state on a food display tag, menu or menu board the average caloric value for beers, wines and spirits as established by the United States Department of Agriculture, Agriculture Research Service in the National Nutrient Database for Standard Reference. A food display tag, menu or menu board for beer, wine and spirits may include the following statement: "Signature drinks or liqueurs with added ingredients may contain increased caloric content."

[2009, c. 395, §7 (NEW); 2009, c. 395, §8 (AFF) .]

7. **Compliance; enforcement.** The department or an agent authorized to inspect an eating establishment under section 2499 shall ensure compliance with the provisions of this section but is not required to verify the accuracy of the caloric information required by this section. Upon request a chain restaurant shall provide to the department documentation of the accuracy of the information required by subsection 1. A violation of this section is a violation of the Maine Unfair Trade Practices Act, enforceable against the owner or franchisee of the eating establishment, except that no private remedies exist under Title 5, section 213. This section may not be construed to create or enhance any claim, right of action or civil liability that did not exist under state law prior to the effective date of this subsection or limit any claim, right of action or civil liability that otherwise exists under state law. No private right of action arises out of this section. The only mechanism for enforcing this section is as provided in this subsection.

[2009, c. 395, §7 (NEW); 2009, c. 395, §8 (AFF) .]

8. **Uniformity of regulation; preemption.** To the extent consistent with federal law, the regulation of disclosure of caloric and nutritional information is a matter of statewide concern, and state law governing that disclosure occupies the whole field of regulation regarding disclosure by chain restaurants of nutritional information and requirements regarding the content required to be posted on menus, menu boards and food display tags. A local government may not adopt an ordinance regulating the dissemination of caloric or nutritional information or requiring information to be placed on menus, menu boards or food display tags by a chain restaurant, and any ordinance or regulation that violates this subsection is void and has no force or effect.

[2009, c. 395, §7 (NEW); 2009, c. 395, §8 (AFF) .]

SECTION HISTORY
2009, c. 395, §7 (NEW). 2009, c. 395, §8 (AFF). 2011, c. 691, Pt. D, §9 (AMD).

§2501. EXCEPTIONS

Private homes are not deemed or considered lodging places and subject to a license when not more than 5 rooms are let; such private homes must post in a visible location in each rented room a card with the following statement in text that is easily readable in no less than 18-point boldface type of uniform font "This lodging place is not regulated by the State of Maine Department of Health and Human Services, Maine Center for Disease Control and Prevention." The homes must provide guests upon check-in with a notice containing the same information. A license is not required from vacation rentals, dormitories of charitable, educational or philanthropic institutions or fraternity and sorority houses affiliated with educational institutions, or private homes used in emergencies for the accommodation of persons attending conventions, fairs or similar public

gatherings, nor from temporary eating establishments and temporary lodging places for the same, nor from railroad dining or buffet cars, nor from construction camps, nor from boarding houses and camps conducted in connection with wood cutting and logging operations, nor from any boarding care facilities or children's homes that are licensed under section 7801. [2015, c. 494, Pt. D, §4 (AMD).]

Rooms and cottages are not deemed or considered lodging places and subject to a license where not more than 3 rooms and cottages are let. [2011, c. 193, Pt. B, §10 (AMD).]

Stores or other establishments, where bottled soft drinks or ice cream is sold for consumption from the original containers only, and where no tables, chairs, glasses or other utensils are provided in connection with such sale, are not considered eating establishments. At such establishments, straws or spoons may be provided to aid in the consumption of such bottled soft drinks or ice cream, as long as they are supplied in original individual single service sterile packages. [2011, c. 193, Pt. B, §10 (AMD).]

Nonprofit organizations including, but not limited to, 4-H Clubs, scouts and agricultural societies are exempt from department rules and regulations relating to dispensing foods and nonalcoholic beverages at not more than 12 public events or meals within one calendar year. [2011, c. 193, Pt. B, §10 (AMD).]

SECTION HISTORY
1975, c. 496, §3 (NEW). 1977, c. 78, §148 (AMD). 2007, c. 428, §1 (AMD). 2011, c. 193, Pt. B, §10 (AMD). 2013, c. 264, §7 (AMD). 2015, c. 494, Pt. D, §4 (AMD).

§2502. TRANSACTION FEE FOR ELECTRONIC RENEWAL OF LICENSE

The department may collect a transaction fee from a licensee who renews a license electronically under this chapter. The fee may not exceed the cost of providing the electronic license renewal service. The department may adopt rules necessary to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 589, §3 (NEW).]

SECTION HISTORY
2009, c. 589, §3 (NEW).

Chapter 562-A: PREPARATION OF LIVESTOCK AND POULTRY PRODUCTS FOR HUMAN CONSUMPTION

Subchapter 1: GENERAL PROVISIONS

§2511. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1999, c. 771, §1 (NEW).]

1. **Adulterated.** "Adulterated" applied to a livestock or poultry product means that the livestock product or poultry product:

A. Contains a poisonous or harmful substance that may render it injurious to health. The product is not considered adulterated under this definition if the quantity of the substance in or on the product does not ordinarily render it injurious to health; [1999, c. 771, §1 (NEW).]

B. Contains an added poisonous or harmful substance that may, in the judgment of the commissioner, make the product unfit for human food; [1999, c. 771, §1 (NEW).]

C. Is a raw agricultural commodity and the commodity contains a pesticide chemical that is unsafe within the meaning of the Federal Food, Drug, and Cosmetic Act, Section 408; [1999, c. 771, §1 (NEW).]

D. Contains a food additive that is unsafe within the meaning of the Federal Food, Drug, and Cosmetic Act, Section 409; [1999, c. 771, §1 (NEW).]

E. Contains a color additive that is unsafe within the meaning of the Federal Food, Drug, and Cosmetic Act, Section 706. A product that is not otherwise considered adulterated under paragraph C or D is considered adulterated if use of the pesticide chemical, food additive or color additive in or on the product is prohibited by rules of the commissioner in licensed establishments; [1999, c. 771, §1 (NEW).]

F. Consists of any filthy, putrid or decomposed substance or is unsound, unhealthful, unwholesome or otherwise unfit for human food; [1999, c. 771, §1 (NEW).]

G. Has been prepared, packed or held under unsanitary conditions where it may have become contaminated with filth or where it may have been rendered injurious to health; [1999, c. 771, §1 (NEW).]

H. Is the product of an animal, including poultry, that has died in a manner other than by slaughter; [1999, c. 771, §1 (NEW).]

I. Is in or has been in a container composed of a poisonous or harmful substance that may render the contents injurious to health; [1999, c. 771, §1 (NEW).]

J. Has been subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to the Federal Food, Drug, and Cosmetic Act, Section 409; [1999, c. 771, §1 (NEW).]

K. Has had a valuable constituent omitted or abstracted; has had a substance substituted, wholly or in part; has had damage or inferiority concealed in any manner; or has had a substance added, mixed or packed so as to increase its bulk or weight, reduce its quality or strength or make it appear better or of greater value than it is; or [1999, c. 771, §1 (NEW).]

L. Is margarine containing animal fat, and any of the raw material used consisted of a filthy, putrid or decomposed substance. [1999, c. 771, §1 (NEW).]

[1999, c. 771, §1 (NEW) .]

2. **Animal food manufacturer.** "Animal food manufacturer" means a person engaged in the business of preparing animal food, including poultry food, derived wholly or in part from livestock or poultry carcasses or parts or products of carcasses.

[1999, c. 771, §1 (NEW) .]

3. **Broker or meat and poultry products broker.** "Broker" or "meat and poultry products broker" means a person engaged in the business of buying or selling livestock products or poultry products for other persons on commission or otherwise negotiating purchases or sales of these products other than for the broker's account or as an employee of another person.

[1999, c. 771, §1 (NEW) .]

4. **Color additive.** "Color additive" has the same meaning as under the Federal Food, Drug, and Cosmetic Act.

[1999, c. 771, §1 (NEW) .]

5. **Commercial processor.** "Commercial processor" means a person who maintains an official establishment under this chapter for the purpose of processing livestock, meat, meat food products, poultry or poultry products other than for the exclusive use in the household of the owner of the commodity by the owner and members of the owner's household and the owner's nonpaying guests and employees.

[1999, c. 771, §1 (NEW) .]

6. **Commercial slaughterhouse.** "Commercial slaughterhouse" means a person engaged in the business of slaughtering livestock or poultry other than as a custom slaughterhouse.

[1999, c. 771, §1 (NEW) .]

7. **Commissioner.** "Commissioner" means the Commissioner of Agriculture, Conservation and Forestry or the commissioner's designee.

[1999, c. 771, §1 (NEW); 2011, c. 657, Pt. W, §6 (REV) .]

8. **Consumer package.** "Consumer package" means a container or package that contains a product in its final form for sale to the end-use consumer.

[1999, c. 771, §1 (NEW) .]

9. **Container or package.** "Container" or "package" means a box, can, tin, cloth or plastic or other receptacle, wrapper or cover.

[1999, c. 771, §1 (NEW) .]

10. **Custom processor.** "Custom processor" means a person who maintains a licensed establishment under this chapter for the purpose of processing livestock, meat, meat food products, poultry or poultry products exclusively for use in the household of the owner of the commodity by the owner and members of the owner's household and the owner's nonpaying guests and employees.

[1999, c. 771, §1 (NEW) .]

11. **Custom slaughterhouse.** "Custom slaughterhouse" means a person who maintains a slaughtering facility that is a licensed establishment or a registered establishment under this chapter for the purposes of slaughtering livestock or poultry for another person's exclusive use by that person and members of that person's household and that person's nonpaying guests and employees, and who is not engaged in the business of buying or selling carcasses, parts of carcasses, meat or meat food products or any cattle, domesticated deer, sheep, swine, goats, domestic rabbits, equines, poultry or other designated animals useable as human food.

[2013, c. 252, §1 (AMD) .]

12. **Director.** "Director" means the person designated by the commissioner to be in charge of the day-to-day operations of the state meat and poultry inspection and licensing program established by this chapter.

[1999, c. 771, §1 (NEW) .]

13. **Domesticated deer.** "Domesticated deer" means fallow deer, family Cervidae, subfamily Cervinae, genus Dama; red deer, family Cervidae, subfamily Cervinae, genus Cervus, species Elaphus; and any other species specified under Title 7, section 1333, subsection 1 kept as domestic animals for breeding stock or for sale as food.

[2003, c. 386, §18 (AMD) .]

14. **Federal acts.** "Federal acts" means the Federal Meat Inspection Act and the Federal Poultry Products Inspection Act.

[1999, c. 771, §1 (NEW) .]

15. **Federal Food, Drug, and Cosmetic Act.** "Federal Food, Drug, and Cosmetic Act" means the Act so entitled, approved June 25, 1938, 52 Stat. 1040, and amendatory or supplementary acts. It includes as part of its meaning the Maine Food Law, chapter 551, subchapter 1, rules promulgated under that subchapter and amendatory or supplementary acts, when not inconsistent with the Federal Food, Drug, and Cosmetic Act.

[1999, c. 771, §1 (NEW) .]

16. **Federal Meat Inspection Act.** "Federal Meat Inspection Act" means the Act so entitled, approved March 4, 1907, 34 Stat. 1260, as amended by the Wholesome Meat Act 81 Stat. 584.

[1999, c. 771, §1 (NEW) .]

17. **Federal Poultry Products Inspection Act.** "Federal Poultry Products Inspection Act" means the Act so entitled, approved August 28, 1957, 71 Stat. 441, as amended by the Federal Wholesome Poultry Products Act, 82 Stat. 791.

[1999, c. 771, §1 (NEW) .]

18. **Food additive.** "Food additive" has the same meaning as under the Federal Food, Drug, and Cosmetic Act.

[1999, c. 771, §1 (NEW) .]

19. **Handler of dead, dying, disabled or diseased animals.** "Handler of dead, dying, disabled or diseased animals" means a person who buys, sells, transports or otherwise handles animals that died other than by slaughter or animals that display the following symptoms:

A. Central nervous system disorder; [1999, c. 771, §1 (NEW).]

B. Abnormal temperature, high or low; [1999, c. 771, §1 (NEW).]

C. Difficult breathing; [1999, c. 771, §1 (NEW).]

D. Abnormal swellings; [1999, c. 771, §1 (NEW).]

E. Lack of muscular coordination; [1999, c. 771, §1 (NEW).]

F. Inability to walk normally or stand; or [1999, c. 771, §1 (NEW).]

G. Any of the conditions for which livestock are required to be condemned on ante mortem inspection in accordance with the requirements of this chapter and the rules adopted pursuant to this chapter. [1999, c. 771, §1 (NEW).]

[1999, c. 771, §1 (NEW) .]

20. **Immediate container.** "Immediate container" means a consumer package or any other container in which livestock products or poultry products are packed.

[1999, c. 771, §1 (NEW) .]

21. **Inspector.** "Inspector" means an employee or official of the State or an employee or official of the Federal Government or of any other governmental entity of this State, authorized by the commissioner to perform inspection functions under this chapter under an agreement between the commissioner and the governmental entity.

[1999, c. 771, §1 (NEW) .]

22. **Label.** "Label" means a display of written, printed or graphic matter upon a product or the immediate container, not including package liners, of a product.

[1999, c. 771, §1 (NEW) .]

23. **Labeling.** "Labeling" means all labels and other written, printed or graphic matter:

A. On a product or its container or wrapper; or [1999, c. 771, §1 (NEW).]

B. Accompanying the product. [1999, c. 771, §1 (NEW).]

[1999, c. 771, §1 (NEW) .]

24. **Licensed establishment.** "Licensed establishment" means a person required to hold a license under section 2514.

[1999, c. 771, §1 (NEW) .]

25. **Livestock.** "Livestock" means cattle, domesticated deer, sheep, swine, goats, domestic rabbits, horses, mules, other equines or other designated animals, whether live or dead.

[1999, c. 771, §1 (NEW) .]

26. **Livestock product.** "Livestock product" means a carcass or part of a carcass, meat or meat food product of any livestock.

[1999, c. 771, §1 (NEW) .]

26-A. **Locally owned grocery store.** "Locally owned grocery store" means a grocery store at least 51% of which is owned by one or more residents of the State and that has a gross floor area of 25,000 square feet or less.

[2013, c. 304, §1 (NEW) .]

26-B. **Locally owned restaurant.** "Locally owned restaurant" means an eating establishment at least 51% of which is owned by one or more residents of the State and that is not a chain restaurant pursuant to section 2491, subsection 2-B.

[2013, c. 304, §1 (NEW) .]

27. **Meat.** "Meat" means the part of the muscle of cattle, domesticated deer, sheep, swine, goats, horses, mules, other equines or other designated animals that is skeletal or that is found in the tongue, diaphragm, heart or esophagus, with or without the accompanying and overlying fat, and the portions of bone, skin, sinew, nerve and blood vessels that normally accompany the muscle tissue but does not include the muscle found in the lips, snout or ears.

[1999, c. 771, §1 (NEW) .]

28. **Meat food product or meat product.** "Meat food product" or "meat product" means a product useable as human food that is made wholly or in part from any meat or other portion of a carcass of cattle, domesticated deer, sheep, swine, domestic rabbits or goats, excepting products that are exempted from definition as a meat food product by the commissioner under conditions that the commissioner may prescribe to ensure that the meat or other portions of carcass contained in products are unadulterated and that products are not represented as meat food products. This term, as applied to food products of equines or other designated animals, has a meaning comparable to that provided in this subsection with respect to cattle, domesticated deer, sheep, swine, domestic rabbits and goats.

[1999, c. 771, §1 (NEW) .]

29. **Misbranded.** "Misbranded" applies to any livestock product or poultry product under one or more of the following circumstances:

A. Its labeling is false or misleading; [1999, c. 771, §1 (NEW).]

B. It is offered for sale under the name of another food; [1999, c. 771, §1 (NEW).]

C. It is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately after the word "imitation," the name of the food imitated; [1999, c. 771, §1 (NEW).]

D. Its container is made, formed or filled so that it is misleading; [1999, c. 771, §1 (NEW).]

E. It does not bear a label showing the name and place of business of the manufacturer, packer or distributor and an accurate statement of the quantity of the product in terms of weight, measure or numerical count, except that the commissioner may establish by rule exemptions for livestock products not in containers and variations and exemptions as to small packages for livestock products or poultry products; [1999, c. 771, §1 (NEW).]

F. A word, statement or other information required by this chapter to appear on the label or labeling is not prominently and conspicuously placed as compared with other words, statements, designs or devices on the labeling and in terms likely to be read and understood by the ordinary individual under customary conditions of purchase and use; [1999, c. 771, §1 (NEW).]

G. It is represented as a food for which a definition and standard of identity or composition has been prescribed by the rules of the commissioner under section 2512 and:

(1) It does not conform to the definition and standard; or

(2) Its label does not bear the name of the food specified in the definition and standard and, as may be required by rules, the common names of optional ingredients other than spices, flavoring and coloring present in the food; [1999, c. 771, §1 (NEW).]

H. It is represented as a food for which a standard of fill of container has been prescribed by rules of the commissioner under section 2512 and it falls below the standard of fill of container, unless its label bears, in such manner and form as the rules specify, a statement that it falls below the standard; [1999, c. 771, §1 (NEW).]

I. It is not a food for which a definition and standard of identity or composition has been prescribed and the label does not bear:

(1) The common or usual name of the food; and

(2) If it is fabricated from 2 or more ingredients, the common name of each ingredient, except that spices, flavorings and colorings may be designated as spices, flavorings and colorings without naming each as provided in rule; [1999, c. 771, §1 (NEW).]

J. It is represented for special dietary uses and its label does not bear such information concerning its vitamin, mineral and other dietary properties as the commissioner determines to be and by rule prescribes as necessary in order to fully inform purchasers of its value for these uses; [1999, c. 771, §1 (NEW).]

K. It contains any artificial flavoring, artificial coloring or chemical preservative, does not have a label stating that fact and does not meet requirements for exemption from this paragraph as established in rule; or [1999, c. 771, §1 (NEW).]

L. It fails to have, directly on its containers, as the commissioner may by rules prescribe, the official inspection legend and establishment number of the official establishment where the product was prepared and any other information as the commissioner may require in rules to ensure that it does not have false or misleading labeling and that the public is informed of the manner of handling required to maintain the product in a wholesome condition. [1999, c. 771, §1 (NEW).]

[1999, c. 771, §1 (NEW) .]

29-A. **Mobile poultry processing unit.** "Mobile poultry processing unit" means a poultry slaughterhouse that meets the structural, operational and licensing requirements of a mobile poultry processing unit under the federal acts and that is operated by a person licensed under section 2514.

[2013, c. 304, §2 (NEW) .]

30. **Official certificate.** "Official certificate" means a certificate established by rule of the commissioner for issuance by an inspector or other person performing official functions under this chapter.

[1999, c. 771, §1 (NEW) .]

31. **Official device.** "Official device" means a device authorized by the commissioner for use in applying an official mark.

[1999, c. 771, §1 (NEW) .]

32. **Official establishment.** "Official establishment" means an establishment as determined by the commissioner at which inspection of the slaughter of livestock or poultry or the preparation of livestock products or poultry products is maintained under the authority of this chapter.

[1999, c. 771, §1 (NEW) .]

33. **Official inspection legend.** "Official inspection legend" means a symbol established by rule of the commissioner showing that a product was inspected and passed in accordance with this chapter.

[1999, c. 771, §1 (NEW) .]

34. **Official mark.** "Official mark" means the official inspection legend or any other symbol established by rule of the commissioner to identify the status of any product of livestock or poultry under this chapter.

[1999, c. 771, §1 (NEW) .]

35. **Person.** "Person" includes an individual, partnership, corporation, association or other business unit and an officer, agent or employee.

[1999, c. 771, §1 (NEW) .]

36. **Pesticide chemical.** "Pesticide chemical" has the same meaning as under the Federal Food, Drug, and Cosmetic Act.

[1999, c. 771, §1 (NEW) .]

37. **Poultry.** "Poultry" means a domesticated bird, whether live or dead.

[1999, c. 771, §1 (NEW) .]

37-A. **Poultry producer.** "Poultry producer" means a person who raises poultry offered for sale.

[2009, c. 354, §1 (NEW) .]

38. **Poultry product.** "Poultry product" means a poultry carcass or part of a carcass or a product that is made wholly or in part from a poultry carcass or part of a carcass, excepting products that are exempted by the commissioner from definition as a poultry product under conditions that the commissioner may prescribe to ensure that the poultry ingredients in products are not adulterated and that these products are not represented as poultry products.

[1999, c. 771, §1 (NEW) .]

39. **Prepared.** "Prepared" means slaughtered, canned, salted, stuffed, rendered, boned, cut up or otherwise manufactured or processed.

[1999, c. 771, §1 (NEW) .]

40. **Public warehouse operator.** "Public warehouse operator" means a person who acts as a temporary custodian of meat, meat food products or poultry products stored in that person's warehouse for a fee.

[1999, c. 771, §1 (NEW) .]

41. **Raw agricultural commodity.** "Raw agricultural commodity" has the same meaning as under the Federal Food, Drug, and Cosmetic Act.

[1999, c. 771, §1 (NEW) .]

41-A. **Registered establishment.** "Registered establishment" means a person registered under section 2514-A.

[2015, c. 329, Pt. A, §6 (RPR) .]

42. **Reinspection.** "Reinspection" includes inspection of the preparation of livestock products and poultry products, as well as reexamination of products previously inspected.

[1999, c. 771, §1 (NEW) .]

43. **Renderer.** "Renderer" means a person engaged in the business of rendering livestock or poultry carcasses or parts of carcasses, except rendering conducted under inspection or exemption under this chapter.

[1999, c. 771, §1 (NEW) .]

44. **Retail vendor.** "Retail vendor" means a person who sells, displays, advertises for sale, offers for sale or has available for sale meat, meat food products or poultry products for purchase by consumers. "Retail vendor" includes a person who operates a store or who sells or attempts to sell to consumers at their homes or otherwise sells, displays, advertises, offers or has available for sale meat food products or poultry products at retail for purchase by consumers.

[1999, c. 771, §1 (NEW) .]

45. **Shipping container.** "Shipping container" means a container used or intended for use in packaging a livestock product or poultry product packed in an immediate container.

[1999, c. 771, §1 (NEW) .]

45-A. **Small enterprise.** "Small enterprise" means a person licensed under section 2514 that processes 20,000 birds or fewer in a calendar year and that elects to operate under an exemption pursuant to section 2517-C, subsection 1-B.

[2013, c. 323, §2 (NEW) .]

46. **Useable as human food.** "Useable as human food" refers to a livestock or poultry carcass or part or product of a livestock or poultry carcass, unless it is denatured or otherwise identified as required by rules prescribed by the commissioner to deter its use as human food or as naturally inedible by humans.

[1999, c. 771, §1 (NEW) .]

47. **Wholesale distributor.** "Wholesale distributor" means a person who sells meat to retail vendors, other merchants or to industrial, institutional and commercial users mainly for resale or business use.

[1999, c. 771, §1 (NEW) .]

SECTION HISTORY
1999, c. 777, §1 (NEW). 2003, c. 386, §18 (AMD). 2009, c. 354, §1 (AMD). 2011, c. 657, Pt. W, §6 (REV). 2013, c. 252, §§1, 2 (AMD). 2013, c. 304, §§1, 2 (AMD). 2013, c. 323, §§1, 2 (AMD). 2015, c. 329, Pt. A, §6 (AMD).

§2512. POWERS AND DUTIES OF THE COMMISSIONER

The commissioner shall implement a meat and poultry products inspection and licensing program that imposes and enforces requirements with respect to intrastate operations and commerce that are at least as stringent as those imposed and enforced under the federal acts with respect to operations and transactions in interstate commerce. The Department of Agriculture, Conservation and Forestry is designated as the state agency to administer this chapter and to cooperate with the Secretary of Agriculture of the United States in developing and administering the state meat inspection program. [1999, c. 777, §1 (NEW); 2011, c. 657, Pt. W, §5 (REV).]

1. **Duties.** The commissioner shall:

A. Require ante mortem and post mortem inspections, quarantine, segregation and reinspections with respect to the slaughter of livestock and poultry and the preparation of livestock products and poultry products at all establishments in this State, except those exempted under section 2517-C or exempted by the commissioner under subsection 2, paragraph K, at which livestock or poultry are slaughtered or livestock products or poultry products are prepared for human food solely for distribution in intrastate commerce; [2009, c. 354, §2 (AMD).]

B. Require the identification of livestock and poultry for inspection purposes and the marking and labeling of livestock products or poultry products or their containers, or both, as "Maine Inspected and Passed" if the products are not found upon inspection to be adulterated and "Maine Inspected and Condemned" if they are found upon inspection to be adulterated and the destruction for food purposes of all the condemned products under the supervision of an inspector; [1999, c. 777, §1 (NEW).]

C. Prohibit the entry into official establishments of livestock products and poultry products not prepared under federal inspection or inspection pursuant to this chapter and further limit the entry of these articles and other materials into licensed establishments under conditions that the commissioner determines necessary to carry out the purposes of this chapter; [1999, c. 777, §1 (NEW).]

D. Require that when livestock products and poultry products leave official establishments they bear directly on the products or on their containers, or both, as the commissioner may require, all information required under section 2511, subsection 29 and require approval of all labeling and containers to be used for the products when sold or transported in intrastate commerce to ensure that they comply with the requirements of this chapter; [1999, c. 777, §1 (NEW).]

E. Investigate the sanitary conditions of each licensed or official establishment under paragraph A and withdraw or otherwise refuse to provide inspection service at a licensed or official establishment where the sanitary conditions are such as to render adulterated the livestock products or poultry products prepared or handled there; [1999, c. 777, §1 (NEW).]

F. Establish standards relating to sanitation for all establishments required to have inspection under paragraph A or required to be licensed under section 2514; and [1999, c. 777, §1 (NEW).]

G. Require that persons licensed under this chapter keep records; fully and correctly disclose all transactions involved in their business; and afford to the commissioner and the commissioner's representatives, including representatives of other governmental agencies designated by the commissioner, access to their places of business and opportunity, at all reasonable times, to examine the facilities, inventory and records, to copy the records and to take reasonable samples of the inventory upon the payment of the fair market value. [1999, c. 777, §1 (NEW).]

[2009, c. 354, §2 (AMD) .]

2. **Powers.** The commissioner may:

A. Remove inspectors from an official establishment that fails to destroy condemned products as required by subsection 1, paragraph B; [1999, c. 777, §1 (NEW).]

B. Refuse to provide inspection service under this chapter with respect to an official establishment for reasons specified in the Federal Meat Inspection Act, Section 401 or the Federal Poultry Products Inspection Act, Section 18 or for any other violation of this chapter or the rules adopted under it; [1999, c. 777, §1 (NEW).]

C. Order labeling and containers to be withheld from use if the commissioner determines that the labeling is false or misleading or the containers are of a misleading size or form; [1999, c. 777, §1 (NEW).]

D. Require that the slaughter and preparation of equines be conducted in establishments separate from establishments where other livestock are slaughtered or their products are prepared; [1999, c. 777, §1 (NEW).]

E. Authorize inspection to continue at an official establishment on state holidays or beyond the regular work shift or workweek for state inspectors as long as the necessary inspectors are available and the official establishment pays all overtime salaries for inspections necessary to keep the plant open and other expenses caused by the overtime employment. Funds reimbursed under this chapter must be deposited into the General Fund as undedicated revenue; [2003, c. 451, Pt. G, §1 (AMD).]

F. Adopt by reference, or otherwise, provisions of the rules under the federal acts with changes as the commissioner determines appropriate to make those provisions applicable to operations and transactions subject to this chapter that have the same effect as if adopted under this chapter. The commissioner may adopt other rules of practice providing an opportunity for hearing in connection with the issuance of orders under paragraph A, B or C or subsection 1, paragraph E and establishing a procedure for

proceedings in these cases. This paragraph does not preclude a requirement that a label or container be withheld from use or a refusal of inspection under paragraph A or C or subsection 1, paragraph E pending issuance of a final order in a proceeding; [1999, c. 777, §1 (NEW).]

G. Appoint and prescribe the duties of a director, inspectors and other personnel that the commissioner determines necessary to carry out the purposes of this chapter; [1999, c. 777, §1 (NEW).]

H. Cooperate with the Secretary of Agriculture of the United States in administration of this chapter to carry out the purposes of this chapter, accept federal assistance for that purpose and spend public funds of this State appropriated for administration of this chapter to pay the State's proportionate share of the estimated total cost of the cooperative program; [1999, c. 777, §1 (NEW).]

I. Recommend to the Secretary of Agriculture of the United States officials or employees of the Department of Agriculture, Conservation and Forestry for appointment to the advisory committees provided for in the federal acts; [1999, c. 777, §1 (NEW); 2011, c. 657, Pt. W, §5 (REV).]

J. Serve as the representative of the Governor for consultation with the Secretary of Agriculture under the Federal Meat Inspection Act, Section 301, Subsection (c) and the Federal Poultry Products Inspection Act, Section 5, Subsection (c) unless the Governor selects another representative; [1999, c. 777, §1 (NEW).]

K. Exempt the operations of a person from inspection or other requirements of this chapter if and to the extent the operations would be exempt from the corresponding requirements under the federal acts if the operations were conducted in or for interstate commerce or if the State were designated under the federal acts as one in which the federal requirements apply to intrastate commerce; [1999, c. 777, §1 (NEW).]

L. Require a retail vendor that affixes labels with a date to meat, meat food products or poultry products to clearly and conspicuously post its policy concerning date of sale labeling to enable consumers to understand the policy; [1999, c. 777, §1 (NEW).]

M. Exempt a livestock producer that sells directly to consumers or inspected slaughterhouses in carcass form from the licensing requirements of section 2514. To be eligible for this exemption, the livestock must be slaughtered under inspection and the producer shall relinquish control of the carcass at the slaughterhouse. Payment for the carcasses is based on hanging weight rather than live weight. This exemption does not apply to retail operations or poultry; [1999, c. 777, §1 (NEW).]

N. Establish the sizes and style of type to be used for labeling information required under this chapter and definitions and standards of identity or composition or standards of fill of container consistent with federal standards when the commissioner determines the action appropriate for the protection of the public; [1999, c. 777, §1 (NEW).]

O. Establish conditions for storage and handling of livestock products and poultry products by persons engaged in the business of buying, selling, freezing, storing or transporting these products in or for intrastate commerce to ensure that these products are not adulterated or misbranded when delivered to the consumer; and [1999, c. 777, §1 (NEW).]

P. Establish the method for providing voluntary inspection and withdrawal of inspection of exotic animals, wild game, domesticated deer and domestic rabbits. These rules may also provide for the inspection of meat and meat food products derived from those animals. The commissioner shall provide voluntary inspection of bison, domesticated deer and ratite produced in the State, including the inspection of meat and meat food products derived from bison, domesticated deer and ratite, for which

the commissioner shall charge a fee of $35 per hour. The commissioner shall charge $35 per hour per inspection of meat and meat food products processed in the State but derived from bison, domesticated deer and ratite produced outside the State. [2003, c. 20, Pt. E, §1 (AMD).]

[2003, c. 20, Pt. E, §1 (AMD); 2003, c. 451, Pt. G, §1 (AMD); 2011, c. 657, Pt. W, §5 (REV) .]

SECTION HISTORY
1999, c. 777, §1 (NEW). 2003, c. 20, §E1 (AMD). 2003, c. 451, §G1 (AMD). 2009, c. 354, §2 (AMD). 2011, c. 657, Pt. W, §5 (REV).

§2513. RULES

The commissioner shall adopt rules to carry out the purposes of this chapter. Rules adopted under this section may incorporate by reference those provisions of the Code of Federal Regulations that are applicable to meat and poultry inspection, as such regulations may be amended, and that are necessary to remain in compliance with the federal requirements for the State's meat and poultry products inspection and licensing program under section 2512. Rules adopted under this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 393, §11 (AMD).]

SECTION HISTORY
1999, c. 777, §1 (NEW). 2009, c. 393, §11 (AMD).

Subchapter 2: LICENSING AND REGISTRATION

§2514. LICENSING

1. **License or registration required.** A person may not engage in intrastate commerce in the business of buying, selling, preparing, processing, packing, storing, transporting or otherwise handling meat, meat food products or poultry products, unless that person holds a valid license issued under this chapter or is registered under section 2514-A. Categories of licensure include:

A. Commercial slaughterers; [1999, c. 777, §1 (NEW).]

B. Custom slaughterers, except that itinerant custom slaughterers who slaughter solely at a customer's home or farm and who do not own, operate or work at a slaughtering plant are exempt from the licensing provisions of this section; [1999, c. 777, §1 (NEW).]

C. Commercial processors; [1999, c. 777, §1 (NEW).]

D. Custom processors; [1999, c. 777, §1 (NEW).]

E. Wholesale distributors, except that livestock producers and livestock dealers who sell carcasses to or through inspected slaughterhouses are exempt from having to obtain a wholesale distributor's license under this paragraph. All other licensing provisions are applicable; [1999, c. 777, §1 (NEW).]

F. Retail vendors; [1999, c. 777, §1 (NEW).]

G. Meat and poultry product brokers; [1999, c. 777, §1 (NEW).]

G-1. [2015, c. 329, Pt. A, §7 (RP).]

H. Renderers; [1999, c. 777, §1 (NEW).]

I. Public warehouse operators; [1999, c. 777, §1 (NEW).]

J. Animal food manufacturers; [1999, c. 777, §1 (NEW).]

K. Handlers of dead, dying, disabled or diseased animals; [2013, c. 304, §3 (AMD).]

L. Any other category that the commissioner may by rule establish; and [2013, c. 304, §3 (AMD).]

M. Mobile poultry processing unit operators. [2013, c. 304, §4 (NEW).]

[2015, c. 329, Pt. A, §7 (AMD) .]

2. **Application.** A person required to hold a license under subsection 1 shall apply in writing to the commissioner on a form prescribed by the commissioner. In case of a change of ownership or location, a new application must be made. A person engaged in more than one activity subject to licensure shall obtain a separate license for each activity.

[1999, c. 777, §1 (NEW) .]

3. **Investigate circumstances.** The commissioner shall investigate all circumstances in connection with an application for licensure to determine whether the applicable requirements of this chapter and rules adopted under this chapter are satisfied.

[1999, c. 777, §1 (NEW) .]

4. **Issuance of license.** The commissioner shall issue a license to an applicant who the commissioner determines satisfies the requirements of this chapter and the rules adopted under this chapter. Each license must bear an identifying number.

[1999, c. 777, §1 (NEW) .]

5. **Annual license fee; rules.** All licenses issued under this section expire on December 31st. The commissioner shall adopt rules to establish a schedule of fees for licenses issued under this chapter. Fees must be appropriate to the size of the establishment. Notwithstanding Title 5, section 8071, subsection 3, paragraph B, rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 539, Pt. GGGG, §7 (AMD) .]

6. **Denial, suspension or revocation of license.** The commissioner may, after notice and opportunity for hearing in conformance with the applicable provisions of the Maine Administrative Procedure Act, suspend or revoke a license or may take any other action that the commissioner determines appropriate concerning a license. The following are grounds for denial, suspension or revocation of a license:

A. The commissioner determines that a false statement was made in the license application; or [1999, c. 777, §1 (NEW).]

B. The commissioner finds that the licensee failed to comply with this chapter or the rules made under this chapter. [1999, c. 777, §1 (NEW).]

[1999, c. 777, §1 (NEW) .]

SECTION HISTORY
1999, c. 777, §1 (NEW). 2007, c. 539, Pt. GGGG, §7 (AMD). 2013, c. 252, §3 (AMD). 2013, c. 304, §§3, 4 (AMD). 2013, c. 323, §3 (AMD). 2015, c. 329, Pt. A, §7 (AMD).

§2514-A. REGISTRATION

1. **Registration permitted.** A person that is not licensed under section 2514 may engage in intrastate commerce in the business of buying, selling, preparing, processing, packing, storing, transporting or otherwise handling meat, meat food products or poultry products if that person is registered under this section. A person may register under this section if the person is a:

A. Custom slaughterer, except that itinerant custom slaughterers who slaughter solely at a customer's home or farm and who do not own, operate or work at a slaughtering plant are exempt from the registration provisions of this section; [2013, c. 252, §4 (NEW).]

B. Custom processor; [2013, c. 252, §4 (NEW).]

C. Poultry producer who processes fewer than 1,000 birds annually under section 2517-C; or [2015, c. 329, Pt. A, §8 (AMD).]

D. Person in any other category that the commissioner may by rule establish. [2013, c. 252, §4 (NEW).]

[2015, c. 329, Pt. A, §8 (AMD) .]

SECTION HISTORY
2013, c. 252, §4 (NEW). 2015, c. 329, Pt. A, §8 (AMD).

§2515. REGISTRATION

(REPEALED)

SECTION HISTORY
2013, c. 323, §4 (NEW). 2015, c. 329, Pt. A, §9 (RP).

Subchapter 3: INSPECTIONS AND EXAMINATIONS

§2517. ANTE MORTEM EXAMINATION OF ANIMALS TO BE SLAUGHTERED

For the purpose of preventing the use in commerce of meat and meat food products that are adulterated, the commissioner shall appoint inspectors to examine and inspect all livestock before they are allowed to enter into a slaughtering, packing, meat-canning, rendering or similar official establishment in which they are to be slaughtered and the meat and meat food products of which are to be used in commerce. All livestock found on such inspection to show symptoms of disease must be set apart and slaughtered separately from all other livestock and when so slaughtered the carcasses of the livestock are subject to a careful examination and inspection, as provided by the rules established by the commissioner and adopted pursuant to this chapter. [1999, c. 777, §1 (NEW).]

SECTION HISTORY
1999, c. 777, §1 (NEW).

§2517-A. POST MORTEM EXAMINATION OF CARCASSES

The commissioner shall appoint inspectors to examine the carcasses and parts of carcasses of all livestock to be prepared at a slaughtering, meat-canning, salting, packing, rendering or similar official establishment in the State as articles of commerce that are useable as human food. The carcasses and parts of carcasses of all such animals found to be not adulterated must be marked, stamped, tagged or labeled as "Inspected and Passed" and the inspectors shall label, mark, stamp or tag as "Inspected and Condemned" all carcasses and parts of carcasses of animals found to be adulterated. All carcasses and parts thus inspected and condemned must be destroyed for food purposes by the official establishment in the presence of an inspector. The commissioner may remove inspectors from any such official establishment that fails to so destroy any condemned carcass or part of a carcass. The inspectors, after the first inspection, shall, when they consider

it necessary, reinspect the carcasses or parts of carcasses to determine whether, since the first inspection, the same have become adulterated and, if any carcass or any part of the carcass, upon examination and inspection subsequent to the first examination and inspection, is found to be adulterated, the carcass must be destroyed for food purposes by the official establishment in the presence of an inspector. The commissioner may remove inspectors from an official establishment that fails to so destroy any condemned carcass or part of a carcass. [1999, c. 777, §1 (NEW).]

SECTION HISTORY
1999, c. 777, §1 (NEW).

§2517-B. PRODUCT INSPECTION

1. **Sealed.** An inspection of products placed in a container at an official establishment is not considered complete until the products are sealed or enclosed under the supervision of an inspector.

[1999, c. 777, §1 (NEW) .]

2. **Access to official establishment.** For purposes of a product inspection required by this chapter, inspectors have access at all times to any part of an official establishment required to have inspection under this chapter, whether the official establishment is operated or not.

[1999, c. 777, §1 (NEW) .]

SECTION HISTORY
1999, c. 777, §1 (NEW).

§2517-C. SLAUGHTER AND INSPECTION; PRODUCER EXEMPTIONS FOR POULTRY

1. **Exemption for processing fewer than 1,000 birds annually.** Notwithstanding section 2512 and whether or not the poultry are intended for human consumption, inspection is not required for the slaughter of poultry or the preparation of poultry products as long as the poultry are slaughtered by the producer that raised the poultry and the poultry products are prepared on the farm where the poultry were raised and:

A. Fewer than 1,000 birds are slaughtered annually on the farm; [2015, c. 329, Pt. A, §10 (RPR).]

B. No birds are offered for sale or transportation in interstate commerce; [2015, c. 329, Pt. A, §10 (RPR).]

C. Any poultry products sold are sold only as whole birds; [2015, c. 329, Pt. A, §10 (RPR).]

D-1. The poultry producer is registered under section 2514-A; [2015, c. 329, Pt. A, §10 (RPR).]

F. The poultry producer assigns a lot number to all birds sold and maintains a record of assigned lot numbers and the point of sale; [2015, c. 329, Pt. A, §10 (RPR).]

G. The poultry are sold in accordance with the restrictions in subsection 2; [2015, c. 329, Pt. A, §10 (RPR).]

H. The poultry are sold at the farm on which the poultry were raised or delivered to a consumer's home by the poultry producer; and [2015, c. 329, Pt. A, §10 (RPR).]

I. The poultry products are labeled with:

(1) The name of the farm, the name of the poultry producer and the address of the farm including the zip code;

(2) The statement "Exempt under the Maine Revised Statutes, Title 22, section 2517-C NOT INSPECTED"; and

(3) Safe handling and cooking instructions as follows: "SAFE HANDLING INSTRUCTIONS: Keep refrigerated or frozen. Thaw in refrigerator or microwave. Keep raw poultry separate from other foods. Wash working surfaces, including cutting boards, utensils and hands, after touching raw poultry. Cook thoroughly to an internal temperature of at least 165 degrees Fahrenheit maintained for at least 15 seconds. Keep hot foods hot. Refrigerate leftovers immediately or discard." [2015, c. 329, Pt. A, §10 (RPR).]

[2015, c. 329, Pt. A, §10 (RPR) .]

1-A. **Exemption for processing fewer than 20,000 birds annually.** A poultry producer may slaughter and process that producer's own poultry without an inspector being present during processing if all the following criteria are met; a producer that does not meet these criteria does not qualify for this exemption and shall seek state or United States Department of Agriculture inspection of poultry products intended to be sold:

A. The producer is licensed as a commercial processor pursuant to section 2514; [2015, c. 329, Pt. A, §10 (RPR).]

B. The producer's facilities conform to the rules of the department governing food processing and manufacturing, including a:

(1) Separate area for slaughter, bleeding and defeathering;

(2) Separate area for evisceration and cooling; and

(3) Water supply that is tested twice annually for nitrates, nitrites and coliforms; [2015, c. 329, Pt. A, §10 (RPR).]

C. The producer raises, slaughters and processes, on that producer's premises, no more than 20,000 poultry in a calendar year. The producer must declare to the Department of Agriculture, Conservation and Forestry that it is exempt under this subsection at the beginning of each calendar year. Records must demonstrate numbers of birds raised. A producer that does not maintain accurate records does not qualify for the exemption under this subsection; [2015, c. 329, Pt. A, §10 (RPR).]

D. The producer's facility is not used to slaughter or process poultry by any other person or business without prior approval from the commissioner in accordance with the requirements of the federal Food Safety and Inspection Service Administrator; [2015, c. 329, Pt. A, §10 (RPR).]

E. The producer does not purchase birds for resale that have been processed under any exemption under this section; [2015, c. 329, Pt. A, §10 (RPR).]

F. Poultry are healthy when slaughtered; [2015, c. 329, Pt. A, §10 (RPR).]

G. Slaughter and processing are conducted using sanitary standards, practices and procedures to produce poultry products that are not adulterated; [2015, c. 329, Pt. A, §10 (RPR).]

H. The producer does not engage in Internet or interstate sales; [2015, c. 329, Pt. A, §10 (RPR).]

I. The shipping containers of the poultry bear the following labeling:

(1) Producer's name, address and zip code;

(2) Common name of product or list of ingredients;

(3) Weight of product in shipping container or immediate container;

(4) Lot number, which must consist of a coded number in some combination of the number of the day of the year on which the poultry was slaughtered;

(5) The statement "Exempt P.L. 90-492"; and

(6) Safe handling and cooking instructions as follows: "SAFE HANDLING INSTRUCTIONS: Keep refrigerated or frozen. Thaw in refrigerator or microwave. Keep raw poultry separate from other foods. Wash working surfaces, including cutting boards, utensils and hands, after touching raw poultry. Cook thoroughly to an internal temperature of at least 165 degrees Fahrenheit maintained for at least 15 seconds. Keep hot foods hot. Refrigerate leftovers immediately or discard." [2015, c. 329, Pt. A, §10 (RPR).]

The producer may further process poultry carcasses into parts and other products. The producer may sell retail poultry products to the household consumer and may sell wholesale poultry products to retail stores, hotels, restaurants and institutions, with the appropriate licenses.

[2015, c. 329, Pt. A, §10 (RPR) .]

1-B. **Small enterprise exemption.** A small enterprise may slaughter, dress and cut up poultry without an inspector being present during processing if all the following criteria are met; a small enterprise that does not meet these criteria does not qualify for the exemption and shall seek state or United States Department of Agriculture inspection of poultry products intended to be sold:

A. The small enterprise is licensed as a commercial processor pursuant to section 2514; [2015, c. 329, Pt. A, §10 (RPR).]

B. The small enterprise's facilities conform to the rules of the department governing food processing and manufacturing, including a:

(1) Separate area for slaughter, bleeding and defeathering;

(2) Separate area for evisceration and cooling; and

(3) Water supply that is tested twice annually for nitrates, nitrites and coliforms; [2015, c. 329, Pt. A, §10 (RPR).]

C. The small enterprise raises, slaughters and dresses poultry, or purchases live poultry to slaughter and dress, or purchases dressed poultry, in a combination of no more than 20,000 birds in a calendar year. The small enterprise must declare to the Department of Agriculture, Conservation and Forestry that it is exempt under this subsection at the beginning of each calendar year. Records must show numbers of birds raised, purchased or purchased as dressed. A small enterprise that does not maintain accurate records does not qualify for the exemption under this subsection; [2015, c. 329, Pt. A, §10 (RPR).]

D. The small enterprise's further processing is limited to whole and cut up poultry only; [2015, c. 329, Pt. A, §10 (RPR).]

E. The facility is not used to slaughter or process poultry by any other person or business without prior approval from the commissioner in accordance with the requirements of the federal Food Safety and Inspection Service Administrator; [2015, c. 329, Pt. A, §10 (RPR).]

F. Slaughter and processing are conducted using sanitary standards, practices and procedures to produce poultry products that are not adulterated; [2015, c. 329, Pt. A, §10 (RPR).]

G. Poultry are healthy when slaughtered; [2015, c. 329, Pt. A, §10 (RPR).]

H. The small enterprise does not engage in Internet or interstate sales; [2015, c. 329, Pt. A, §10 (RPR).]

I. The small enterprise does not cut up and distribute poultry products to a business operating under any exemption under this section; [2015, c. 329, Pt. A, §10 (RPR).]

J. The shipping or immediate containers of the poultry bear the following labeling:

(1) Business name, address and zip code;

(2) Common name of product;

(3) Weight of product in shipping container or immediate container;

(4) Lot number, which must consist of a coded number in some combination of the number of the day of the year on which the poultry was slaughtered;

(5) The statement "Processed by a Licensed Commercial Food Processor/Small Enterprise Exempt from state or United States Department of Agriculture continuous bird-by-bird inspection"; and

(6) Safe handling and cooking instructions as follows: "SAFE HANDLING INSTRUCTIONS: Keep refrigerated or frozen. Thaw in refrigerator or microwave. Keep raw poultry separate from other foods. Wash working surfaces, including cutting boards, utensils and hands, after touching raw poultry. Cook thoroughly to an internal temperature of at least 165 degrees Fahrenheit maintained for at least 15 seconds. Keep hot foods hot. Refrigerate leftovers immediately or discard." [2015, c. 329, Pt. A, §10 (RPR).]

The small enterprise may sell poultry products wholesale to hotels, restaurants and institutions, prepackaged products to retail stores and retail products to household consumers, with the appropriate licenses.

[2015, c. 329, Pt. A, §10 (RPR) .]

2. **Restrictions on point of sale.** Except as provided in subsections 1-A and 1-B, poultry products sold under this section may be sold only by the poultry producer and in the following locations or manner:

A. At the farm on which the poultry were raised; [2015, c. 329, Pt. A, §10 (RPR).]

B. At a farmers' market as defined in Title 7, section 415; [2015, c. 329, Pt. A, §10 (RPR).]

C. Delivered to a consumer’s home by the poultry producer whose name and address appear on the label under subsection 1 or whose name and license number appear on the label under subsection 1-A or 1-B; [2015, c. 329, Pt. A, §10 (RPR).]

D. Received by a person who is a member of a community supported agriculture farm that has a direct marketing relationship with the poultry producer. For the purposes of this section, "community supported agriculture" means an arrangement whereby individual consumers have agreements with a farmer to be provided with food or other agricultural products produced on that farm; [2015, c. 329, Pt. A, §10 (RPR).]

E. To a locally owned grocery store; or [2015, c. 329, Pt. A, §10 (RPR).]

F. To a locally owned restaurant. [2015, c. 329, Pt. A, §10 (RPR).]

[2015, c. 329, Pt. A, §10 (RPR) .]

3. **Mobile poultry processing unit operators.** A mobile poultry processing unit operator may not sell poultry products that have not been inspected at a farmers' market, to a locally owned grocery store or to a locally owned restaurant unless the poultry products are labeled with:

A. The name of the farm, the name of the poultry producer and the address of the farm including the zip code; [2015, c. 329, Pt. A, §10 (RPR).]

B. The number of the license issued to the poultry producer in accordance with section 2514 and the lot number for the poultry products pursuant to subsection 1, paragraph F; [2015, c. 329, Pt. A, §10 (RPR).]

C. The statement "Exempt under the Maine Revised Statutes, Title 22, section 2517-C NOT INSPECTED." The statement must be prominently displayed with such conspicuousness that it is likely to be read and understood; and [2015, c. 329, Pt. A, §10 (RPR).]

D. Safe handling and cooking instructions as follows: "SAFE HANDLING INSTRUCTIONS: Keep refrigerated or frozen. Thaw in refrigerator or microwave. Keep raw poultry separate from other foods. Wash working surfaces, including cutting boards, utensils and hands, after touching raw poultry. Cook

thoroughly to an internal temperature of at least 165 degrees Fahrenheit maintained for at least 15 seconds. Keep hot foods hot. Refrigerate leftovers immediately or discard." [2015, c. 329, Pt. A, §10 (RPR).]

[2015, c. 329, Pt. A, §10 (RPR) .]

4. **Rules.** The commissioner shall adopt rules to establish requirements for the physical facilities and sanitary processes used by poultry producers whose products are exempt from inspection under this section. Rules adopted under this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[2015, c. 329, Pt. A, §10 (RPR) .]

5. **Enforcement.** The commissioner shall enforce the provisions of this section.

[2015, c. 329, Pt. A, §10 (RPR) .]

6. **Violation; penalty.** A person who violates this section is subject to penalties under section 2524.

[2015, c. 329, Pt. A, §10 (RPR) .]

SECTION HISTORY
2009, c. 354, §3 (NEW). 2013, c. 304, §§5-7 (AMD). 2013, c. 323, §5 (AMD). 2013, c. 567, §1 (AMD). 2015, c. 329, Pt. A, §10 (RPR).

§2517-D. RENTAL OF A LICENSED SLAUGHTERHOUSE

1. **Contract slaughtering.** A commercial slaughterhouse or custom slaughterhouse licensed under section 2514 or a custom slaughterhouse registered under section 2514-A, but not engaging in the custom slaughter of poultry, may enter into a contract with a poultry producer who otherwise meets the requirements of the exemption for poultry producers that slaughter or process 20,000 or fewer poultry under the federal Poultry Products Inspection Act, 21 United States Code, Section 464(c)(3) to rent that slaughterhouse to the poultry producer for the slaughter and processing of the poultry producer's poultry.

Poultry slaughtered and processed under the rental contract must be slaughtered and processed by the poultry producer.

A poultry producer that otherwise meets the requirements of the 20,000 or fewer poultry exemption, and having the intent to rent a slaughterhouse that is currently used by another poultry producer that meets the requirements of the exemption, must obtain approval from the administrator of the federal Food Safety and Inspection Service within the United States Department of Agriculture prior to rental of the slaughterhouse.

[2013, c. 252, §5 (NEW) .]

2. **Restrictions on point of sale.** Poultry slaughtered and processed under this section may not be offered for sale or transportation in interstate commerce.

[2013, c. 252, §5 (NEW) .]

3. **Labeling.** Packaging for poultry slaughtered and processed under this section must bear the name and address of the renting poultry producer and the statement "Exempted P.L. 90-492."

[2013, c. 252, §5 (NEW) .]

SECTION HISTORY
2013, c. 252, §5 (NEW).

§2518. PERIODIC REVIEW OF NONINSPECTED LICENSED AND REGISTERED ESTABLISHMENTS

1. **Review by inspector.** The commissioner may require establishments that are required to be licensed under section 2514 or registered under section 2514-A but are exempt from inspection under section 2512, subsection 2, paragraph K to be periodically reviewed by inspectors to ensure that the provisions of this chapter and the rules adopted under this chapter are satisfied and that the public health, safety and welfare are protected. The commissioner shall require establishments that are required to be licensed under section 2514 or registered under section 2514-A but are exempt from inspection under section 2517-C to be reviewed annually by inspectors to ensure that the provisions of this chapter and the rules adopted under this chapter are satisfied and that the public health, safety and welfare are protected.

[2015, c. 329, Pt. A, §11 (RPR) .]

2. **Review of certain slaughter or preparation establishments.** Inspection may not be provided under this chapter at any establishment for the slaughter of livestock or poultry or the preparation of any livestock products or poultry products that are not intended for use as human food, but these products must, prior to their offer for sale or transportation in intrastate commerce, unless naturally inedible by humans, be denatured or otherwise identified, as prescribed by rules of the commissioner, to deter their use for human food. These licensed or registered establishments are subject to periodic review.

[2015, c. 329, Pt. A, §11 (RPR) .]

3. **Subject to review.** A periodic review under this section must include an examination of:

A. The licensed or registered establishment's sanitation practices; [2015, c. 329, Pt. A, §11 (RPR).]

B. Sanitation in the areas where meat and poultry products are prepared, stored and displayed; [2015, c. 329, Pt. A, §11 (RPR).]

C. The adequacy of a refrigeration system used for meat food products and poultry products; [2015, c. 329, Pt. A, §11 (RPR).]

D. Labeling; and [2015, c. 329, Pt. A, §11 (RPR).]

E. Meat food products or poultry products for wholesomeness or adulteration. [2015, c. 329, Pt. A, §11 (RPR).]

In addition, the inspector conducting the periodic review may conduct any other examination necessary to ensure compliance with this chapter and the rules adopted pursuant to this chapter.

[2015, c. 329, Pt. A, §11 (RPR) .]

4. **Access.** For purposes of a periodic review of a licensed or registered establishment, inspectors have access during normal business hours to every part of a licensed or registered establishment required to have inspection under this chapter, whether the licensed or registered establishment is operated or not.

[2015, c. 329, Pt. A, §11 (RPR) .]

SECTION HISTORY
1999, c. 777, §1 (NEW). 2009, c. 354, §4 (AMD). 2013, c. 252, §6 (AMD). 2013, c. 323, §6 (AMD). 2015, c. 329, Pt. A, §11 (RPR).

§2519. STOP SALE OR USE ORDER

The inspector may issue a stop sale or use order for any violation of this chapter or of the rules adopted pursuant to this chapter. A person receiving a stop sale or use order shall immediately remove the meat, meat food product or poultry product from sale or shall immediately cease to use any equipment or area as directed by the order until the order is lifted. The inspector may lift a stop sale or use order once the inspector has determined that the violation has been corrected. A person receiving a stop sale or use order may appeal the order to the commissioner within 5 days of receiving the order. [1999, c. 777, §1 (NEW).]

SECTION HISTORY
1999, c. 777, §1 (NEW).

§2519-A. DETENTION

If a livestock product or poultry product or a product exempted from the definitions of "livestock product" and "poultry product" or any dead, dying, disabled or diseased livestock or poultry is found by an authorized representative of the commissioner upon premises where it is held for, during or after distribution in intrastate commerce or is otherwise subject to this chapter and there is reason to believe that the product or animal is adulterated or misbranded and is useable as human food or that it has not been inspected, in violation of the provisions of this chapter or the federal acts or the Federal Food, Drug, and Cosmetic Act, or that the product or animal has been or is intended to be distributed in violation of any of these provisions, it may be detained by a representative for a period not to exceed 30 days, pending action under section 2522 or notification of a federal authority having jurisdiction over the product or animal. The product or animal may not be moved by a person from the place at which it is located when detained, until released by the representative. All official marks may be required by the representative to be removed from the product or animal before it is released, unless it appears to the satisfaction of the commissioner or the commissioner's designee that the product or animal is eligible to retain the marks. [1999, c. 777, §1 (NEW).]

SECTION HISTORY
1999, c. 777, §1 (NEW).

§2519-B. INVESTIGATION; RECORD KEEPING

1. **Investigation.** The commissioner may:

A. Gather and compile information and investigate the organization, business, conduct, practices and management of any person engaged in intrastate commerce and that person's business relationships; and [1999, c. 777, §1 (NEW).]

B. Require, by general or special orders, persons engaged in intrastate commerce to file with the commissioner, in the form that the commissioner may prescribe, annual or special reports or answers in writing to specific questions. The person filing the reports or answers shall furnish the commissioner with any information the commissioner may require as to the organization, business, conduct, practices, management and relationship to other persons. The reports and answers must be made under oath or otherwise, as the commissioner may prescribe, and must be filed with the commissioner within a reasonable period, as the commissioner may prescribe, unless additional time is granted by the commissioner. [1999, c. 777, §1 (NEW).]

[1999, c. 777, §1 (NEW) .]

2. **Access to evidence.** For the purpose of this chapter, the commissioner at all reasonable times has access to and the right to copy documentary evidence of a person being investigated or proceeded against. The commissioner may subpoena the attendance and testimony of witnesses and the production of all documentary evidence of a person relating to a matter under investigation or subject to administrative hearing. The commissioner or the commissioner's designee may sign subpoenas, administer oaths and affirmations, examine witnesses and receive evidence.

A. The attendance of witnesses and the production of documentary evidence may be required at a designated place of hearing. In a case of disobedience to a subpoena, the commissioner may invoke the aid of the District Court or the Superior Court in requiring the attendance and testimony of witnesses and the production of documentary evidence. [1999, c. 777, §1 (NEW).]

B. Upon the application of the Attorney General at the request of the commissioner, the Superior Court has jurisdiction to issue preliminary or permanent injunctions commanding a person to comply with this chapter or an order of the commissioner made pursuant to this chapter. [1999, c. 777, §1 (NEW).]

C. The commissioner may order testimony to be taken by deposition in a proceeding or investigation pending under this chapter at any stage of the proceeding or investigation. The depositions may be taken before a person designated by the commissioner who has the power to administer oaths. The testimony must be reduced to writing by the person taking the deposition, or under that person's direction, and must be signed by the deponent. A person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commissioner as provided in this chapter. [1999, c. 777, §1 (NEW).]

D. Witnesses summoned before the commissioner must be paid the same fees and mileage that are paid witnesses in the courts of this State. Witnesses whose depositions are taken and the persons taking the depositions are each entitled to the same fees as are paid for like services in the courts. [1999, c. 777, §1 (NEW).]

[1999, c. 777, §1 (NEW) .]

3. **Refusal to testify.** A person who neglects or refuses to attend and testify, to answer a lawful inquiry or to produce documentary evidence, if in that person's power to do so, in obedience to the subpoena or lawful requirement of the commissioner or the commissioner's designee commits a Class E crime.

[1999, c. 777, §1 (NEW) .]

SECTION HISTORY
1999, c. 777, §1 (NEW).

Subchapter 4: SLAUGHTER

§2521. HUMANE METHODS OF SLAUGHTER

A method of slaughtering or handling in connection with slaughtering does not comply with the public policy of the State unless it is humane. Either of the following 2 methods of slaughtering and handling are humane: [1999, c. 777, §1 (NEW).]

1. **Humane slaughter.** In the case of livestock, rendering animals insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective before they are shackled, hoisted, thrown, cast or cut; or

[1999, c. 777, §1 (NEW) .]

2. **Ritual slaughter.** Slaughtering and handling in accordance with the ritual requirements of a religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument.

[1999, c. 777, §1 (NEW) .]

SECTION HISTORY
1999, c. 777, §1 (NEW).

§2521-A. METHODS RESEARCH; DESIGNATION OF METHODS

The commissioner may: [1999, c. 777, §1 (NEW).]

1. **Research.** Conduct, assist and foster research, investigation and experimentation to develop and determine methods of slaughter and handling of livestock in connection with slaughter that are practicable with reference to the speed and scope of slaughtering operations and humane with reference to other existing methods and current scientific knowledge; and

[1999, c. 777, §1 (NEW) .]

2. **Conform to chapter.** Designate methods of slaughter and handling in connection with slaughter that, with respect to each species of livestock, conform to this chapter. The commissioner may make any such designation by designating methods that are not in conformity with this chapter.

[1999, c. 777, §1 (NEW) .]

SECTION HISTORY
1999, c. 777, §1 (NEW).

§2521-B. INSPECTION FOR USE OF HUMANE SLAUGHTERING METHODS

For the purpose of preventing the inhumane slaughtering of livestock, the commissioner shall appoint inspectors to examine and inspect the method by which livestock are slaughtered and handled in connection with slaughter in the licensed or official slaughtering establishments inspected under this chapter. The commissioner may refuse to license or provide inspection to a new slaughtering establishment or may cause inspection to be temporarily suspended at an official slaughtering establishment if the commissioner finds that livestock have been slaughtered or handled in connection with slaughter at such establishment by a method not in accordance with the Humane Methods of Slaughter Act of 1978, 7 United States Code, Sections 1901 to 1906 or not as stated in this section and sections 2521, 2521-A and 2521-C until the establishment furnishes assurances satisfactory to the commissioner that all slaughtering and handling in connection with slaughter of livestock are in accordance with such a method. [1999, c. 777, §1 (NEW).]

SECTION HISTORY
1999, c. 777, §1 (NEW).

§2521-C. EXEMPTION OF RITUAL SLAUGHTER

This chapter may not be construed to prohibit, abridge or in any way hinder the religious freedom of a person or group. Notwithstanding any other provision of this chapter, in order to protect freedom of religion, ritual slaughter and the handling or other preparation of livestock for ritual slaughter are exempted from the terms of this chapter. For the purposes of this section the term "ritual slaughter" means slaughter in accordance with section 2521, subsection 2. [1999, c. 777, §1 (NEW).]

SECTION HISTORY
1999, c. 777, §1 (NEW).

Subchapter 5: PROHIBITED ACTS; VIOLATIONS; PROCEDURES

§2523. PROHIBITED ACTS

1. **Use as human food.** A person may not, with respect to livestock, poultry or livestock products or poultry products:

A. Slaughter any livestock or poultry or prepare products that are useable as human food at a licensed or official establishment preparing the products solely for intrastate commerce, except in compliance with the requirements of this chapter and the rules adopted pursuant to this chapter; [1999, c. 777, §1 (NEW).]

B. In intrastate commerce, sell, transport, offer for sale or transportation or receive for transportation products that are useable as human food and:

(1) Are adulterated or misbranded at the time of the sale, transportation, offer for sale or transportation or receipt for transportation; or

(2) Have not been inspected and passed, unless the products are exempt from inspection pursuant to rules adopted by the commissioner; or [1999, c. 777, §1 (NEW).]

C. With respect to those products that are useable as human food, perform any act, while the products are being transported in intrastate commerce or held for sale after transportation, that is intended to cause or has the effect of causing the products to be adulterated or misbranded. [1999, c. 777, §1 (NEW).]

[1999, c. 777, §1 (NEW) .]

2. **Slaughtered poultry.** In intrastate commerce, a person may not sell, transport, offer for sale or transportation or receive for transportation or from an official establishment any slaughtered poultry from which the blood, feathers, feet, head or viscera have not been removed in accordance with rules adopted by the commissioner except as authorized by those rules.

[1999, c. 777, §1 (NEW) .]

3. **Plainly identified.** In intrastate commerce, a person may not sell, transport, offer for sale or transportation or receive for transportation any carcass of horses, mules or other equines or parts of these carcasses, or the meat or meat food products of these carcasses, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by rules established by the commissioner to show the kinds of animals from which they were derived.

[1999, c. 777, §1 (NEW) .]

4. **Denatured.** In intrastate commerce, a person may not buy, sell, transport or offer for sale or transportation or receive for transportation livestock products or poultry products that are not intended for use as human food, unless they are denatured or otherwise identified as required by the rules of the commissioner or are naturally inedible by humans.

[1999, c. 777, §1 (NEW) .]

5. **Animals not slaughtered.** A person engaged in the business of buying, selling or transporting in intrastate commerce dead, dying, disabled or diseased animals or parts of the carcasses of any animals that died other than by slaughter may not buy, sell, transport, offer for sale or transportation or receive for transportation in intrastate commerce dead, dying, disabled or diseased livestock or poultry or the products of these animals that died other than by slaughter, unless the transaction or transportation is made in accordance with rules that the commissioner may prescribe to ensure that the animals or the unwholesome parts or products are prevented from being used for human food purposes.

[1999, c. 777, §1 (NEW) .]

6. **False information or failure to cooperate.** A person commits a Class D crime if the person intentionally or knowingly:

A. Makes or causes to be made, a false entry or statement of fact; [1999, c. 777, §1 (NEW).]

B. Fails to make correct entries in any report, account, record or memorandum kept by a person that is required by or subject to this chapter; [1999, c. 777, §1 (NEW).]

C. Removes out of the jurisdiction of this State or mutilates, alters or by any other means falsifies documentary evidence of a person subject to this chapter; or [1999, c. 777, §1 (NEW).]

D. Refuses to submit to the commissioner or to any of the commissioner's authorized agents, for the purpose of inspection and taking copies, documentary evidence of a person, subject to this chapter, in that person's possession or within that person's control. [1999, c. 777, §1 (NEW).]

[1999, c. 777, §1 (NEW) .]

7. **Report.** If a person fails to file an annual or special report as required by this chapter, the commissioner shall notify that person of the failure to report and designate a day by which the report must be received. If the report is not received within 30 days of the designated day, the person shall forfeit $100 to the State for each day beyond the 30-day period. The forfeiture is payable into the State Treasury and is recoverable in a civil suit, in the name of the State, brought in the county where the person has that person's principal office or in the Superior Court.

[1999, c. 777, §1 (NEW) .]

SECTION HISTORY
1999, c. 777, §1 (NEW).

§2524. GENERAL PENALTIES

1. **Criminal violation.** A person who violates this chapter or the rules adopted under this chapter for which no other criminal penalty is provided by this chapter commits a Class E crime. If the violation involves intent to defraud or any distribution or attempted distribution of a product that is adulterated, except as defined in section 2511, subsection 1, paragraph K, the person commits a Class D crime.

[1999, c. 799, §1 (NEW) .]

2. **Civil violation.** A person who violates this chapter or any rule adopted under this chapter commits a civil violation for which a forfeiture of not more than $1,000 may be adjudged for each violation. If the commissioner finds that the violation occurred despite the exercise of due care, the commissioner may issue a warning instead of seeking a forfeiture.

[1999, c. 799, §1 (NEW) .]

SECTION HISTORY
1999, c. 777, §1 (NEW).

§2524-A. ACTION UPON VIOLATION

After discovery of a violation of this chapter or the rules adopted under this chapter, the commissioner may take any additional action against the licensed establishment that the commissioner determines appropriate, including instituting a proceeding under section 2514, subsection 6 and causing a civil or criminal proceeding to be brought against the licensed establishment. [1999, c. 777, §1 (NEW).]

SECTION HISTORY
1999, c. 777, §1 (NEW).

§2525. OFFICIAL DEVICES, MARKS AND CERTIFICATES

1. **Mark; simulation.** A brand manufacturer, printer or other person may not cast, print, lithograph or otherwise make any device containing any official mark or simulation, any label bearing any mark or simulation or any form of official certificate or simulation except as authorized by the commissioner.

[1999, c. 777, §1 (NEW) .]

2. **Official device; mark; certificate.** A person may not:

A. Without authorization from the commissioner, use an official device, mark or certificate, or simulation, or alter, detach, deface or destroy any official device, mark or certificate; [1999, c. 777, §1 (NEW).]

B. Contrary to the rules established by the commissioner, fail to use or detach, deface or destroy an official device, mark or certificate; [1999, c. 777, §1 (NEW).]

C. Knowingly possess, without promptly notifying the commissioner or the commissioner's representative, an official device; a counterfeit, simulated, forged or improperly altered official certificate; a device or label for a carcass of an animal, including poultry; or a part or product of an animal, including poultry, bearing a counterfeit, simulated, forged or improperly altered official mark; [1999, c. 777, §1 (NEW).]

D. Knowingly make a false statement on a shipper's certificate or other nonofficial or official certificate provided for in the rules established by the commissioner; or [1999, c. 777, §1 (NEW).]

E. Knowingly represent that a product has been inspected and passed or exempted under this chapter when it has not been inspected and passed or exempted. [1999, c. 777, §1 (NEW).]

[1999, c. 777, §1 (NEW) .]

SECTION HISTORY
1999, c. 777, §1 (NEW).

§2526. FORFEITURE

1. **Transportation in intrastate commerce.** Any livestock product or poultry product of any dead, dying, disabled or diseased livestock or poultry that is being transported in intrastate commerce, is otherwise subject to this chapter or is held for sale in this State after transportation, and that is or has been prepared, sold, transported or otherwise distributed or offered or received for distribution in violation of this chapter or the rules adopted under this chapter; is adulterated or misbranded and is useable as human food; or in any other way is in violation of this chapter is liable to be proceeded against and seized and condemned, at any time, on a complaint in Superior Court as provided in section 2527. If the product or animal is condemned it must, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs and fees and storage and other proper expenses, must be paid into the State Treasury. The product or animal may not be sold contrary to the provisions of this chapter, the federal acts or the Federal Food, Drug, and Cosmetic Act. Upon the execution and delivery of a good and sufficient bond guaranteeing that the product or animal will not be sold or otherwise disposed of contrary to the provisions of this chapter or the laws of the United States, the court may direct that the product or animal be delivered to the owner, subject to supervision by authorized representatives of the commissioner to ensure compliance with the applicable laws. If a decree of condemnation is entered against the product or animal and it is released under bond or destroyed, court costs and fees and storage and other proper expenses must be awarded against the person, if any, intervening as claimant of the product or animal.

[1999, c. 777, §1 (NEW) .]

2. **Unimpaired authority.** This section does not impair the authority for condemnation or seizure conferred by other provisions of this chapter or other laws.

[1999, c. 777, §1 (NEW) .]

SECTION HISTORY
1999, c. 777, §1 (NEW).

§2527. APPEAL AND JURISDICTION

1. **Appeal.** An order issued under section 2512, subsection 1, paragraph C; section 2512, subsection 2, paragraph A, B or C; section 2514, subsection 6; or a decision issued by the commissioner under section 2514, subsection 6 is final unless appealed to Superior Court within 15 days after service. An appeal of any other order or decision of the commissioner may be taken pursuant to Title 5, chapter 375. Review of any order and the determinations upon which it is based must be in the record in the administrative proceeding in which the order was issued.

[1999, c. 777, §1 (NEW) .]

2. **Jurisdiction.** The Superior Court has legal and equitable jurisdiction to enforce, prevent and restrain violations of this chapter and has legal and equitable jurisdiction in all other cases arising under this chapter. The Superior Court and District Court are granted jurisdiction to handle criminal matters arising under this chapter and rules.

[1999, c. 777, §1 (NEW) .]

SECTION HISTORY
1999, c. 777, §1 (NEW).

Chapter 563: SLAUGHTERHOUSES AND MEAT PROCESSING PLANTS

§2531. DEFINITIONS

(REPEALED)

SECTION HISTORY
1969, c. 464, §2 (RP).

§2532. LICENSES; REGISTRATION; CARCASSES

(REPEALED)

SECTION HISTORY
1965, c. 50, (AMD). 1969, c. 464, §2 (RP).

§2533. REVOCATION AND SUSPENSION OF LICENSE; APPEALS; HEARING

(REPEALED)

SECTION HISTORY
1969, c. 464, §2 (RP).

§2534. SANITARY EQUIPMENT; ADVERTISING; INSPECTIONS; HUMANE METHODS

(REPEALED)

SECTION HISTORY
1969, c. 464, §2 (RP).

§2535. RITUAL SLAUGHTER

(REPEALED)

SECTION HISTORY
1969, c. 464, §2 (RP).

§2536. INSPECTORS AND AUTHORITY

(REPEALED)

SECTION HISTORY
1969, c. 464, §2 (RP).

§2537. DISPOSITION OF FEES

(REPEALED)

SECTION HISTORY
1969, c. 464, §2 (RP).

§2538. PENALTIES

(REPEALED)

SECTION HISTORY
1969, c. 464, §2 (RP).

Chapter 564: MAINE MEAT INSPECTION ACT

§2541. DEFINITIONS

(REPEALED)

SECTION HISTORY
1969, c. 464, §1 (NEW). 1979, c. 672, §A62 (RP).

§2542. PURPOSE

(REPEALED)

SECTION HISTORY
1969, c. 464, §1 (NEW). 1979, c. 672, §A62 (RP).

§2543. EXAMINATION AND INPSECTION

(REPEALED)

SECTION HISTORY

1969, c. 464, §1 (NEW). 1979, c. 672, §A62 (RP).

§2544. -POSTMORTEM

(REPEALED)

SECTION HISTORY
1969, c. 464, §1 (NEW). 1979, c. 672, §A62 (RP).

§2545. APPLICATION

(REPEALED)

SECTION HISTORY
1969, c. 464, §1 (NEW). 1979, c. 672, §A62 (RP).

§2546. INSPECTORS; POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1969, c. 464, §1 (NEW). 1977, c. 694, §353 (RPR). 1979, c. 672, §A62 (RP).

§2547. LABELING

(REPEALED)

SECTION HISTORY
1969, c. 464, §1 (NEW). 1977, c. 694, §§354,355 (AMD). 1979, c. 672, §A62 (RP).

§2548. SANITATION

(REPEALED)

SECTION HISTORY
1969, c. 464, §1 (NEW). 1979, c. 672, §A62 (RP).

§2549. TIME OF INSPECTION

(REPEALED)

SECTION HISTORY
1969, c. 464, §1 (NEW). 1979, c. 672, §A62 (RP).

§2550. COMPLIANCE

(REPEALED)

SECTION HISTORY
1969, c. 464, §1 (NEW). 1979, c. 672, §A62 (RP).

§2551. FALSE LABELS, DEVICES AND STATEMENTS

(REPEALED)

SECTION HISTORY

1969, c. 464, §1 (NEW). 1979, c. 672, §A62 (RP).

§2552. PLAINLY IDENTIFIED

(REPEALED)

SECTION HISTORY
1969, c. 464, §1 (NEW). 1979, c. 672, §A62 (RP).

§2553. INSPECTORS; APPOINTMENT AND DUTIES, RULES AND REGULATIONS

(REPEALED)

SECTION HISTORY
1969, c. 464, §1 (NEW). 1977, c. 87, (AMD). 1977, c. 694, §356 (AMD). 1979, c. 672, §A62 (RP).

§2554. HUMANE SLAUGHTER; RITUAL SLAUGHTER

(REPEALED)

SECTION HISTORY
1969, c. 464, §1 (NEW). 1977, c. 694, §357 (AMD). 1979, c. 672, §A62 (RP).

§2555. PENALTIES

(REPEALED)

SECTION HISTORY
1969, c. 464, §1 (NEW). 1979, c. 672, §A62 (RP).

§2556. EXEMPTIONS

(REPEALED)

SECTION HISTORY
1969, c. 464, §1 (NEW). 1971, c. 387, (AMD). 1979, c. 672, §A62 (RP).

§2557. STORAGE AND HANDLING

(REPEALED)

SECTION HISTORY
1969, c. 464, §1 (NEW). 1977, c. 694, §358 (AMD). 1979, c. 672, §A62 (RP).

§2558. REGISTRATION OF COMMERICAL ESTABLISHMENTS

(REPEALED)

SECTION HISTORY
1979, c. 275, (NEW). 1979, c. 672, §A62 (RP).

§2559. REGISTRATION OF CUSTOM ESTABLISHMENTS

(REPEALED)

SECTION HISTORY
1979, c. 275, (NEW). 1979, c. 672, §A62 (RP).

§2561. NOT FOR HUMAN FOOD

(REPEALED)

SECTION HISTORY
1969, c. 464, §1 (NEW). 1979, c. 672, §A62 (RP).

§2562. RECORDS

(REPEALED)

SECTION HISTORY
1969, c. 464, §1 (NEW). 1979, c. 672, §A62 (RP).

§2563. REGISTRATION

(REPEALED)

SECTION HISTORY
1969, c. 464, §1 (NEW). 1979, c. 672, §A62 (RP).

§2564. ANIMALS NOT SLAUGHTERED

(REPEALED)

SECTION HISTORY
1969, c. 464, §1 (NEW). 1979, c. 672, §A62 (RP).

§2571. DEPARTMENT OF AGRICULTURE-POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1969, c. 464, §1 (NEW). 1979, c. 672, §A62 (RP).

§2581. INSPECTION SERVICES; JUDICIAL REVIEW

(REPEALED)

SECTION HISTORY
1969, c. 464, §1 (NEW). 1977, c. 694, §359 (AMD). 1979, c. 672, §A62 (RP).

§2582. DETENTION

(REPEALED)

SECTION HISTORY
1969, c. 464, §1 (NEW). 1977, c. 694, §360 (AMD). 1979, c. 672, §A62 (RP).

§2583. PROCEDURE; CONDEMNATION

(REPEALED)

SECTION HISTORY
1969, c. 464, §1 (NEW). 1979, c. 672, §A62 (RP).

§2584. JURISDICTION

(REPEALED)

SECTION HISTORY
1969, c. 464, §1 (NEW). 1979, c. 672, §A62 (RP).

§2585. PENALTIES

(REPEALED)

SECTION HISTORY
1969, c. 464, §1 (NEW). 1979, c. 672, §A62 (RP).

§2586. GENERAL PENALTY

(REPEALED)

SECTION HISTORY
1969, c. 464, §1 (NEW). 1979, c. 672, §A62 (RP).

§2587. POWERS OF COMMISSIONER

(REPEALED)

SECTION HISTORY
1969, c. 464, §1 (NEW). 1977, c. 694, §§361-363 (AMD). 1979, c. 672, §A62 (RP).

§2588. APPLICATION OF CHAPTER

(REPEALED)

SECTION HISTORY
1969, c. 464, §1 (NEW). 1979, c. 672, §A62 (RP).

§2589. TITLE

(REPEALED)

SECTION HISTORY
1969, c. 464, §1 (NEW). 1979, c. 672, §A62 (RP).

Chapter 565: GENETICALLY ENGINEERED PRODUCTS

§2591. PURPOSE

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UPON CONTINGENCY: See PL 2013, c. 436, §2, sub-§1)
(WHOLE SECTION TEXT REPEALED 1/1/18 IF CONTINGENCY NOT MET)

It is the purpose of this chapter to: [2013, c. 436, §1 (NEW); 2013, c. 436, §2 (AFF).]

1. **Public health and food safety.** Promote food safety and protect public health by enabling consumers to avoid the potential risks associated with genetically engineered foods and serve as a risk management tool enabling consumers, physicians and scientists to identify unintended health effects resulting from the consumption of genetically engineered foods;

[2013, c. 436, §1 (NEW); 2013, c. 436, §2 (AFF) .]

2. **Environmental impacts.** Assist consumers who are concerned about the potential effects of genetic engineering on the environment to make informed purchasing decisions;

[2013, c. 436, §1 (NEW); 2013, c. 436, §2 (AFF) .]

3. **Consumer confusion and inadvertent deception.** Reduce and prevent consumer confusion and inadvertent deception and promote the disclosure of factual information on food labels to allow consumers to make informed decisions;

[2013, c. 436, §1 (NEW); 2013, c. 436, §2 (AFF) .]

4. **Promote economic development.** Create additional market opportunities for those producers who are not certified organic producers and whose products are not produced using genetic engineering and enable consumers to make informed purchasing decisions; and

[2013, c. 436, §1 (NEW); 2013, c. 436, §2 (AFF) .]

5. **Protect religious and cultural practices.** Ensure consumers are provided with data from which they may make informed decisions for personal, religious, moral, cultural or ethical reasons.

[2013, c. 436, §1 (NEW); 2013, c. 436, §2 (AFF) .]

SECTION HISTORY
2013, c. 436, §1 (NEW). 2013, c. 436, §2 (AFF).

§2592. DEFINITIONS

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UPON CONTINGENCY: See PL 2013, c. 436, §2, sub-§1)
(WHOLE SECTION TEXT REPEALED 1/1/18 IF CONTINGENCY NOT MET)

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2013, c. 436, §1 (NEW); 2013, c. 436, §2 (AFF).]

1. **Commissioner.** "Commissioner" means the Commissioner of Agriculture, Conservation and Forestry.

[2013, c. 436, §1 (NEW); 2013, c. 436, §2 (AFF) .]

2. **Food.** "Food" means food intended for human consumption.

[2013, c. 436, §1 (NEW); 2013, c. 436, §2 (AFF) .]

3. **Genetically engineered.** "Genetically engineered" has the same meaning as under Title 7, section 1051, subsection 2.

[2013, c. 436, §1 (NEW); 2013, c. 436, §2 (AFF) .]

4. **Medical food.** "Medical food" means food prescribed by a physician for treatment of a medical condition.

[2013, c. 436, §1 (NEW); 2013, c. 436, §2 (AFF) .]

SECTION HISTORY
2013, c. 436, §1 (NEW). 2013, c. 436, §2 (AFF).

§2593. DISCLOSURE REQUIREMENTS FOR GENETICALLY ENGINEERED FOOD

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT REPEALED 1/1/18 IF CONTINGENCY NOT MET)
(WHOLE SECTION TEXT EFFECTIVE UPON CONTINGENCY: See PL 2013, c. 436, §2, sub-§1)

1. **Disclosure.** Beginning 18 months after the effective date of this section, any food offered for retail sale that is genetically engineered must be accompanied by a conspicuous disclosure that states "Produced with Genetic Engineering." The statement must be located on the package for all packaged food or, in the case of unpackaged food, on a card or label on the store shelf or bin in which the food is displayed.

[2013, c. 436, §1 (NEW); 2013, c. 436, §2 (AFF) .]

2. **Use of term "natural."** A food that is subject to disclosure under subsection 1 may not be described on the label or by similar identification as "natural."

[2013, c. 436, §1 (NEW); 2013, c. 436, §2 (AFF) .]

3. **Misbranding.** Any food that is genetically engineered that does not display the disclosure required under subsection 1 or that is labeled or identified as natural in violation of subsection 2 is considered misbranded for the purposes of chapter 551, subchapter 1 except that:

A. A food is not considered misbranded if the food is produced by a person who:

(1) Grows, raises or otherwise produces that food without knowledge that the food was created from other seed or other food that was genetically engineered; and

(2) Obtains a sworn statement from the person from whom the food was obtained that the food was not knowingly genetically engineered and was segregated from and not knowingly commingled with a food component that may have been genetically engineered; [2013, c. 436, §1 (NEW); 2013, c. 436, §2 (AFF).]

B. A food product derived from an animal is not considered misbranded if the animal was not genetically engineered but was fed genetically engineered feed; and [2013, c. 436, §1 (NEW); 2013, c. 436, §2 (AFF).]

C. A packaged processed food is not considered misbranded if the total weight of the processed food that was genetically engineered is less than 0.9% of the total weight of the processed food. [2013, c. 436, §1 (NEW); 2013, c. 436, §2 (AFF).]

[2013, c. 436, §1 (NEW); 2013, c. 436, §2 (AFF) .]

4. **Rules.** The commissioner may adopt routine technical rules under Title 5, chapter 375, subchapter 2-A for the administration and enforcement of this chapter.

[2013, c. 436, §1 (NEW); 2013, c. 436, §2 (AFF) .]

SECTION HISTORY
2013, c. 436, §1 (NEW). 2013, c. 436, §2 (AFF).

§2594. THIRD-PARTY PROTECTION

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UPON CONTINGENCY: See PL 2013, c. 436, §2, sub-§1)
(WHOLE SECTION TEXT REPEALED 1/1/18 IF CONTINGENCY NOT MET)

1. **Reliance on affidavit.** A distributor or retailer that sells or advertises food that is genetically engineered that fails to make the disclosure required under section 2593, subsection 1 is not subject to liability in any civil action to enforce this chapter if the distributor or retailer relied on the affidavit under section 2596 provided by the producer or grower stating that the food is not subject to the disclosure requirements under this chapter.

[2013, c. 436, §1 (NEW); 2013, c. 436, §2 (AFF) .]

2. **Eating establishments.** Eating establishments are exempt from the disclosure requirements of this chapter.

[2013, c. 436, §1 (NEW); 2013, c. 436, §2 (AFF) .]

3. **Exempt products.** Alcoholic beverages, nonalcoholic malt beverages and medical food are exempt from the disclosure requirements of this chapter. For purposes of this subsection, "nonalcoholic malt beverage" means a malt beverage that contains less than 1/2 of 1% alcohol by volume.

[2015, c. 118, §1 (AMD) .]

SECTION HISTORY
2013, c. 436, §1 (NEW). 2013, c. 436, §2 (AFF). 2015, c. 118, §1 (AMD).

§2595. ENFORCEMENT

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UPON CONTINGENCY: See PL 2013, c. 436, §2, sub-§1)
(WHOLE SECTION TEXT REPEALED 1/1/18 IF CONTINGENCY NOT MET)

1. **Authority.** The commissioner shall enforce this chapter in the same manner as is authorized for enforcement of chapter 551, subchapter 1.

[2013, c. 436, §1 (NEW); 2013, c. 436, §2 (AFF) .]

2. **No private right.** There is no private right of action to enforce this chapter.

[2013, c. 436, §1 (NEW); 2013, c. 436, §2 (AFF) .]

3. **Penalty.** A person who violates this chapter commits a civil violation for which a fine may be assessed that may not exceed $1,000 per day per misbranded product per sales location.

[2013, c. 436, §1 (NEW); 2013, c. 436, §2 (AFF) .]

SECTION HISTORY
2013, c. 436, §1 (NEW). 2013, c. 436, §2 (AFF).

§2596. AFFIDAVIT

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UPON CONTINGENCY; See PL 2013, c. 436, §2, sub-§1)
(WHOLE SECTION TEXT REPEALED 1/1/18 IF CONTINGENCY NOT MET)

The commissioner shall develop an affidavit form that may be provided by a producer or grower of food to distributors and retailers and that may be included in shipments of food within the State certifying that the food being sold or shipped is not subject to the disclosure requirements of this chapter. [2013, c. 436, §1 (NEW); 2013, c. 436, §2 (AFF).]

SECTION HISTORY
2013, c. 436, §1 (NEW). 2013, c. 436, §2 (AFF).

Chapter 601: WATER FOR HUMAN CONSUMPTION

Subchapter 1: GENERAL PROVISIONS

§2601. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings. [1975, c. 751, §4 (NEW).]

1. **Contaminant.** "Contaminant" means any physical, chemical, biological or radiological substance or matter in water.

[1975, c. 751, §4 (NEW) .]

1-A. **Administrative compliance order.** "Administrative compliance order" means an administrative order that is issued by the commissioner against a public water system in violation of state drinking water laws, regulations or rules.

[1993, c. 678, §1 (NEW) .]

1-B. **Administrative consent order.** "Administrative consent order" means an order issued by the commissioner pursuant to a bilateral agreement between the commissioner and a public water system in violation of state drinking water laws, regulations or rules.

[1993, c. 678, §1 (NEW) .]

1-C. **Administrative penalty.** "Administrative penalty" means a fine imposed by the commissioner against a public water system in violation of state drinking water laws, regulations or rules.

[1993, c. 678, §1 (NEW) .]

1-D. **Administrative remedy.** "Administrative remedy" means an administrative compliance order, an administrative consent order or an administrative penalty.

[1993, c. 678, §1 (NEW) .]

2. **Feasible.** "Feasible" means capable of being done within the current limitation of economics and technology, as determined by the commissioner.

[1975, c. 751, §4 (NEW) .]

3. **Maximum contaminant level.** "Maximum contaminant level" means the maximum concentration of a contaminant allowed under the State Primary Drinking Water Regulations in water supplied for human consumption.

[1975, c. 751, §4 (NEW) .]

4. **National Drinking Water Regulations.** "National Drinking Water Regulations" means the drinking water regulations promulgated by the Administrator of the U.S. Environmental Protection Agency under the authority of the Safe Drinking Water Act, P.L. 93-523.

[1975, c. 751, §4 (NEW) .]

4-A. **Notice of noncompliance.** "Notice of noncompliance" means a formal written complaint or a notice of violation of state drinking water laws, regulations or rules.

[1993, c. 678, §1 (NEW) .]

5. **Operator.** "Operator" means an individual either employed or retained by a public water system who, as part of the individual's job duties, is assigned the responsibilities for operational activities that will have a direct impact on the quality or quantity of water provided to consumers.

[1999, c. 688, §1 (AMD) .]

6. **Person.** "Person" means any individual, partnership, company, public or private corporation, political subdivision or agency of the State, department, agency or instrumentality of the United States or any other legal entity.

[1975, c. 751, §4 (NEW) .]

7. **Political subdivision.** "Political subdivision" means any municipality, county, district or any portion or combination of 2 or more thereof.

[1975, c. 751, §4 (NEW) .]

8. **Public water system.** "Public water system" means any publicly or privately owned system of pipes or other constructed conveyances, structures and facilities through which water is obtained for or sold, furnished or distributed to the public for human consumption if such a system has at least 15 service connections, regularly serves an average of at least 25 individuals daily at least 60 days out of the year or bottles water for sale. Any publicly or privately owned system that only stores and distributes water without treating or collecting it; obtains all its water from, but is not owned or operated by, a public water system; and does not sell water or bottled water to any person is not a "public water system." The term "public water system" includes any collection, treatment, storage or distribution pipes or other constructed conveyances, structures or facilities under the control of the supplier of water and used primarily in connection with such a

system, and any collection or pretreatment storage facilities not under that control that are used primarily in connection with such a system. The system does not include the portion of service pipe owned and maintained by a customer of the public water system.

For purposes of this subsection, a connection to a system that delivers water by a constructed conveyance other than a pipe is not considered a connection if:

A. The water is used exclusively for purposes other than residential uses. For the purposes of this subsection, the term "residential uses" includes drinking, bathing, cooking and other similar uses; and [1997, c. 705, §1 (NEW).]

B. The commissioner determines that alternative water to achieve the equivalent level of public health protection provided by the applicable state primary drinking water regulation is provided for residential or similar uses; or [1997, c. 705, §1 (NEW).]

C. The commissioner determines that the water provided for residential or similar uses is centrally treated or treated at the point of entry by the provider, a pass-through entity or the user to achieve the equivalent level of protection provided by the applicable state primary drinking water regulation. [1997, c. 705, §1 (NEW).]

[1997, c. 705, §1 (AMD) .]

8-A. **Roadside spring.** "Roadside spring" means any spring, well or other water diverted by pipes for the use of the public to obtain water by using containers or other methods, including but not limited to water being diverted and collected by a landowner by tiles, pipes, catch basins, buildings or other appurtenances.

[1997, c. 45, §1 (NEW) .]

9. **Supplier of water.** "Supplier of water" means any person who controls, owns or generally manages a public water system.

[1975, c. 751, §4 (NEW) .]

9-A. **Violation.** "Violation" means noncompliance with state drinking water laws, regulations and rules regardless of whether that noncompliance is intentional, negligent or otherwise.

[1993, c. 678, §1 (NEW) .]

10. **Water treatment plant.** "Water treatment plant" means that portion of the public water system which is designed to alter the physical, chemical, biological or radiological quality of the water or to remove any contaminants.

[1975, c. 751, §4 (NEW) .]

SECTION HISTORY
1975, c. 751, §4 (NEW). 1993, c. 410, §DD2 (AMD). 1993, c. 678, §1 (AMD). 1997, c. 45, §1 (AMD). 1997, c. 705, §1 (AMD). 1999, c. 688, §1 (AMD).

§2601-A. SCOPE

This chapter establishes a system designed to help ensure public health; to allow the State, municipalities and public water systems to identify significant public water supplies and strive for a higher degree of protection around source water areas or areas that are used as public drinking water supplies; and to allow the State, municipalities and water systems to pursue watershed or wellhead protection activities around significant public water supplies. [1999, c. 761, §1 (NEW).]

SECTION HISTORY
1999, c. 761, §1 (NEW).

§2602. FEES FOR TESTING

The department shall charge the average cost of the analysis for any examination, testing or analysis required under this chapter and performed in the departmental diagnostic laboratory. The fees must be recalculated and deposited according to section 565, subsection 3 and section 568. [2001, c. 471, Pt. A, §26 (AMD).]

SECTION HISTORY
1975, c. 751, §4 (NEW). 2001, c. 471, §A26 (AMD).

§2602-A. FEES FOR TESTING PRIVATE WATER SUPPLIES

1. **Purpose.** The Legislature finds that there is a growing threat to the state's drinking water from a variety of contaminants and that testing of private residential water supplies may be necessary under certain circumstances to protect the public health. The Legislature recognizes that certain testing may be prohibitively expensive and accordingly provides for state-funded testing as set forth in this section.

[1983, c. 837, §1 (NEW) .]

2. **Fees.** The department shall charge the average cost of the analysis for an examination, testing or analysis of private residential water supplies requested under this chapter. These fees must be recalculated and deposited according to section 565, subsection 3 and section 568, provided that the fee charged for testing a private residential water supply may not exceed $150 when:

A. In the opinion of the department, initial testing or screening performed at the expense of the owner indicates the need for additional testing at a cost in excess of $150 to determine whether that water supply contains contaminants potentially hazardous to human health and that additional testing is essential to the maintenance of public health; or [1983, c. 837, §1 (NEW).]

B. In the opinion of the department, there is reason to suspect that a private residential water supply may be affected by contamination potentially hazardous to human health and that additional testing is essential to the maintenance of public health. In making such a determination, the department shall consider the following:

(1) The proximity of the private residential water supply to a known or suspected source of contamination;

(2) The proximity of the private residential water supply to another private well or water supply known to be contaminated;

(3) Information provided in writing to the department by a physician who has seen or treated a person and who has identified contaminated drinking water as a possible cause of the person's condition or symptoms; or

(4) Information provided by the owner or a user of the private residential water supply voluntarily or in response to questions asked by personnel of the department. [1991, c. 499, §3 (AMD); 1991, c. 499, §26 (AFF).]

The department may waive all fees incurred in connection with the testing of a private residential water supply upon a showing of indigency.

[1991, c. 499, §3 (AMD); 1991, c. 499, §26 (AFF) .]

SECTION HISTORY
1981, c. 703, §A20 (NEW). 1983, c. 837, §1 (RPR). 1991, c. 499, §3 (AMD). 1991, c. 499, §26 (AFF).

§2603. SHIPPING COSTS

Any person required under this chapter to submit samples of water to the department for analysis shall pay the shipping charges thereon. [1975, c. 751, §4 (NEW).]

SECTION HISTORY
1975, c. 751, §4 (NEW).

§2604. SCHOOLS, SAMPLING AND EXAMINATION OF WATER

Any school, which takes water from a source other than a public water system and uses such water for drinking or culinary purposes, shall submit samples of such water to the department for analysis at least once during each school year. Such samples shall be analyzed by the department. If the water is found to violate the state primary drinking water regulations, the department shall issue an order prohibiting the use of the water for drinking or culinary purposes by the school, which order shall remain in force until the water conforms to the state primary drinking water regulations. [1975, c. 751, §4 (NEW).]

Violation of this section shall, on conviction, be punishable by a fine of not more than $500. [1975, c. 751, §4 (NEW).]

SECTION HISTORY
1975, c. 751, §4 (NEW).

§2604-A. ROADSIDE SPRINGS

A roadside spring is not a public water system if the owner of the roadside spring does not collect, charge or accept donations, fees or money for the water or for testing or maintenance of the water and does not post signs or construct other structures that invite persons to use the spring. [1997, c. 45, §2 (NEW).]

SECTION HISTORY
1997, c. 45, §2 (NEW).

§2605. ADMINISTRATION

To carry out this chapter, the commissioner is authorized and empowered to: [1975, c. 751, §4 (NEW).]

1. **Agreements.** Enter into agreements, contracts or cooperative arrangements under such terms and conditions as he deems appropriate with other state, federal or interstate agencies, municipalities, education institutions, local health departments or other organizations or individuals;

[1975, c. 751, §4 (NEW) .]

2. **Assistance.** Receive financial and technical assistance from the Federal Government and other public or private agencies;

[1975, c. 751, §4 (NEW) .]

3. **Program participation.** Participate in related programs of the Federal Government, other states, interstate agencies or other public agencies or organizations;

[1975, c. 751, §4 (NEW) .]

4. **Fiscal control and accounting.** Establish adequate fiscal controls and accounting procedures to assure proper disbursement of and accounting for funds;

[1975, c. 751, §4 (NEW) .]

5. **Procedures.** Adopt and implement adequate procedures to insure compliance with this chapter and rules and regulations promulgated hereunder, including procedures for the monitoring and inspection of public water systems; and

[1975, c. 751, §4 (NEW) .]

6. **Advising other agencies.** Advise other regulatory agencies of the department's rules, regulations and orders promulgated under this chapter.

[1975, c. 751, §4 (NEW) .]

Except as otherwise specifically provided by law, the commissioner may impose no standard, method or procedure upon any water utility, as defined in Title 35-A, section 102, that is more stringent than required under the federal Safe Drinking Water Act, as amended, or rules promulgated under that Act by the Administrator of the United States Environmental Protection Agency, unless the particular standard, method or procedure has been adopted in a rule adopted according to the Maine Administrative Procedure Act and the rule specifies in detail the scientific basis justifying the more stringent standard, method or procedure and the precise criteria for when the standard, method or procedure applies to a water utility. [1993, c. 514, §1 (NEW).]

SECTION HISTORY
1975, c. 751, §4 (NEW). 1993, c. 514, §1 (AMD).

§2606. EMERGENCY PLANNING

The department shall develop plans, with the advice and assistance of the Bureau of Emergency Preparedness and of the public water systems of the State, for emergency conditions and situations that may endanger the public health or welfare by contamination of drinking water. Such plans shall include potential sources of contaminants and situations or conditions that could place them in the sources of public drinking water, techniques and methods to be used by public water systems to reduce or eliminate the dangers to public health caused thereby, methods and times for analysis or testing during such emergency conditions or situations, alternate sources of water available to public water systems and methods of supplying drinking water to consumers if a public water system cannot supply such water. [1975, c. 751, §4 (NEW).]

SECTION HISTORY
1975, c. 751, §4 (NEW).

§2607. APPROVED LABORATORIES

The department shall approve the facilities, techniques, testing methods and training of personnel of any laboratories that analyze water samples to determine compliance with State Primary Drinking Water Regulations. Such approval shall be based on the capability of the laboratory to accurately and reliably analyze samples to determine their contaminant levels under the State Primary Drinking Water Regulations, and may be limited to approval of only certain tests or contaminant level determinations. Any sample analysis performed by a laboratory not approved by the department shall not be considered in determining the compliance of a public water system with the State Primary Drinking Water Regulations. [1975, c. 751, §4 (NEW).]

SECTION HISTORY
1975, c. 751, §4 (NEW).

§2608. INFORMATION ON PRIVATE WATER SUPPLY CONTAMINATION; INTERAGENCY COOPERATION

1. **Information on private water supply contamination.** The department shall provide information and consultation to citizens who:

A. Make reports of potential contamination of private water supplies; and [1983, c. 837, §2 (NEW).]

B. Request information on potential ground water contamination at or near the site of a private water supply. [1983, c. 837, §2 (NEW).]

[1983, c. 837, §2 (NEW) .]

2. **Interagency cooperation.** The department shall coordinate with the Department of Environmental Protection for the purposes of:

A. Assessing the public health implications of reports or requests made by citizens in subsection 1; and [1983, c. 837, §2 (NEW).]

B. Determining the appropriate response to those reports or requests, including, but not limited to, on-site investigation, well water testing and ground water monitoring. [1983, c. 837, §2 (NEW).]

[1983, c. 837, §2 (NEW) .]

3. **Cooperation with local health officer.**

[2007, c. 598, §12 (RP) .]

SECTION HISTORY
1983, c. 837, §2 (NEW). 2007, c. 598, §12 (AMD).

§2609. RECOVERY OF TESTING COSTS

Whenever the cost of testing a private residential water supply exceeds $150 and that testing is conducted pursuant to section 2602-A, the department shall seek to recover the costs of the testing above $150 from the person responsible for contaminating the water supply, or from the recipient of any compensation for the contamination of the well. [1983, c. 837, §2 (NEW).]

SECTION HISTORY
1983, c. 837, §2 (NEW).

§2610. MAINE DRINKING WATER FUND

1. **Establishment; administration.** The Maine Drinking Water Fund, referred to in this section as "the fund," is established as provided in this section.

A. The fund is established as a nonlapsing fund to provide financial assistance, in accordance with subsection 2, for the acquisition, planning, design, construction, reconstruction, enlargement, repair, protection and improvement of public water systems, drinking water supplies and water treatment facilities. [2009, c. 377, §1 (NEW).]

B. The department shall administer the fund. The fund must be invested in the same manner as permitted for investment of funds belonging to the State or held in the State Treasury. The fund must be established and held separate from any other funds and used and administered exclusively for the purpose of this section. The fund consists of the following:

(1) Sums that are appropriated by the Legislature or transferred to the fund from time to time from the State Water and Wastewater Infrastructure Fund, pursuant to Title 30-A, section 6006-H;

(2) Interest earned from the investment of fund balances; and

(3) Other funds from any public or private source received for use for any of the purposes for which the fund has been established. [2009, c. 377, §1 (NEW).]

[2009, c. 377, §1 (NEW) .]

2. **Uses.** The fund may be used for one or more of the following purposes:

A. To make grants to public water systems, pursuant to this section, for the acquisition, planning, design, construction, reconstruction, enlargement, repair, protection or improvement of public water systems, drinking water supplies or water treatment facilities; [2009, c. 377, §1 (NEW).]

B. To forgive loans held by public water systems for the acquisition, planning, design, construction, reconstruction, enlargement, repair, protection or improvement of public water systems, drinking water supplies or water treatment facilities; [2009, c. 377, §1 (NEW).]

C. To provide a state match for federal funds provided to the Safe Drinking Water Revolving Loan Fund, pursuant to Title 30-A, section 6006-B; [2009, c. 377, §1 (NEW).]

D. To invest available fund balances and to credit the net interest income on those balances to the fund; and [2009, c. 377, §1 (NEW).]

E. To pay the costs of the department associated with the administration of the fund, as long as no more than 5% of the aggregate of the highest fund balance in any fiscal year is used for these purposes. [2009, c. 377, §1 (NEW).]

[2009, c. 377, §1 (NEW) .]

3. **Rules.** The department shall adopt rules necessary to implement this section, including rules to establish one or more grant programs in accordance with subsection 2, paragraph A. Rules adopted by the department pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 377, §1 (NEW) .]

SECTION HISTORY
2009, c. 377, §1 (NEW).

Subchapter 2: SAFE DRINKING WATER ACT

§2611. DRINKING WATER REGULATIONS

1. **State primary drinking water regulations.** The commissioner shall promulgate and enforce primary drinking water regulations which are necessary to protect the public health and which shall apply to all public water systems. Such regulations shall include:

A. Identification of contaminants which may have an adverse effect on the health of persons; [1975, c. 751, §4 (NEW).]

B. Specifies for each contaminant either:

(1) A maximum contaminant level that is acceptable in water for human consumption, if it is feasible to ascertain the level of such contaminant in water in public water systems; or

(2) One or more treatment techniques or methods which lead to a reduction of the level of such contaminant sufficient to protect the public health, if it is not feasible to ascertain the level of such contaminant in water in the public water system; and [1975, c. 751, §4 (NEW).]

C. Criteria and procedures to assure compliance with the levels or methods determined under paragraph B, including quality control and testing procedures to insure compliance with such levels or methods and to insure proper operation and maintenance of the system, and requirements as to the minimum quality of water which may be taken into the system and the siting for new facilities. [1975, c. 751, §4 (NEW).]

Such regulations shall be no less stringent than the most recent National Primary Drinking Water Regulations in effect, as issued or promulgated by the United States Environmental Protection Agency. Regulations under this subsection may be amended from time to time, as necessary.

[1975, c. 751, §4 (NEW) .]

2. **State secondary drinking water regulations or guidelines.** The commissioner shall adopt secondary drinking water regulations or guidelines which are necessary to protect the public welfare. Such regulations or guidelines may apply to any contaminant in drinking water which may adversely affect the color, odor or appearance of the water and consequently may cause a substantial number of persons to discontinue using a public water system, or which may otherwise adversely affect the public welfare. Such regulations or guidelines may vary according to geographic, economic, technical or other relevant circumstances. Such regulations or guidelines shall reasonably assure the protection of the public welfare and the supply of aesthetically adequate drinking water; and shall be based upon the National Secondary Drinking Water Regulations promulgated by the United States Environmental Protection Agency. Regulations or guidelines under this subsection may be amended from time to time, as necessary.

[1975, c. 751, §4 (NEW) .]

3.

[1977, c. 694, §364 (RP) .]

SECTION HISTORY
1975, c. 751, §4 (NEW). 1977, c. 694, §364 (AMD).

§2612. APPROVAL OF CONSTRUCTION OR ALTERATION, TRAINING, INSPECTION, REGULATIONS AND RECORDS

1. **Construction or alteration of public water systems.** New construction, additions or alterations involving the source, treatment or storage of water in any public water system may not commence until the plans and specifications have been submitted to and approved by the department.

A. The commissioner may exempt the construction, addition or alteration from submission and approval if it will have no effect on public health or welfare. [1999, c. 761, §2 (NEW).]

B. The department must consult with and advise persons planning or operating a public water system as to the most appropriate source of supply and the best methods of ensuring its purity. The department must consider any existing potential sources of contamination in the vicinity of the proposed source of supply when reviewing whether to approve a new source of supply and may deny approval based on those existing potential sources of contamination. [1999, c. 761, §2 (NEW).]

C. In granting approval of plans and specifications, the department may require modifications, conditions or procedures to ensure, as far as feasible, the protection of the public health. The department may adopt and enforce rules governing the construction or alteration of public water systems to ensure the protection of the public health and may require the submission of water samples for analysis to determine the extent of treatment required. [1999, c. 761, §2 (NEW).]

Records of construction, including, when feasible, plans and descriptions of existing public water systems, must be maintained by public water systems and made promptly available to the department upon request.

[1999, c. 761, §2 (RPR) .]

2. **Operation and maintenance of public water systems.** The department shall monitor the operation and maintenance of any public water system in the State. Such monitoring shall include all aspects of operation and maintenance which may affect the quality of the water supply. The department may adopt rules and regulations relating to operation and maintenance of public water systems to insure the purity of water and the protection of public health. Such rules and regulations may apply to all aspects of operation and maintenance which may affect the quality of water supplied to the public, including feasible purification methods, equipment and systems. The department may require, by rule or regulation, any public water system to submit water samples for analysis on a regular basis, as often as necessary to insure the public health. Records of operation and maintenance of public water systems shall be kept on forms approved or specified by the department and this data shall be submitted to the department at the times and in the manner as the department directs. The supplier of water shall promptly comply with such department directions.

[1975, c. 751, §4 (NEW) .]

3. **Inspection.** Any officer or employee duly designated by the commissioner, upon presenting appropriate credentials and a written notice of his authority to inspect, signed by the commissioner, is authorized to enter any part of a public water system in order to determine whether such supplier is complying with this chapter and any departmental rules, regulations or orders issued hereunder. The inspection may include any portion of a public water system, including the sources of supply, treatment facilities and materials, pumping facilities, distribution and storage facilities, records, files and reports on operation. The inspection may also include the testing of any portion of a public water system affecting water quality, including raw and processed water, and the taking of any samples necessary to insure compliance with this chapter and the rules, regulations or orders issued hereunder. Each inspection shall take place at a reasonable time and be commenced and completed with reasonable promptness. The supplier shall be promptly notified of the results of the inspection.

[1975, c. 751, §4 (NEW) .]

4. **Engineering studies.** The commissioner may order a public water supplier to carry out an engineering study of the water works system or any portion thereof, if such study is required to identify potential threats to the public health and remedies that will remove such threats. The purpose of such study shall be to ascertain the best methods of complying with this chapter and departmental rules and regulations. The department may further order a public water system to implement the feasible recommendations of the study required to protect the public health. Prior to issuing any order under this subsection, this commissioner

shall provide written notice to the public water system and public notice in a newspaper of general circulation in the area served by the public water system, and shall also provide the opportunity for a public hearing on the proposed order.

[1975, c. 751, §4 (NEW) .]

5. **Cross connections.** The department may adopt and enforce regulations governing the connection of any public water systems to any pipes, facilities or structures that carry, store or distribute water that has not been analyzed for compliance or cannot comply with the State Primary Drinking Water Standards, or any connection that may introduce contamination into the system, in order to protect the system from contamination.

[1975, c. 751, §4 (NEW) .]

6. **Training.** The department may provide training in operations and maintenance of public water systems, techniques and methods of testing and analysis of water, and the requirements of this chapter and departmental rules and regulations, for suppliers of water and operators and employees of public water systems.

[1975, c. 751, §4 (NEW) .]

SECTION HISTORY
1975, c. 751, §4 (NEW). 1999, c. 761, §2 (AMD).

§2612-A. CAPACITY DEVELOPMENT

1. **Authority.** The commissioner is authorized to ensure that all new community water systems and new nontransient, noncommunity systems commencing operation after October 1, 1999 demonstrate technical, managerial and financial capacity with respect to each state primary drinking water regulation in effect, or likely to be in effect, on the date of commencement of operations.

[1997, c. 705, §2 (NEW) .]

2. **Rulemaking.** The commissioner shall adopt rules to ensure that all new community water systems and new nontransient, noncommunity systems commencing operation after October 1, 1999 demonstrate technical, managerial and financial capacity with respect to each state primary drinking water regulation in effect, or likely to be in effect, on the date of commencement of operations. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[1997, c. 705, §2 (NEW) .]

SECTION HISTORY
1997, c. 705, §2 (NEW).

§2613. VARIANCES AND EXEMPTIONS

1. **Variances.** The commissioner may grant one or more variances from an applicable state primary drinking water regulation to a public water system if the variance will not result in an unreasonable risk to the public health and if:

A. Because of the characteristics of the raw water sources reasonably available to the systems, the system can not meet the maximum contaminant levels of the drinking water regulation despite application of the best technology, treatment techniques or other means; or [1995, c. 622, §1 (AMD).]

B. Where a specified treatment technique for a contaminant is required by the state primary drinking water regulation, the system demonstrates to the commissioner's satisfaction that the treatment technique is not required to protect the public health because of the nature of the raw water source. [1995, c. 622, §1 (AMD).]

Prior to granting a variance, the commissioner shall provide an opportunity for public hearing pursuant to the Maine Administrative Procedure Act on the proposed variance. Variances may be conditioned on monitoring, testing, analyzing or other requirements to ensure the protection of the public health; and variances granted under paragraph A must include a compliance schedule under which the public water system will meet each contaminant level for which a variance is granted as expeditiously as is feasible.

A variance may be issued to a system on the condition that the system install the best technology, treatment techniques or other means that are available, taking costs into consideration, according to the United States Environmental Protection Agency and based upon an evaluation satisfactory to the commissioner that indicates that alternative sources of water are not reasonably available to the system.

[1997, c. 705, §3 (AMD) .]

1-A. **Small system variances.** The commissioner may grant a variance for compliance with a requirement specifying a maximum contaminant level or treatment technique contained in a state primary drinking water regulation to public water systems serving 3,300 or fewer persons. With the approval of the Administrator of the United States Environmental Protection Agency, the commissioner may grant a variance under this subsection to a public water system serving more than 3,300 persons but fewer than 10,000 persons.

The commissioner shall adopt rules for variances to be granted under this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[1997, c. 705, §4 (NEW) .]

2. **Exemptions.** The commissioner may grant one or more exemptions from an applicable state primary drinking water regulation to a public water system, if:

A. The exemption will not result in an unreasonable risk to the public health; [1975, c. 751, §4 (NEW).]

B. The public water system is unable to comply with the regulation or to implement measures to develop an alternative source of water supply due to compelling factors, which may include economic factors such as qualification of the public water system serving a disadvantaged community. For purposes of this paragraph "disadvantaged community" means the service area of a public water system that meets affordability criteria established by the department after public review and comment; [1997, c. 705, §5 (AMD).]

C. The public water system was in operation on the earliest effective date under present or prior law of the contaminant level or treatment technique requirement; and [1997, c. 705, §5 (AMD).]

D. Management or restructuring changes can not reasonably be made that will result in compliance with this chapter or, if compliance can not be achieved, improve the quality of the drinking water. [1997, c. 705, §5 (NEW).]

Prior to implementation of a schedule for compliance with contaminant level or treatment technique requirements and for implementation of control measures, the commissioner shall provide notice and opportunity for public hearing pursuant to the requirements of the Maine Administrative Procedure Act. Each exemption must also be conditioned on monitoring, testing, analyzing or other requirements to ensure the protection of the public health and must include a compliance schedule, including increments of progress or measures to develop an alternative source of water supply, under which the public water system will meet each contaminant level for which an exemption is granted as expeditiously as is feasible.

[1997, c. 705, §5 (AMD) .]

3. **Exemption for water distillers in retail stores.** A retail store that distills and bottles water from a public water system and sells the water on the premises is exempt from state water rules except:

A. The distiller must be inspected annually by the Department of Agriculture, Conservation and Forestry; and [1991, c. 113, (NEW); 2011, c. 657, Pt. W, §5 (REV).]

B. A bacteriological sample of the distilled water must be submitted to the Department of Health and Human Services at least every 3 months. If the distiller has a one-year history of no coliform bacteria contamination, the Department of Health and Human Services may reduce the frequency of sampling to one sample per year. [1991, c. 113, (NEW); 2003, c. 689, Pt. B, §6 (REV).]

[1991, c. 113, (NEW); 2003, c. 689, Pt. B, §6 (REV); 2011, c. 657, Pt. W, §5 (REV) .]

3-A. **Exemption criteria.** An exemption described in subsection 2 may not be granted unless:

A. The public water system can not meet the standards without capital improvements that can not be completed within the period of the exemption; [1997, c. 705, §6 (NEW).]

B. In the case of a public water system that needs financial assistance for the necessary improvements, the system has entered into an agreement to obtain such financial assistance or assistance pursuant to the state revolving loan fund program or any other federal or state program that is reasonably likely to be available within the period of the exemption; or [1997, c. 705, §6 (NEW).]

C. The public water system has entered into an enforceable agreement to become part of a regional public water system and the system is taking practicable steps to meet the standards. [1997, c. 705, §6 (NEW).]

[1997, c. 705, §6 (NEW) .]

4. **Exemption; extended.** The exemption described in subsection 2 is effective for up to one year after the date of the issuance of the exemption.

A. The final date for compliance provided in any schedule in an exemption may be extended for a period not to exceed 3 years after the date of the issuance of the exemption. [1997, c. 705, §7 (AMD).]

B. In the case of a system that does not serve more than 3,300 people and that needs financial assistance for the necessary improvements, an exemption granted may be renewed for one to 3 additional 2-year periods, but may not exceed a total of 6 additional years, if the system establishes that it is taking all practicable steps to meet the requirements established in the exemption. [1997, c. 705, §7 (AMD).]

[1997, c. 705, §7 (AMD) .]

A public water system may not receive an exemption under this section if the system was granted a variance under subsection 1-A. [1997, c. 705, §8 (NEW).]

SECTION HISTORY
1975, c. 751, §4 (NEW). 1979, c. 541, §§B28,29 (AMD). 1991, c. 113, (AMD). 1995, c. 622, §§1-3 (AMD). 1997, c. 705, §§3-8 (AMD). 2003, c. 689, §B6 (REV). 2011, c. 657, Pt. W, §5 (REV).

§2614. IMMINENT HAZARDS TO PUBLIC HEALTH

1. **Determination of imminent hazard.** An imminent hazard shall be considered to exist when there is a violation of the state primary drinking water regulations, or when, in the judgment of the commissioner, a condition exists in a public water system or water supply which will cause a violation and will result in a serious risk to public health.

[1975, c. 751, §4 (NEW) .]

2. **Elimination of imminent hazard.** In order to eliminate an imminent hazard, the commissioner may, without a prior hearing, issue an emergency order requiring the supplier of water to immediately take such action as is required under the circumstances to protect the public health. Actions required under the emergency order may include:

A. The prohibition of transportation, sale, distribution or supplying of water; [1975, c. 751, §4 (NEW).]

B. The repair, installation or operation of feasible purification equipment or methods; [1975, c. 751, §4 (NEW).]

C. The notification of all potential users of the system, including travelers, of the nature, extent and possible health effects of the imminent hazard and precautions to be taken by users; or [1975, c. 751, §4 (NEW).]

D. The testing, sampling or other analytical operations required to determine the nature, extent, duration or termination of the imminent hazard. [1975, c. 751, §4 (NEW).]

A copy of the emergency order shall be served in the same manner as the service of notice of the commencement of a civil action in Superior Court. An emergency order issued by the commissioner shall be effective immediately and shall be binding for no more than 90 days unless sooner revoked, reviewed by the department at a public hearing or modified or rescinded by a Superior Court. At the written request of the supplier of water, a public hearing shall be held on the emergency order within 15 days of receipt of such request.

[1975, c. 751, §4 (NEW) .]

3. **Boil-water order.** For the purposes of this section and section 2615, "boil-water order" means an order issued by the commissioner to protect the health of persons consuming water from a public water system that may be contaminated by pathogenic microorganisms.

The boil-water order may immediately require the supplier of water to complete public notification of the threat to public health pursuant to section 2615.

A boil-water order may be issued when, in the judgment of the commissioner, a threat to the public health may exist from the presence of pathogenic microorganisms in a public water system. A boil-water order may be issued without a prior public hearing and served on the supplier of water by personal service, certified mail or by any other method if receipt is acknowledged by the supplier of water. At the written request of a supplier of water, a public hearing must be held on the boil-water order within 15 days of the receipt of the request.

[1995, c. 622, §4 (NEW) .]

SECTION HISTORY
1975, c. 751, §4 (NEW). 1995, c. 622, §4 (AMD).

§2615. NOTIFICATION OF NONCOMPLIANCE TO REGULATORY AGENCIES AND USERS

1. **Notification.** A public water system shall notify the public of the nature and extent of possible health effects as soon as practicable, but not later than the time period established under subsection 4, if the system:

A. Is not in compliance with a state drinking water rule; [1995, c. 622, §5 (RPR).]

B. Fails to perform monitoring, testing or analyzing or fails to provide samples as required by departmental rules; [1995, c. 622, §5 (RPR).]

C. Is subject to a variance or an exemption granted under section 2613; or [1995, c. 622, §5 (RPR).]

D. Is not in compliance with the terms of a variance or an exemption granted under section 2613. [1995, c. 622, §5 (RPR).]

E. [1995, c. 622, §5 (RP).]

Public notification under this section must be provided concurrently to the system's local health officer and to the department. When required by law, the department shall forward a copy of the notification to the Administrator of the United States Environmental Protection Agency. The department may require notification to a public water system's individual customers by mail delivery or by hand delivery within a reasonable time, but not earlier than required under federal laws.

[2001, c. 574, §14 (AMD) .]

2. **Certain uses of notification prohibited.** Notification received pursuant to this section or information obtained by the exploitation of such notification shall not be used against any person or system providing such notice in any criminal case, except for prosecutions for perjury or the giving of a false statement.

[1975, c. 751, §4 (NEW) .]

3. **Form of notification.** In addition to the notification required under subsection 1, a public water system shall provide public notification pursuant to the requirements in 40 Code of Federal Regulations, Parts 141 to 143 (2001).

A. [2001, c. 574, §15 (RP).]

B. [2001, c. 574, §15 (RP).]

[2001, c. 574, §15 (AMD) .]

4. **Additional time of notification.** A public water system shall provide public notification pursuant to subsection 3:

A. When a boil-water order is properly issued to a public water system under section 2614, subsection 3, within 24 hours. [2001, c. 574, §15 (AMD).]

B. [2001, c. 574, §15 (RP).]

C. [2001, c. 574, §15 (RP).]

D. [2001, c. 574, §15 (RP).]

E. [2001, c. 574, §15 (RP).]

F. [2001, c. 574, §15 (RP).]

[2001, c. 574, §15 (AMD) .]

5. **Rulemaking.** The commissioner shall adopt rules establishing the procedures for the provision of public notification as required to comply with state and federal laws. Rules adopted pursuant to this section are minor technical rules as defined in Title 5, chapter 375, subchapter II-A.

[1995, c. 622, §6 (NEW) .]

SECTION HISTORY
1975, c. 751, §4 (NEW). 1995, c. 622, §§5,6 (AMD). 2001, c. 574, §§14,15 (AMD).

§2615-A. CONSUMER CONFIDENCE REPORTS

1. **Annual reports to customers.** The commissioner shall require each community water system, as defined in section 2660-B, subsection 2, to prepare and provide to each customer of the system at least once annually a consumer confidence report, which must include, but is not limited to, the source of drinking water and potential contamination sources, the level of detected regulated contaminants and detected unregulated contaminants for which monitoring is required by the primacy agency, the health risks associated with detected contaminants, the status and notice of public input in the renewal of variances or exemptions, the nature of applicable compliance violations, including remedial action, and access to additional information from the community water system and the United States Environmental Protection Agency's safe drinking water hotline.

[1999, c. 77, §1 (NEW) .]

2. **Reports to State.** Each community water system shall mail to the department a copy of the consumer confidence report and a signed certification that the report is accurate and was delivered to each customer of the system.

[1999, c. 77, §1 (NEW) .]

3. **Delivery to customers.** Each community water system shall mail a copy of the consumer confidence report to each customer of the system. The Governor may waive the mailing requirement for community water systems serving fewer than 10,000 persons and require those systems to publish the consumer confidence report in a newspaper of general circulation to inform customers that the report will not be mailed and to make the report available upon request. If the Governor waives the mailing requirement for systems serving fewer than 10,000 persons, community water systems serving 500 or fewer persons have the option of posting the consumer confidence report in an appropriate public location.

Each community water system serving 100,000 or more persons shall also post its current year's report to a publicly accessible site on the Internet.

[1999, c. 77, §1 (NEW) .]

4. **Rulemaking.** The commissioner shall adopt rules establishing the requirements with respect to the form, content and delivery of consumer confidence reports under this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[1999, c. 77, §1 (NEW) .]

SECTION HISTORY
1999, c. 77, §1 (NEW).

§2616. PROHIBITED ACTS

The following acts and the causing thereof are prohibited: [1975, c. 751, §4 (NEW).]

1. **Failure to comply with section 2615 or dissemination of certain misleading information.** Failure by a supplier of water to comply with the requirements of section 2615, or dissemination by such supplier of any false or misleading information with respect to remedial actions being undertaken to achieve compliance with state primary drinking water regulations;

[1975, c. 751, §4 (NEW) .]

2. **Failure to comply with regulations and actions under sections 2611, 2612, 2613 and 2614.** Failure by a supplier of water to comply with the regulations for water quality, monitoring, maintenance, operations, reporting and corrective actions pursuant to sections 2611, 2612, 2613 and 2614; and

[1975, c. 751, §4 (NEW) .]

3. **Refusal to allow entry under section 2612.** The refusal of a supplier of water to allow entry and inspection of establishments, facilities or other property pursuant to section 2612.

[1975, c. 751, §4 (NEW) .]

SECTION HISTORY
1975, c. 751, §4 (NEW).

§2617. PENALTIES AND REMEDIES

1. **Violation of section 2616 or subchapter VII.** A person that violates section 2616 or subchapter VII commits a civil violation for which a penalty not to exceed $5,000 may be adjudged. Each day of operation in violation of section 2616 or subchapter VII constitutes a separate violation. The District Court or the Superior Court has jurisdiction over violations of section 2616 or subchapter VII.

[1993, c. 2, §13 (COR) .]

2. **Injunctive relief.** The commissioner may commence or cause to be instituted a civil action in the Superior Court of either Kennebec County or of the county in which the principal place of business of the supplier of water is located, to convict and punish a person under subsection 1, to seek injunctive relief to prevent the violation of any rule or regulation issued pursuant to this chapter, to prevent the violation of any order issued pursuant to sections 2612, 2613 or 2614, or to require a public water system or supplier of water to take other action necessary to protect the public health, with or without a prior order from the commissioner or department.

[1975, c. 751, §4 (NEW) .]

3. **Administrative remedies.** The commissioner may seek and impose administrative remedies as provided in subchapter II-A for a violation of state drinking water laws, regulations and rules.

[1993, c. 678, §3 (NEW) .]

SECTION HISTORY
1975, c. 751, §4 (NEW). 1979, c. 60, (AMD). RR 1993, c. 2, §13 (COR). 1993, c. 410, §DD3 (AMD). 1993, c. 678, §§2,3 (AMD).

Subchapter 2-A: SAFE DRINKING WATER ADMINISTRATIVE ENFORCEMENT

§2618. GENERAL AUTHORIZATION

In accordance with the process outlined in section 2619, the commissioner may impose one or more of the administrative remedies provided in this subchapter when a violation of this chapter, or rules adopted pursuant to this chapter, occurs or if the commissioner determines that administrative remedies are necessary and appropriate to ensure compliance with state drinking water laws, regulations and rules. [1993, c. 678, §4 (NEW).]

SECTION HISTORY
1993, c. 678, §4 (NEW).

§2619. ADMINISTRATIVE REMEDY PROCESS

1. **Notice of noncompliance.** Except as otherwise provided in this subchapter, the commissioner shall issue a notice of noncompliance to a public water system within 30 days after the commissioner has determined that the public water system has committed a violation. The notice of noncompliance must contain the following information:

A. Identification of the violation; [1993, c. 678, §4 (NEW).]

B. A compliance deadline; and [1993, c. 678, §4 (NEW).]

C. The possible consequences of noncompliance if the requirements of the notice are not met by the specified date. [1993, c. 678, §4 (NEW).]

[1993, c. 678, §4 (NEW) .]

2. **Administrative consent order.** If the public water system has failed to correct the violation as specified in the notice of noncompliance by the date specified in the notice, the commissioner and the public water system shall make a good faith effort to agree upon a settlement and, if agreement is reached, the commissioner shall issue an administrative consent order. An administrative consent order may not be changed without written consent by all parties to the agreement. An administrative consent order must include, but is not limited to, compliance schedules and milestones. If the public water system and the commissioner fail to reach an agreement, the commissioner may issue an administrative compliance order under subsection 3 or may refer the case to the Attorney General for relief under section 2617.

[1993, c. 678, §4 (NEW) .]

3. **Administrative compliance order.** If the public water system and the commissioner fail to reach an agreement under subsection 2, the commissioner may issue an administrative compliance order to the public water system to correct the violation in a manner and within a time frame that the commissioner determines appropriate. The administrative compliance order must contain a schedule that the public water system must follow to bring it into compliance. An administrative compliance order may include an administrative penalty that takes effect as early as the day that the parties ceased negotiating in good faith under subsection 2. The administrative compliance order must specify an administrative penalty that takes effect if the public water system fails to comply with the administrative compliance order.

[1993, c. 678, §4 (NEW) .]

4. **Administrative penalty.** If the public water system and the commissioner fail to reach an agreement under subsection 2, the commissioner may impose an administrative penalty that takes effect as early as the day that the parties ceased negotiating in good faith under subsection 2. If the public water system fails to comply with an administrative compliance order by the deadline in the compliance schedule, an administrative penalty may be assessed. A notice of penalty assessment may be issued in conjunction with or separate from an administrative compliance order, and must contain the following:

A. Identification of the violation for which it is issued; [1993, c. 678, §4 (NEW).]

B. A citation of the law, rule or order being violated; [1993, c. 678, §4 (NEW).]

C. The amount of the penalty; [1993, c. 678, §4 (NEW).]

D. Notice of the right to an adjudicatory hearing pursuant to the Maine Administrative Procedure Act; and [1993, c. 678, §4 (NEW).]

E. The procedure for paying the penalty. [1993, c. 678, §4 (NEW).]

[1993, c. 678, §4 (NEW) .]

SECTION HISTORY
1993, c. 678, §4 (NEW).

§2620. PROVISIONS GOVERNING ADMINISTRATIVE PENALTIES

Administrative penalties imposed under this subchapter are governed by the following provisions. [1993, c. 678, §4 (NEW).]

1. **Maximum penalty.** An administrative penalty may not be greater than $750 for each violation, except that for public water systems serving more than 10,000 people, an administrative penalty may not be less than $1,000 for each violation. Each day that a violation remains uncorrected may be counted as a separate violation.

[1997, c. 705, §9 (AMD) .]

2. **Schedule of penalties.** The commissioner shall adopt rules in accordance with Title 5, chapter 375 establishing a schedule of administrative penalties. Factors that may be considered include but are not limited to:

A. The nature and duration of the violation; [1993, c. 678, §4 (NEW).]

B. The level of assessment necessary to ensure immediate and continued compliance; [1993, c. 678, §4 (NEW).]

C. Whether steps were taken by the public water system to prevent the violation; [1993, c. 678, §4 (NEW).]

D. Whether steps were taken by the public water system to remediate or mitigate damage resulting from the violation; [1993, c. 678, §4 (NEW).]

E. Whether the public water system has a history of violations; [1993, c. 678, §4 (NEW).]

F. The financial condition of the public water system; [1993, c. 678, §4 (NEW).]

G. Whether or not compliance is less costly than committing the violation; [1993, c. 678, §4 (NEW).]

H. Deterrence of future noncompliance; and [1993, c. 678, §4 (NEW).]

I. The best interest of the public. [1993, c. 678, §4 (NEW).]

[1993, c. 678, §4 (NEW) .]

3. **Payment of penalty.** Administrative penalties must be paid within 30 days of the issuance of notice of administrative penalty or, if appealed, within 30 days of the appeal decision. The commissioner shall deposit administrative penalties received into the Public Drinking Water Fund established in section 2660-F.

[1993, c. 678, §4 (NEW) .]

4. **Enforcement.** Further prosecution of a person who fails to pay the full penalty imposed pursuant to this chapter must be referred to the Attorney General for appropriate action. A person who fails to pay the full penalty imposed pursuant to this chapter is liable for all fines and penalties allowed under this subchapter and all costs, interest and fees incurred by the State, including attorney's fees.

[1993, c. 678, §4 (NEW) .]

SECTION HISTORY
1993, c. 678, §4 (NEW). 1997, c. 705, §9 (AMD).

§2620-A. APPEALS

Appeal of actions authorized under this section is governed by the following. [1993, c. 678, §4 (NEW).]

1. **Due process generally.** The commissioner shall comply with the Maine Administrative Procedure Act when imposing administrative penalties and issuing administrative compliance orders. A public water system against which an administrative penalty is assessed or an administrative compliance order is issued has a right to a hearing as provided under the Maine Administrative Procedure Act. The decision of a hearing officer is a final agency action subject to review in the Superior Court, as provided in Title 5, chapter 375, subchapter VII.

[1993, c. 678, §4 (NEW) .]

2. **Effect on penalties.** A public water system has 30 days from the date an administrative penalty is issued against it to pay the full amount of the penalty or to file a request for a hearing with the commissioner. If the public water system waives the right to or fails to request a hearing within 30 days, the administrative penalty is considered final. If a request for a hearing is filed within the 30 days, the following provisions apply.

A. Violations or penalties do not accrue from the date that the public water system files the request for a hearing to the date the hearing officer renders a decision. [1993, c. 678, §4 (NEW).]

B. Notwithstanding paragraph A, if the hearing officer finds that the appeal is frivolous, the violations or penalties accrue throughout the appeal period. [1993, c. 678, §4 (NEW).]

C. If an administrative hearing is held and a penalty is assessed at the conclusion of that hearing, the penalty becomes final 30 days after the decision. [1993, c. 678, §4 (NEW).]

[1993, c. 678, §4 (NEW) .]

SECTION HISTORY
1993, c. 678, §4 (NEW).

§2620-B. EXCEPTION

Notwithstanding section 2619, if a violation poses a serious risk to public health, the commissioner may issue an administrative compliance order immediately without having issued a notice of noncompliance or having attempted to negotiate an administrative consent order. [1993, c. 678, §4 (NEW).]

SECTION HISTORY
1993, c. 678, §4 (NEW).

§2620-C. RULES

The commissioner shall adopt rules establishing procedures regarding notice and the issuance, amendment and withdrawal of administrative compliance orders and administrative consent orders. [1993, c. 678, §4 (NEW).]

The commissioner may adopt rules establishing a permitting process for public water systems. Rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter II-A. [1997, c. 705, §10 (NEW).]

SECTION HISTORY
1993, c. 678, §4 (NEW). 1997, c. 705, §10 (AMD).

Subchapter 3: LICENSURE OF OPERATORS

§2621. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following words have the following meanings. [1983, c. 819, Pt. A, §55 (AMD).]

1. **Board.**

[1993, c. 360, Pt. E, §3 (RP) .]

1-A. **Board.** "Board" means the Board of Licensure of Water System Operators.

[2003, c. 33, §2 (AMD) .]

2. **License.** "License" means a license issued by the board stating that the applicant has met the requirements for the specified operator classification.

[2003, c. 33, §3 (AMD) .]

SECTION HISTORY
1975, c. 751, §4 (NEW). 1983, c. 819, §A55 (AMD). 1985, c. 748, §25 (AMD). 1993, c. 360, §E3 (AMD). 1999, c. 688, §2 (AMD). 2003, c. 33, §§2,3 (AMD).

§2622. CLASSIFICATION OF PUBLIC WATER SYSTEMS AND PARTS THEREOF

The board, with the advice of the department, shall classify all community public water systems, all nontransient, noncommunity public water systems, all public water systems utilizing surface water and the water treatment plants or collection, treatment, distribution or storage facilities or structures that are part of a system with due regard to the size and type of facilities, the character of water to be treated and any other physical conditions affecting such system or part thereof and specify the qualifications the operator of the system or of a part of a system must have to supervise successfully the operation of the system or parts thereof so as to protect the public health or prevent nuisance conditions. [2011, c. 45, §1 (AMD).]

The board, with the advice of the department, shall establish the criteria and conditions for the classification of public water systems and water treatment plants or collection, treatment or storage facilities or structures that are part of a system. [1997, c. 705, §11 (AMD).]

The commissioner, with the advice of the board, may establish classes of public water supply systems that do not require licensed individuals as operators. [1997, c. 705, §11 (AMD).]

SECTION HISTORY

1975, c. 751, §4 (NEW). 1983, c. 819, §A55 (AMD). 1997, c. 705, §11 (AMD). 1999, c. 688, §3 (AMD). 2001, c. 471, §D20 (AMD). 2003, c. 33, §4 (AMD). 2011, c. 45, §1 (AMD).

§2623. APPLICABILITY

It is unlawful for any person to perform the duties of an operator, as defined, without being duly licensed under this subchapter, except as provided in section 2630. [1983, c. 819, Pt. A, §55 (AMD).]

SECTION HISTORY
1975, c. 751, §4 (NEW). 1983, c. 819, §A55 (AMD).

§2624. ADVISORY BOARD OF LICENSURE

(REPEALED)

SECTION HISTORY
1975, c. 751, §4 (NEW). 1979, c. 178, §1 (AMD). 1983, c. 819, §A55 (AMD). 1985, c. 295, §§35,36 (AMD). 1985, c. 748, §26 (AMD). 1991, c. 622, §S29 (RP).

§2624-A. BOARD OF LICENSURE OF WATER SYSTEM OPERATORS

The Board of Licensure of Water System Operators, referred to in this section as the "board," is established within the department pursuant to Title 5, chapter 379. [2003, c. 33, §5 (AMD).]

1. **Membership; general qualifications.** The board consists of 9 members appointed by the Governor as follows: 3 water treatment or water distribution system operators, one holding a Class II license, one holding a Class III license and one holding a Class IV license; one member of the public who is a registered professional engineer; one person who is an educator in the field of water supply or service; one person who is a water management representative; one person who represents a "very small water system," as that term is defined in rules of the board; one person who is an owner or manager of a nontransient, noncommunity public water system; and one person from the department, as the commissioner may recommend, subject to appointment by the Governor.

[2003, c. 33, §5 (AMD) .]

2. **Terms.** Each member of the board is appointed for a 3-year term. The appointee from the department serves at the pleasure of the Governor. The commissioner may recommend to the Governor at any time that the appointee from the department be replaced. Vacancies must be filled by appointment of the Governor for all unexpired terms.

[2003, c. 33, §5 (AMD) .]

3. **Chair; secretary.** Members of the board shall elect from among the members a chair at the first meeting of each year. Members shall also elect from among the members a secretary who is responsible for maintaining records and providing administrative support.

[1995, c. 442, §2 (NEW) .]

4. **Call of meetings.** Meetings of the board may be called by the chair, or by the chair at the request of any other 2 members, as necessary to carry out this chapter.

[1995, c. 442, §2 (NEW) .]

5. **Conduct of meetings.** A majority of the members of the board constitutes a quorum for the purpose of conducting the business of the board and exercising all the powers of the board. A vote of the majority of members present is sufficient for all actions of the board.

[1995, c. 442, §2 (NEW) .]

6. **Powers and duties.** The powers and duties of the board are as follows.

A. The board shall license persons to serve as operators of all or part of any public water system in the State. [2011, c. 45, §2 (AMD).]

B. The board shall design or approve and hold at least one examination each year at a time and place designated for the purpose of examining candidates for licensure. The board may accept results of examinations approved by the board administered by a 3rd party, whose fees are not governed by section 2629. [2011, c. 45, §2 (AMD).]

C. The board may enter into contracts or agreements to carry out its responsibilities under this section. [2011, c. 45, §2 (AMD).]

[2011, c. 45, §2 (AMD) .]

7. **Fund.** The Board of Licensure of Water System Operators Fund is established and is governed by the following provisions.

A. All money collected by the board in the form of application fees, reinstatement and renewal fees, expense reimbursements ordered by the board or payment for services such as reproduction and distribution of copies of board decisions and photocopying or for the use of facilities must be deposited with the Treasurer of State in a separate account to be known as the Board of Licensure of Water System Operators Fund. [2003, c. 33, §5 (AMD).]

B. The board may use the fund to defray the reasonable costs incurred by the board in carrying out its duties. [1995, c. 442, §2 (NEW).]

C. Except as specified in this paragraph, any amount within the fund that is not expended at the end of a fiscal year does not lapse, but is carried forward to be expended by the board in carrying out its duties in succeeding fiscal years. Upon certification of the board that certain amounts in the fund are not required by the board, the Treasurer of State shall transfer the amounts to the General Fund. [1995, c. 442, §2 (NEW).]

[2003, c. 33, §5 (AMD) .]

8. **Records.** The board shall keep all records and minutes necessary to the ordinary dispatch of its functions. The board shall keep a register of all applicants for licensure and a register of all licensees.

[1995, c. 442, §2 (NEW) .]

9. **Reports.** No later than August 1st of each year, the board shall submit to the commissioner a report of its transactions in the preceding fiscal year ending June 30th and shall transmit to the commissioner a complete statement of all the receipts and expenditures of the board, attested by affidavits of the board's chair and secretary.

[1995, c. 442, §2 (NEW) .]

10. **Staff.** The commissioner, to the extent possible and reasonable, shall make available to the board such staff, facilities, equipment, supplies, information and other assistance as the board may reasonably require to carry out its activities. The commissioner may also appoint, subject to the Civil Service Law, the employees necessary to carry out this section. Any person so employed must be located in the department and under the administrative and supervisory direction of the commissioner.

[1995, c. 442, §2 (NEW) .]

11. **Compensation of members.** Members of the board are entitled to reimbursement for expenses only pursuant to Title 5, section 12004-A, subsection 46.

[1995, c. 442, §2 (NEW) .]

SECTION HISTORY
1995, c. 442, §2 (NEW). 1999, c. 688, §4 (AMD). 2001, c. 471, §D21 (AMD). 2003, c. 33, §5 (AMD). 2011, c. 45, §2 (AMD).

§2625. LICENSES

The Board of Licensure of Water System Operators shall issue biennial licenses to individuals to act as operators. The license must indicate the classification level of the systems or parts of systems for the operation of which the individual is qualified to act as an operator. [2003, c. 33, §6 (AMD).]

The board may suspend or revoke a license of a certified operator when it is determined that the operator has practiced fraud or deception; that the operator has been negligent in that reasonable care, judgment or the application of knowledge or ability was not used in the performance of the operator's duties; or that the operator is incompetent or unable to perform the operator's duties properly. [1999, c. 688, §5 (AMD).]

This chapter shall not be construed to effect or prevent the practices of any other legally recognized profession. [1977, c. 694, §365 (RPR).]

When the unexpired term of license of an applicant is or will be more than one year at the time of licensure, the commissioner may require the applicant to pay an additional fee not to exceed 1/2 the biennial license fee. [1985, c. 748, §27 (AMD).]

SECTION HISTORY
1975, c. 751, §4 (NEW). 1977, c. 694, §365 (RPR). 1983, c. 819, §A55 (AMD). 1985, c. 748, §27 (AMD). 1995, c. 442, §§3-5 (AMD). 1999, c. 688, §5 (AMD). 2003, c. 33, §6 (AMD).

§2625-A. RENEWALS

All licenses expire on December 31st of each biennial period and may be renewed thereafter for 2-year periods without further examination, upon the payment of the proper renewal fee as set forth in the rules. A person who fails to renew that person's license within 2 years following the expiration of the license must take an examination as a condition of licensure. [2011, c. 45, §3 (AMD).]

The Board of Licensure of Water System Operators shall notify a person registered under this subchapter of the date of expiration of that person's license and the fee required for its renewal for a 2-year period. The notice must be mailed to the person's last-known address at least 30 days in advance of the expiration date of that person's license. [2003, c. 33, §7 (AMD).]

SECTION HISTORY
1983, c. 819, §A55 (NEW). 1985, c. 748, §28 (AMD). 1995, c. 442, §6 (AMD). 2003, c. 33, §7 (AMD). 2011, c. 45, §3 (AMD).

§2626. LICENSE FROM OUTSIDE THE STATE

The Board of Licensure of Water System Operators, upon application for licensure, may issue a license without examination, in a comparable classification, to any person who holds a license in any state, territory or possession of the United States or any country, providing the requirements for licensure of operators under which the person's license was issued does not conflict with this chapter and, in the opinion of the board, are of a standard not lower than that specified by rules adopted under this chapter. [2003, c. 33, §8 (AMD).]

SECTION HISTORY
1975, c. 751, §4 (NEW). 1983, c. 819, §A55 (AMD). 1985, c. 748, §29 (AMD). 1995, c. 442, §7 (AMD). 2003, c. 33, §8 (AMD).

§2627. LICENSE FROM OWNER OF PARTICULAR SYSTEM

(REPEALED)

SECTION HISTORY
1975, c. 751, §4 (NEW). 1983, c. 819, §A55 (AMD). 1999, c. 688, §6 (RP).

§2628. RULES

The Board of Licensure of Water System Operators, in accordance with any other appropriate state laws, shall make such rules as are reasonably necessary to carry out the intent of this subchapter. The rules must include, but are not limited to, provisions establishing requirements for licensure and procedures for examination of candidates and such other provisions as are necessary for the administration of this subchapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2011, c. 45, §4 (AMD).]

SECTION HISTORY
1975, c. 751, §4 (NEW). 1983, c. 819, §A55 (AMD). 1985, c. 748, §29 (AMD). 1995, c. 442, §7 (AMD). 2003, c. 33, §9 (AMD). 2011, c. 45, §4 (AMD).

§2629. FEES

The Board of Licensure of Water System Operators shall establish by rule fees authorized pursuant to this subchapter. These fees may include examination, licensure, biennial renewal and reinstatement fees in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed $95. Revenues derived from applicants failing the examination must be retained. [2011, c. 45, §5 (AMD).]

SECTION HISTORY
1975, c. 751, §4 (NEW). 1979, c. 178, §2 (RPR). 1983, c. 819, §A55 (AMD). 1985, c. 748, §29 (AMD). 1995, c. 442, §7 (AMD). 2003, c. 33, §10 (AMD). 2011, c. 45, §5 (AMD).

§2630. LICENSURE

If a public water system loses its licensed operator, it shall secure a new licensed operator or enter into a contractual agreement with a licensed operator of proper classification until a new operator has been employed for that public water system. [2003, c. 33, §11 (AMD).]

SECTION HISTORY

1975, c. 751, §4 (NEW). 1979, c. 178, §3 (AMD). 1983, c. 819, §A55 (AMD). 1995, c. 442, §8 (AMD). 1999, c. 688, §7 (AMD). 2003, c. 33, §11 (AMD).

§2631. VIOLATIONS

1. **Violation.** Any person violating any provision of this subchapter or the rules and regulations adopted under this subchapter, commits a civil violation for which a forfeiture of not more than $500 may be adjudged. Each day of operation in violation of this subchapter or any rules and regulations adopted under this subchapter shall constitute a separate violation.

[1979, c. 178, §4 (NEW) .]

2. **Injunctive relief.** The commissioner may commence or cause to be instituted a civil action in the Superior Court under subsection 1, to seek injunctive relief to prevent the violation of this subchapter, to prevent the violation of any rule or regulation issued pursuant to this subchapter or to require a public water system or supplier of water to take other action necessary to comply with this subchapter, with or without a prior order from the commissioner or department.

[1979, c. 178, §4 (NEW) .]

In addition to the county in which the principal place of business of the supplier of water is located, the action may be instituted in the Superior Court of Kennebec County. [1979, c. 178, §4 (RPR).]

SECTION HISTORY
1975, c. 751, §4 (NEW). 1979, c. 178, §4 (RPR).

Subchapter 4: PUBLIC WATER SUPPLIES

Article 1: MUNICIPAL REGULATIONS

§2641. SOURCE OF PUBLIC WATER SUPPLY DEFINED

As used in this subchapter, unless the context otherwise indicates, "public water source" means any natural or man-made impoundment, pond or lake or ground water aquifer whose waters are transported or delivered by a public water system, as defined in section 2601, subsection 8. Where the intake of a public water supply is on the outlet of any impoundment, pond or lake, the source of such public water supply shall be considered to be the impoundment, pond or lake itself. [1983, c. 785, §4 (RPR).]

SECTION HISTORY
1975, c. 751, §4 (NEW). 1979, c. 472, §4 (AMD). 1983, c. 785, §4 (RPR).

§2642. MUNICIPAL REGULATION AUTHORIZED; PENALTY

1. **Municipal regulations authorized.** The municipal officers of each municipality, after notice and public hearing, may adopt regulations governing the surface uses of sources of public water supply, portions thereof or land overlying ground water aquifers and their recharge areas used as sources of public water supply that are located within that municipality in order to protect the quality of such sources of public water supply and the health, safety and welfare of persons dependent upon such supplies.

At least 15 days prior to public hearings held under this section, notice of the hearing must be published in a newspaper of general circulation in the county in which the municipality is located and mailed by certified mail to each owner of land bordering the source of public water supply within that municipality. Regulations adopted pursuant to this section become void upon the expiration of one year from the date of the adoption unless sooner ratified by vote of the legislative body of the municipality.

[1995, c. 664, §1 (AMD) .]

2. **Penalty.** Whoever willfully violates any regulation established under the authority of this section must, upon conviction, be penalized in accordance with Title 30-A, section 4452.

[1991, c. 824, Pt. A, §41 (AMD) .]

SECTION HISTORY
1975, c. 751, §4 (NEW). 1979, c. 472, §5 (AMD). 1985, c. 479, §1 (AMD). 1987, c. 192, §2 (AMD). 1991, c. 824, §A41 (AMD). 1995, c. 664, §1 (AMD).

Article 2: PROTECTION OF WATER SOURCES

§2646. DEFINITIONS

(REPEALED)

SECTION HISTORY
1975, c. 751, §4 (NEW). 1983, c. 785, §5 (RP).

§2647. PROTECTION OF PUBLIC WATER SOURCE

(REPEALED)

SECTION HISTORY
1975, c. 751, §4 (NEW). 1977, c. 694, §366 (AMD). 1983, c. 785, §6 (AMD). 1991, c. 467, §1 (RP).

§2647-A. PROTECTION OF PUBLIC WATER SOURCE

Any water utility or municipality and the department are authorized to take reasonable steps to protect a public water source from pollution consistent with section 2642. [1999, c. 761, §3 (AMD).]

1. **Right of entry for water utility.** Employees or agents of a water utility may enter upon land within 1,000 feet of a public water source or upon land used for commercial or industrial purposes having a facility, structure or system draining into or suspected of flowing or seeping into a public water source and inspect the facility, structure or system, including any building or structure on that land. Entry onto property under this subsection is not a trespass. The power of entry and inspection may be exercised only after the water utility has made a reasonable effort to obtain permission from the landowner for the inspection.

[1991, c. 467, §2 (NEW) .]

2. **Right of entry for department and consumer-owned water utility.** Employees or agents of the department or of a consumer-owned water utility as defined in Title 35-A, section 6101 may enter any property at reasonable hours or enter any building with the consent of the owner, occupant or agent to inspect a wastewater disposal system draining into or suspected of flowing or seeping into a public water source.

Entry onto property under this subsection is not a trespass. An employee or agent of the department or consumer-owned utility may seek an administrative inspection warrant pursuant to the Maine Rules of Civil Procedure, Rule 80E to carry out the purposes of this subsection.

[1991, c. 467, §2 (NEW) .]

3. **Remedy.** In addition to rights granted to municipal officers under Title 30-A, section 3428, any local or state health inspector or officer may order the owner of any facility, structure or system flowing or seeping into and contaminating a public water source, if the contamination may result in risk to the public health, to remedy the situation. The order must be served in writing and state a time in which the order must be complied with. An order made pursuant to this subsection is not considered an adjudicatory proceeding within the meaning of the Maine Administrative Procedure Act. Any person aggrieved by an order may appeal to the Superior Court within 30 days.

[1991, c. 467, §2 (NEW) .]

4. **Court-ordered remedies.** The water utility, municipality or department may petition the Superior Court upon failure of the person named in an order served under subsection 3 to comply with that order. The court, after hearing, may order that appropriate measures be taken.

[1991, c. 467, §2 (NEW) .]

5. **Remedy ordered by water district or consumer-owned utility.** If the municipal officers have failed to act on a malfunctioning wastewater disposal unit under Title 30-A, section 3428 and have notified a consumer-owned water utility as defined in Title 35-A, section 6101 in writing of their failure to do so, the consumer-owned water utility may assume the rights of municipal officers under Title 30-A, section 3428, except that it may not assess a special tax under Title 30-A, section 3428, subsection 4, paragraph B.

[1991, c. 467, §2 (NEW) .]

6. **Effect on other law.** Nothing in this section may be construed to limit in any way any private and special or other law granting a water utility or municipality greater controls for protecting its public water source than those set forth in this section.

[1991, c. 467, §2 (NEW) .]

SECTION HISTORY
1991, c. 467, §2 (NEW). 1999, c. 761, §3 (AMD).

§2648. PROTECTION OF INTAKE OF PUBLIC WATER SUPPLY

Any water utility or municipality is authorized, after consultation with the Commissioner of Inland Fisheries and Wildlife, the department and the Department of Agriculture, Conservation and Forestry and after conducting a public hearing in the affected town, to designate by buoys in water or markers on the ice in an area on a lake or pond from which water is taken, with a radius commencing at its point of intake. The radius may not exceed 400 feet and within that area a person may not anchor or moor a boat or carry on ice fishing or carry on any other activity designated by the water utility or municipality when such restriction is necessary to comply with primary or secondary drinking water regulations applicable to public water systems. Any such buoys placed in the water must be plainly marked as required by the Director of the Bureau of Parks and Lands under Title 12, section 1894. Any person violating this section must, on conviction, be penalized in accordance with Title 30-A, section 4452. [1999, c. 127, Pt. A, §36 (AMD); 2011, c. 657, Pt. W, §§5, 7 (REV); 2013, c. 405, Pt. A, §24 (REV).]

Nothing in this section shall be construed to limit in any way any private and special law granting a water utility or municipality greater controls for protecting the intake of its public water supply than those set forth in this section. [1975, c. 751, §4 (NEW).]

SECTION HISTORY
1975, c. 751, §4 (NEW). 1987, c. 192, §3 (AMD). 1991, c. 824, Pt. A, §42 (AMD). 1995, c. 502, Pt. E, §30 (AMD). 1997, c. 739, §11 (AMD). 1999, c. 127, Pt. A, §36 (AMD). 2011, c. 657, Pt. W, §§5, 7 (REV). 2013, c. 405, Pt. A, §24 (REV).

§2649. PROTECTION OF PUBLIC WATER SUPPLIES OVER WINTER

1. **Petition for rules.** Any water utility, water district or municipality which relies on surface water for its water supply may petition the Commissioner of Inland Fisheries and Wildlife to promulgate rules to regulate the size and range of motor vehicles which may be permitted on the ice of any reservoir or surface water which is used as a public water supply. The petitioner must supply the technical information in support of the decision. The commissioner shall promulgate only such rules as are reasonable and necessary to protect the public water supply. These rules shall be promulgated in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, after a public hearing in the affected area.

[1987, c. 353, §1 (NEW) .]

2. **Existing rules.** Any rules that are adopted must be at least as strict as those already in existence for that body of water. Nothing in this section may be construed to limit in any way the authority of the municipal officers to enact ordinances under Title 30-A, section 3009, subsection 1, paragraph E, or any private and special law granting a water utility or municipality greater control for protecting its public water supply than those set forth in this section.

[1991, c. 824, Pt. B, §7 (AMD) .]

3. **Violation.** Any violation of the rules promulgated under this section is a civil violation for which a forfeiture of not more than $100 may be adjudged for each violation.

[1987, c. 353, §1 (NEW) .]

SECTION HISTORY
1987, c. 353, §1 (NEW). 1991, c. 824, §B7 (AMD).

§2649-A. STATE'S IMPACT ON PUBLIC WATER SUPPLY PROTECTION

When undertaking actions that have a negative impact on a public water supply, a state agency shall consider the impact and evaluate alternatives to avoid and minimize the impact. [2007, c. 353, §4 (NEW).]

SECTION HISTORY
2007, c. 353, §4 (NEW).

§2650. SOURCE WATER QUALITY ASSESSMENT PROGRAM

1. **General authorization.** The commissioner is authorized to implement and carry out a source water quality assessment program.

[1997, c. 705, §12 (NEW) .]

2. **Rulemaking.** The commissioner shall adopt rules establishing the procedures for implementation and enforcement of the source water quality assessment program to comply with state and federal laws. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[1997, c. 705, §12 (NEW) .]

SECTION HISTORY
1997, c. 705, §12 (NEW).

Subchapter 5: FLUORIDATION

§2651. FLUORIDATION

(REPEALED)

SECTION HISTORY
1975, c. 751, §4 (NEW). 1983, c. 463, §1 (RP).

§2651-A. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1983, c. 463, §2 (NEW).]

1. **Multiservice municipality.** "Multiservice municipality" means any municipality served in whole or in part by more than one public water system.

[1983, c. 463, §2 (NEW) .]

2. **Multiple community water district.** "Multiple community water district" means that area comprising all municipalities served in whole or part by a single public water system plus those public water system zones within multiservice municipalities served by the same public water system.

[1983, c. 463, §2 (NEW) .]

3. **Multiple community water system district-wide election.** "Multiple community water system district-wide election" means an election held in each municipality within a multiple community water district to determine whether or not to fluoridate the water supply of that system.

[1983, c. 463, §2 (NEW) .]

4. **Municipality.** "Municipality" means a city, town or plantation.

[1983, c. 463, §2 (NEW) .]

5. **Public water system.** "Public water system" means the public water agency, company, utility, district or other entity serving one or more municipalities in whole or in part.

[1983, c. 463, §2 (NEW) .]

6. **Public water system zone.** "Public water system zone" means any one of the 2 or more areas of a multiservice municipality served by a single public water system, as further defined in section 2657.

[1983, c. 463, §2 (NEW) .]

7. **Registered petitioners.** "Registered petitioners" means those registered voters residing in a single community water district or, in the case of a multiple community water system district-wide election, those registered voters residing in the multiple community water district who have accepted the responsibility of receiving notice concerning the filing of petitions pursuant to section 2655, subsection 3.

[1987, c. 122, §1 (AMD) .]

8. **Single community water district.** "Single community water district" means a municipality served in whole or in part by a water system which serves no other municipalities.

[1983, c. 463, §2 (NEW) .]

9. **Single-service municipality.** "Single-service municipality" means any municipality served in whole or in part by a single public water system.

[1983, c. 463, §2 (NEW) .]

SECTION HISTORY
1983, c. 463, §2 (NEW). 1987, c. 122, §1 (AMD).

§2651-B. FLUORIDATION

No public water system may add any fluoride to its water supply without written approval of the department. [1983, c. 463, §2 (NEW).]

SECTION HISTORY
1983, c. 463, §2 (NEW).

§2652. AUTHORIZATION

(REPEALED)

SECTION HISTORY
1975, c. 751, §4 (NEW). 1983, c. 463, §3 (RP).

§2653. AUTHORIZATION OF FLUORIDATION; GENERAL PROVISIONS

1. **Requirement for authorization.** No public water system may add any fluoride to any water supply without first having been authorized to do so by the affected single or multiple community water district served by it. Any public water system duly authorized to add fluoride to any water supply shall do so within 9 months after being notified in accordance with this section. The municipal clerk shall, within 10 days after the vote, notify the public water system of the vote favoring or not favoring the addition of fluoride to the public water supply.

[1983, c. 463, §4 (NEW) .]

2. **Form of question.** Any time the issue of whether to fluoridate a public water supply is submitted to voters, the question shall be phrased as follows: "Shall fluoride be added to the public water supply for the intended purpose of reducing tooth decay?"

[1983, c. 463, §4 (NEW) .]

3. **Prohibition.** Whenever a single community water district has approved fluoridation, it may not again vote on the matter for a minimum period of 2 years from the date of installation of fluoride. Whenever a single community water district has disapproved fluoride, it may not vote again on the matter for a minimum

period of 2 years. Whenever a multiple community water district has approved fluoridation, it may not vote again on the matter until the first general election after 2 years from the date of installation of fluoride. Whenever a multiple community water district disapproves fluoride, it may not vote again on the matter until the next general election.

[1983, c. 463, §4 (NEW) .]

4. **Authorization not required.** The authorization required by subsection 1 shall not apply to any public water supply which receives or purchases less than 50% of its total annual water supply from another public water supply authorized to add fluoride to its water supply.

[1987, c. 122, §2 (NEW) .]

SECTION HISTORY
1983, c. 463, §4 (NEW). 1987, c. 122, §2 (AMD).

§2654. PROCEDURE FOR ELECTIONS

1. **Single community water districts.** In a single community water district, the vote on the issue of fluoridation must be called by a majority vote of the municipal officers acting on their own initiative or pursuant to a petition meeting the requirements established for a referendum vote by the municipality's home rule charter or, if the municipality has no home rule charter, as provided by Title 30-A, section 2522.

[1991, c. 824, Pt. A, §43 (AMD) .]

2. **Multiple community water districts.** In the case of a multiple community water district, authorization shall be by a majority vote of those voting at a multiple community water system district-wide election. A valid request for an election on whether or not to authorize the addition of fluoride may be made in either of the following ways.

A. A valid request for an election shall have been made when a majority of municipal officers, in a majority of municipalities within a multiple community water system district, vote to call an election. All such votes must be taken at least 90 days before the general election. Each voting municipality shall certify within 5 days to all other municipalities within the public water system district the results of its vote.

A multiple community water system district-wide election shall take place in each municipality within the district if, on the basis of the certificates, a majority of municipal officers within a majority of the municipalities in the district have called for an election. [1987, c. 122, §4 (AMD).]

B. A valid request for election shall have been made when a number of registered voters within a multiple community water district equal to at least 10% of the total number of votes cast for Governor at the last gubernatorial election in all municipalities, wholly or partially within the multiple community water district, file a petition in accordance with section 2655. [1987, c. 122, §4 (AMD).]

[1987, c. 122, §4 (AMD) .]

SECTION HISTORY
1983, c. 463, §4 (NEW). 1987, c. 122, §§3,4 (AMD). 1991, c. 824, §A43 (AMD).

§2655. PETITIONS IN MULTIPLE COMMUNITY WATER DISTRICTS

Petitions for an election shall be governed by the following provisions. [1983, c. 463, §4 (NEW).]

1. **Circulation.** Any time the issue of whether to fluoridate a public water supply is submitted to the voters in multiple community water districts pursuant to petition, the petition or petitions shall be circulated and signed in the manner prescribed by Title 30-A, section 2503, subsection 3, paragraph B, subparagraphs (2) and (3), and shall be dated and gathered within the time frame prescribed by the Constitution of Maine, Article IV, Part Third, Section 18, Subsection 2.

[1987, c. 737, Pt. C, §§65, 106 (AMD); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §8, 10 (AMD) .]

2. **Forms; instructions.** On request of a voter, the Secretary of State shall furnish petition forms to that voter within 10 days of the request. The Secretary of State may charge a reasonable fee for the petitions.

If a voter, at his own expense, wishes to have the forms printed and furnished by himself rather than by the Secretary of State, he may do so provided that these petition blanks are first approved by the Secretary of State as to form and content. The Secretary of State shall have 10 days in which to approve the forms. If the forms are found to be unsatisfactory, the Secretary of State shall indicate the manner in which the forms are deficient. Corrected petition forms may be submitted in accordance with the terms in this paragraph.

The Secretary of State shall prepare complete instructions to advise the signers, circulators, registered petitioners, municipal clerks and election officials as to any statutory and constitutional requirements. The instructions must specify the conditions which have been held to invalidate either individual signatures or complete petitions. The instructions must be printed in bold type or capital letters on the petition.

[1987, c. 122, §5 (AMD) .]

3. **Signing; filing.** Petitions may be signed and filed as follows. In multiservice municipalities, petitions may be signed by any registered voter residing within the affected public water system zone of the municipality. All such petitions shall be filed with the appropriate municipality at least 120 days before the next general election. In each municipality in which petitions are filed, the petition or petitions shall be accompanied with the name and address of at least one, but not more than 5, registered voters who shall be the registered petitioners for the purpose of subsection 4. The registered petitioners must reside in the multiple community water district, but need not reside in the municipality in which a petition is filed.

A. [1987, c. 122, §6 (RP).]

B. [1987, c. 122, §6 (RP).]

[1987, c. 122, §6 (RPR) .]

4. **Certification.** Within 20 days after a petition is filed, the municipal clerk shall complete a certificate which states the number of valid signatures on the petition and identifies the relevant multiple community water district or districts involved. The certificate shall be sent by registered mail to the registered petitioners, who shall be responsible for transmitting them to the Secretary of State.

The Secretary of State shall total the number of valid signatures as certified by the municipal clerk. As soon as the total number of certified valid signatures is found to be equal to at least 10% of the total number of votes cast for Governor at the last gubernatorial election in all municipalities which are wholly or partially within the multiple community water district, the Secretary of State shall certify that fact to each municipality which is wholly or partially in the multiple community water district within 48 hours.

[1983, c. 463, §4 (NEW) .]

SECTION HISTORY
1983, c. 463, §4 (NEW). 1987, c. 122, §§5,6 (AMD). 1987, c. 737, §§C65,C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD).

§2656. ELECTIONS IN MULTIPLE COMMUNITY WATER DISTRICTS

1. **Multiple community water system district-wide elections.** In the case of public systems serving more than one municipality, in whole or in part, elections shall be held simultaneously in all municipalities served by the water system at the first general election following the certification of a request for an election on the issue of whether or not to fluoridate the water supply. Those eligible to vote shall be all registered voters within affected single-service municipalities and all registered voters within the affected public water system zone of multiservice municipalities. The following provisions apply to all multiple community water system district-wide elections.

A. Each municipality shall be responsible for posting a warrant according to the following requirements.

(1) It shall specify the voting place and the time of opening and closing of polls.

(2) It shall specify that the purpose of the election is to determine the following question: "Shall fluoride be added to the public water supply for the intended purpose of reducing tooth decay?"

(3) It shall specify that a public hearing will be held by the municipal officers of each municipality at least 10 days before the election date.

(4) It shall be signed by a majority of the municipal officers of the municipality and directed personally to a constable or any resident ordering him to announce the election.

(5) The person to whom the warrant is directed shall post an attested copy of it in a conspicuous public place in each voting district of the municipality at least 7 days immediately before the date of the public hearing. He shall make a return on the warrant stating the manner of announcement and the time it was given and return the warrant to the municipal officers.

(6) The municipal officers shall then deliver the warrant to the clerk who shall record it. [1987, c. 122, §7 (NEW).]

B. Elections shall be held by secret preprinted ballots. [1987, c. 122, §7 (NEW).]

C. Each municipality shall provide for absentee ballots in a manner which substantially complies with Title 21-A, chapter 9, subchapter IV. [1987, c. 122, §7 (NEW).]

[1987, c. 122, §7 (AMD) .]

1-A. **Elections in single community water districts.** Elections in single community water districts shall be conducted in the same manner as other municipal elections.

[1987, c. 122, §8 (NEW) .]

2. **Reporting election results.** Each municipal clerk shall certify in writing the results of the election within 72 hours of the vote to the Secretary of State. The results shall be certified as to the number of eligible voters voting in favor of fluoridation and the number of eligible voters voting in opposition to fluoridation. The municipality shall also certify to the Secretary of State the identity of the relevant public water district or districts involved.

[1983, c. 463, §4 (NEW) .]

3. **Vote tabulation.** The Secretary of State shall, within 48 hours of receiving the last written certification, tabulate the votes from each municipality and immediately make public the results of the multiple community water system district-wide election by mailing to each affected municipality and public water system the results of the election, including the submitted votes from that municipality and public water system zone and the total multiple community water system district-wide vote.

[1983, c. 463, §4 (NEW) .]

SECTION HISTORY

1983, c. 463, §4 (NEW). 1987, c. 122, §§7,8 (AMD).

§2657. ESTABLISHMENT OF PUBLIC WATER SYSTEM ZONES

1. **Division into zones.** In order to facilitate elections in multiservice municipalities, each municipality shall divide itself into as many zones as there are public water services supplying the municipality. The zones shall be so structured as to insure that:

A. All residents served by a given public water service fall within the same zone; [1983, c. 463, §4 (NEW).]

B. Each registered voter within the municipality is within one of the zones; and [1983, c. 463, §4 (NEW).]

C. The size of the zone bears a rational relationship to the area of the municipality being served by a given public water system. [1983, c. 463, §4 (NEW).]

[1983, c. 463, §4 (NEW) .]

2. **Map.** Upon request by a municipality, a public water system shall provide to the municipality within 14 days a map which clearly delineates the boundaries of the service area of the public water system and any other requested information reasonably necessary to enable the municipality to determine the precise area of service in the municipality of the public water system.

[1983, c. 463, §4 (NEW) .]

3. **Description; map; files.** Each multiservice municipality shall keep on file, as a public document, a precise description and accompanying map of its public water system zones.

[1983, c. 463, §4 (NEW) .]

SECTION HISTORY
1983, c. 463, §4 (NEW).

§2658. ALLOCATION OF COSTS

The Public Utilities Commission, upon application, shall determine and allocate the cost of fluoridation among the customers of a public water system and shall from time to time review that determination and allocation as required. In the event that a community water district which has approved fluoridation votes to discontinue fluoridation, the public water system may amortize the remaining cost of its investment in these facilities and allocate the cost of that amortization among its customers, over such period of time as is approved by the Public Utilities Commission. [1983, c. 463, §4 (NEW).]

SECTION HISTORY
1983, c. 463, §4 (NEW).

§2659. RULES

The Department shall promulgate such rules, pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II, as it deems necessary to carry out the purposes of this subchapter, including, but not limited to, rules regarding the time and manner in which municipalities shall establish public water system zones. [1983, c. 463, §4 (NEW).]

SECTION HISTORY
1983, c. 463, §4 (NEW).

Subchapter 6: TRANSPORT OF WATER

§2660. LEGISLATIVE FINDINGS

(REPEALED)

SECTION HISTORY
1987, c. 531, §1 (NEW). 2007, c. 399, §3 (RP).

§2660-A. RESTRICTIONS ON TRANSPORT OF WATER

1. **Prohibition.** Except as otherwise provided in this section, a person may not transport water for commercial purposes by pipeline or other conduit or by tank vehicle or in a container, greater in size than 10 gallons, beyond the boundaries of the municipality or township in which water is naturally located or any bordering municipality or township.

[2013, c. 381, Pt. B, §2 (AMD) .]

2. **Exceptions.** The prohibition in this section does not apply to:

A. Any water utility as defined in Title 35-A; [1987, c. 745, §1 (NEW); 1987, c. 816, Pt. KK, §20 (NEW).]

B. Water transported for use in well drilling, construction activities, concrete mixing, swimming pool filling, servicing portable toilets, firefighting, hospital operations, aquaculture, agricultural applications or civil emergencies; [1987, c. 745, §1 (NEW); 1987, c. 816, Pt. KK, §20 (NEW).]

C. Water distilled as a by-product of a manufacturing process; [2007, c. 399, §4 (AMD).]

D. Water transported from a water source that, before July 1, 1987, was used to supply water for bottling and sale and that is used exclusively for bottling and is sold in its pure form or as a carbonated or flavored beverage product; and [2007, c. 399, §4 (AMD).]

E. Water withdrawn pursuant to a permit issued by the Department of Environmental Protection or the Maine Land Use Planning Commission. [2007, c. 399, §4 (NEW); 2011, c. 682, §38 (REV).]

[2007, c. 399, §4 (AMD); 2011, c. 682, §38 (REV) .]

3. **Appeal.** The commissioner, after consultation with the Public Utilities Commission, the Department of Environmental Protection and the State Geologist, may authorize transport of water for commercial purposes if the commissioner finds that:

A. Transport of the water will not constitute a threat to public health, safety or welfare; and [2007, c. 399, §5 (AMD).]

B. [2007, c. 399, §6 (RP).]

C. [2007, c. 399, §7 (RP).]

D. For a source not otherwise permitted by the Department of Environmental Protection or the Maine Land Use Planning Commission, the water withdrawal will not have an undue adverse effect on waters of the State, as defined by Title 38, section 361-A, subsection 7; water-related natural resources; and existing uses, including, but not limited to, public or private wells, within the anticipated zone of contribution to the withdrawal. In making findings under this paragraph, the commissioner shall consider both the direct effects of the proposed water withdrawal and its effects in combination with existing water withdrawals. [2005, c. 452, Pt. A, §2 (AMD); 2011, c. 682, §38 (REV).]

Any authorization under this subsection is for a period not to exceed 3 years but may be renewed subject to the same criteria. The department may adopt rules necessary for the implementation of this subsection. The rules may include imposition of a fee to cover the costs of providing permits, including any impact studies required by the department. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 399, §§5-7 (AMD); 2011, c. 682, §38 (REV) .]

3-A. **Conditions of authorization.** Notwithstanding Title 1, section 302, the exceptions authorized in subsection 2 and any authorization granted under subsection 3 shall be subject to future legislative limitations of the right to transport water.

[1987, c. 745, §2 (NEW); 1987, c. 816, Pt. KK, §21 (NEW) .]

4. **Emergencies.** In case of an emergency, any person may transport water as necessary for the duration of the emergency, but the person transporting the water must inform the commissioner within 3 days and the commissioner may determine when the emergency is over.

[1987, c. 531, §1 (NEW) .]

5. **Penalty.** Any person who transports water in violation of this section is guilty of illegal transport of water. Illegal transport of water is a Class D crime. Each shipment or day of transport, if by pipeline, is a separate offense.

[1987, c. 531, §1 (NEW) .]

SECTION HISTORY
1987, c. 531, §1 (NEW). 1987, c. 745, §§1,2 (AMD). 1987, c. 816, §§KK20,KK21 (AMD). 1989, c. 502, §B22 (AMD). 1997, c. 587, §2 (AMD). 2003, c. 121, §1 (AMD). 2005, c. 452, §A2 (AMD). 2007, c. 399, §§4-7 (AMD). 2011, c. 682, §38 (REV). 2013, c. 381, Pt. B, §2 (AMD).

Subchapter 7: MAINE PUBLIC DRINKING WATER COMMISSION

§2660-B. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1993, c. 410, Pt. DD, §4 (NEW).]

1. **Commission.** "Commission" means the Maine Public Drinking Water Commission.

[1993, c. 410, Pt. DD, §4 (NEW) .]

2. **Community water system.** "Community water system" means a public water system that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

[1993, c. 410, Pt. DD, §4 (NEW) .]

3. **Division.** "Division" means the Division of Health Engineering within the Bureau of Health, Department of Human Services.

[1993, c. 410, Pt. DD, §4 (NEW) .]

4. **Fund.** "Fund" means the Public Drinking Water Fund.

[1993, c. 410, Pt. DD, §4 (NEW) .]

5. **Noncommunity water system.** "Noncommunity water system" means a public water system that is not a community water system. A noncommunity water system is either nontransient or transient, as follows.

A. A nontransient, noncommunity water system serves at least 25 of the same persons for 6 months or more per year and may include, but is not limited to, a school, factory, industrial park or office building. [1993, c. 410, Pt. DD, §4 (NEW).]

B. A transient, noncommunity water system serves at least 25 persons, but not necessarily the same persons, for at least 60 days per year and may include, but is not limited to, a highway rest stop, seasonal restaurant, seasonal motel, golf course, park or campground. A bottled water company is a transient, noncommunity water system. [1993, c. 410, Pt. DD, §4 (NEW).]

[1993, c. 410, Pt. DD, §4 (NEW) .]

6. **Program.** "Program" means the Maine Public Drinking Water Control Program.

[1993, c. 410, Pt. DD, §4 (NEW) .]

7. **Primacy.** "Primacy" means the federally delegated primary enforcement authority to adopt, implement and enforce federally mandated drinking water standards promulgated pursuant to the federal Safe Drinking Water Act as amended.

[1993, c. 410, Pt. DD, §4 (NEW) .]

SECTION HISTORY
1993, c. 410, §DD4 (NEW).

§2660-C. MAINE PUBLIC DRINKING WATER COMMISSION

The Maine Public Drinking Water Commission as established by Title 5, section 12004-I, subsection 47-C, is created within the department. [1995, c. 462, Pt. A, §42 (AMD).]

1. **Membership.** The commission consists of the commissioner or the commissioner's designee and 8 other members appointed by the Governor in accordance with the following provisions.

A. [2001, c. 232, §1 (RP).]

A-1. Three of the members must represent the water purveying community and must be associated with public water systems. One of the 3 must be associated with a public water system serving a population of not more than 1,000 people, one must be associated with a public water system serving a population of at least 1,001 but not more than 10,000 people and one must be associated with a public water system serving a population greater than 10,000. [2001, c. 232, §2 (NEW).]

A-2. Two members must be users of noncommunity water systems. One of the 2 must be a user of a transient noncommunity water system and one must be a user of a nontransient, noncommunity water system. [2001, c. 232, §2 (NEW).]

B. Three of the members must represent the drinking water public. [2001, c. 232, §3 (AMD).]

C. All members appointed by the Governor must have demonstrated interest, knowledge, experience and expertise regarding public drinking water concerns. The Governor shall seek to appoint members who, to the greatest extent possible, are qualified by interest, education, training or experience to provide, assess and evaluate scientific and technical information regarding public drinking water concerns, financial and staffing requirements and the adoption of policies, standards and rules. [1993, c. 410, Pt. DD, §4 (NEW).]

D. The term of office for members appointed by the Governor is 4 years except that, of the original members appointed, 4 must be appointed for 2 years and 4 must be appointed for 4 years. The Governor shall make all original appointments within 60 days of the effective date of this section. Members may remain in office until their successors are appointed. If a vacancy occurs, the Governor shall appoint a replacement to fill the remaining portion of the unexpired term created by the vacancy. [2003, c. 191, §1 (AMD).]

[2003, c. 191, §1 (AMD) .]

2. **Chair; vice-chair.** At the first meeting of the commission, the members shall elect from among themselves a chair and a vice-chair. The chair and vice-chair serve for one-year terms. The chair and vice-chair may continue to hold those offices until their successors are elected. The chair calls meetings of the commission and presides over meetings. The vice-chair serves as the chair in the absence of the chair. The commissioner shall call the first meeting of the commission as soon as all initial appointments to the commission have been made.

[1993, c. 410, Pt. DD, §4 (NEW) .]

3. **Meetings.** The commission shall hold at least 2 regular meetings each year and may hold additional regular meetings. Special meetings may be called by the chair, by the commissioner or the commissioner's designee or by at least 3 members of the commission. Five members constitute a quorum.

[1993, c. 410, Pt. DD, §4 (NEW) .]

4. **Duties.** The commission shall:

A. Evaluate the proportion of program effort dedicated to each type of public water system served by the program; [1995, c. 581, §2 (AMD).]

B. Evaluate existing and projected program workloads; [1993, c. 410, Pt. DD, §4 (NEW).]

C. Evaluate existing program resources and project future staffing and resource requirements; [1993, c. 410, Pt. DD, §4 (NEW).]

D. Determine funding requirements necessary to meet projected workloads and staffing and resource requirements; [1993, c. 410, Pt. DD, §4 (NEW).]

E. Determine an equitable program funding share for each type of public water system that recognizes the level of program effort required for that public water system; [1995, c. 581, §2 (AMD).]

F. Determine fee formulas and collection and transfer schedules for each type of public water system; and [1995, c. 581, §2 (AMD).]

G. [1995, c. 581, §3 (RP).]

H. Submit to the commissioner annually by August 1st a report that must include, but is not limited to, a performance evaluation of the program, including the implementation of administrative remedies, and commission recommendations regarding, but not limited to, administrative remedies, program operations, funding and staffing requirements, funding formulas and fee collection and transfer schedules. [1993, c. 678, §5 (AMD).]

[1995, c. 581, §§2, 3 (AMD) .]

5. **Compensation.** Members of the commission are entitled to reimbursement by the department for expenses as authorized by Title 5, chapter 379.

[1993, c. 410, Pt. DD, §4 (NEW) .]

6. **Annual accounting.** Within 60 days of the conclusion of the fiscal year for the program, the manager of the program shall submit to the commission an accounting of all of the funds expended by the program during the fiscal year.

[1997, c. 666, Pt. B, §1 (NEW) .]

SECTION HISTORY
1993, c. 410, §DD4 (NEW). 1993, c. 678, §5 (AMD). 1995, c. 462, §A42 (AMD). 1995, c. 581, §§1-3 (AMD). 1997, c. 666, §B1 (AMD). 2001, c. 232, §§1-3 (AMD). 2003, c. 191, §1 (AMD).

§2660-D. ANNUAL WORK PLAN ON PRIMACY

Annually, by January 1st, the commissioner shall submit to the commission a work plan and budget, listing all funding sources including but not limited to appropriations from the General Fund and allocations from the United States Environmental Protection Agency that are used for the purpose of complying with federal requirements for maintaining primacy. The work plan must include goals and objectives relating to the use of administrative remedies that are consistent with other parts of the work plan. [1993, c. 678, §6 (AMD).]

SECTION HISTORY
1993, c. 410, §DD4 (NEW). 1993, c. 678, §6 (AMD).

§2660-E. FEES RELATED TO PRIMACY

In addition to fees authorized under section 9, the commissioner may impose an annual operation fee upon each public water system in the State. [1997, c. 705, §13 (AMD).]

1. **Rules.** The department shall establish fee formulas by rules adopted in accordance with the Maine Administrative Procedure Act. The department must consult with and consider the advice of the commission in preparing the rules. Proposed rules issued by the department under this section must include the fee formulas and collection and transfer schedules developed by the commission. Fee formulas adopted under this section must be equitable. Fees may be based on, but are not limited to, the population served, service connections, volume of water pumped or available seats, campsites, rooms or lots, and may include fixed or graduated fee formulas or combinations of the fee formulas. The base fee may be no more than $75 per year per public water system.

[2009, c. 15, §1 (AMD) .]

2. **Collection and disposition of fees.** Fees adopted under this section cover the period beginning July 1, 1993 and must be collected by each public water system in monthly, quarterly or annual increments. Fees collected by public water systems under this section are state fees. The department shall establish schedules for the collection and transfer of fees to the State with the advice of the commission.

[1995, c. 2, §40 (COR) .]

3. **Suspension and reinstatement of fees.** Fees imposed under this section are suspended on the first day of the calendar quarter following any calendar quarter in which primacy is withdrawn by the Federal Government. Fees suspended under this subsection may be reinstated on the first day of the calendar quarter following the quarter in which the State regains primacy.

[1993, c. 410, Pt. DD, §4 (NEW) .]

SECTION HISTORY

1993, c. 410, §DD4 (NEW). RR 1995, c. 2, §40 (COR). 1995, c. 581, §4 (AMD). 1997, c. 705, §13 (AMD). 2009, c. 15, §1 (AMD).

§2660-F. PUBLIC DRINKING WATER FUND

The Public Drinking Water Fund is established as an interest-bearing dedicated revenue account. All interest earned by the account becomes part of the fund. All fees collected by the commissioner under this subchapter must be deposited into the fund. Any balance remaining in the fund at the end of the fiscal year does not lapse but is carried forward into subsequent fiscal years. The commissioner may use the fund only to support the program, including the cost of salaries, benefits, travel, education, technical assistance, capital equipment and other allowable expenses incurred by the program. [1993, c. 678, §6 (AMD).]

SECTION HISTORY
1993, c. 410, §DD4 (NEW). 1993, c. 678, §6 (AMD).

§2660-G. ENFORCEMENT

This subchapter must be enforced by the department in accordance with section 2617. [1993, c. 410, Pt. DD, §4 (NEW).]

SECTION HISTORY
1993, c. 410, §DD4 (NEW).

§2660-H. REPEAL

(REPEALED)

SECTION HISTORY
1993, c. 410, §DD4 (NEW). 1997, c. 24, §Q1 (RP).

Chapter 602: PUBLIC POOLS AND SPAS

§2661. PURPOSE

The purpose of this chapter is to provide minimum requirements and standards for the protection of the public health, safety and welfare of persons using public pools or spas. [2007, c. 631, §3 (AMD).]

SECTION HISTORY
1985, c. 150, (NEW). 2007, c. 631, §3 (AMD).

§2662. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1985, c. 150, (NEW).]

1. **Communicable disease.** "Communicable disease" is a disease capable of being transmitted from one person to another.

[1985, c. 150, (NEW) .]

2. **Department.** "Department" means the Department of Health and Human Services.

[1985, c. 150, (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

2-A. **Medical facility pool or medical facility spa.** "Medical facility pool" or "medical facility spa" means a pool or spa under the direct supervision and control of licensed medical personnel.

[2007, c. 631, §4 (NEW) .]

2-B. **Pool.** "Pool" means a basin, chamber or tank constructed of smooth, impervious and easily cleaned materials, located either indoors or outdoors, in-ground, aboveground or on-ground, provided with a controlled water supply and containing an artificial body of water used for swimming, recreational bathing or wading. "Pool" includes any related equipment, structures, areas and enclosures that are intended for the use of persons using or operating the pool, including equipment, dressing lockers, showers and toilet rooms.

[2007, c. 631, §4 (NEW) .]

3. **Pool depth.** "Pool depth" means the distance between the floor of the pool and the maximum operating water level.

[1985, c. 150, (NEW) .]

4. **Residential spa.** " Residential spa" means any constructed spa, permanently installed or portable, that is used in connection with a single or multifamily residence, used by tenants of apartment buildings, owners of condominiums or members of property owners associations and available only to these residents and their private guests.

[2007, c. 631, §4 (AMD) .]

5. **Residential swimming pool.** "Residential swimming pool" means any constructed pool that is used for swimming in connection with a single or multifamily residence, used by tenants of apartment buildings, owners of condominiums and members of property owners associations and available only to these residents and their private guests. A pool on the premises of a family child care provider who is certified or required to be certified under section 8301-A is a residential pool.

[2007, c. 631, §4 (AMD) .]

6. **Public spa.** "Public spa" means any constructed spa other than a residential spa or medical facility spa.

[2007, c. 631, §4 (AMD) .]

7. **Public pool.** "Public pool" means any constructed or prefabricated pool other than a residential pool or medical facility pool that is intended to be used for swimming, recreational bathing or wading and is operated by an owner, lessee, tenant or concessionaire or by a person licensed by the department, regardless of whether a fee is charged for use. A pool on the premises of a child care facility that is licensed or required to be licensed under section 8301-A is a public pool.

[2007, c. 631, §4 (AMD) .]

8. **Spa.** "Spa" means a unit containing water primarily designed for therapeutic or nontherapeutic use that is not drained, cleaned or refilled for each individual. It may include, but is not limited to, hydrojet circulation, hot water, cold water, mineral baths, air induction bubbles or any combination thereof. "Spa" includes, but is not limited to, a therapeutic pool, hydrotherapy pool, whirlpool, hot spa and hot tub.

[2007, c. 631, §4 (AMD) .]

9. **Swimming pool.**

[2007, c. 631, §4 (RP) .]

SECTION HISTORY
1985, c. 150, (NEW). 2003, c. 689, §B6 (REV). 2007, c. 631, §4 (AMD).

§2663. EXISTING INSTALLATIONS

1. **Public pool or spa; existing use.** Any public pool or spa installed prior to September 19, 1985, may have its existing use, maintenance or repair continued if the use, maintenance or repair is in accordance with the original design and location and no hazard to the public health, safety or welfare has been created by the installation.

[2007, c. 631, §5 (AMD) .]

2. **Public pool or spa; maintenance.** The owner or the owner's designated agent is responsible for the maintenance of the public pool or spa in a safe and sanitary condition.

[2007, c. 631, §5 (AMD) .]

SECTION HISTORY
1985, c. 150, (NEW). 2007, c. 631, §5 (AMD).

§2664. RULES

The department may adopt and enforce rules necessary to protect public health and safety and carry out the provisions of this chapter relating directly to the safe and sanitary design, construction and operation of public pools and spas. [2007, c. 631, §6 (AMD).]

SECTION HISTORY
1985, c. 150, (NEW). 2007, c. 631, §6 (AMD).

§2665. SUBMISSION OF PLANS

A person may not begin construction of a public pool or spa or substantially alter or reconstruct any public pool or spa without first having submitted plans and specifications to the department for review and approval. The department review is limited to matters relating directly to safety and sanitation. [2007, c. 631, §7 (AMD).]

The design criteria to be followed by the department in the review and approval is the minimum standard for all pools and the minimum standard for all spas published by the American National Standards Institute and the Association of Pool and Spa Professionals or successor organizations. [2007, c. 631, §7 (AMD).]

The design criteria standards that the department is using to review and approve pools and spas must be posted annually on the department's publicly accessible website. [2007, c. 631, §7 (NEW).]

SECTION HISTORY
1985, c. 150, (NEW). 2007, c. 631, §7 (AMD).

§2666. HEALTH AND SAFETY

1. **Employment; communicable disease.**

[2007, c. 631, §8 (RP) .]

2. **Nuisance.** Any public pool or spa found to be unsanitary, as defined by the department's rules, is declared to be a nuisance.

[2007, c. 631, §8 (AMD) .]

3. **Supervision.** Every public pool or spa must be under the supervision of a person as defined in standards by American National Standards Institute and the Association of Pool and Spa Professionals or successor organizations who shall assume the responsibility for compliance with this chapter relating to the safe and sanitary operation and maintenance of a public pool or spa. This chapter may not be construed to require a lifeguard to be on duty when a public pool or spa is open to the public.

[2007, c. 631, §8 (AMD) .]

4. **Anti-entrapment devices required.** Every public pool and public spa must comply with the federal swimming pool and spa drain cover standards as specified in the Virginia Graeme Baker Pool and Spa Safety Act, 15 United States Code, Sections 8001 to 8006. The Maine Center for Disease Control and Prevention shall enforce the provisions of this subsection provided federal funds are available to cover all costs associated with this enforcement activity. Enforcement includes, but is not limited to, the closure of any public pool or public spa that does not meet the requirements of the federal swimming pool and spa drain cover standards.

[2009, c. 206, §1 (NEW) .]

SECTION HISTORY
1985, c. 150, (NEW). 2007, c. 631, §8 (AMD). 2009, c. 206, §1 (AMD).

§2667. INSPECTIONS

The department may conduct the inspections as it considers necessary to ensure compliance with the provisions of this chapter and has right of entry at any reasonable hour to public pools or spas for this purpose. [2007, c. 631, §9 (AMD).]

SECTION HISTORY
1985, c. 150, (NEW). 2007, c. 631, §9 (AMD).

§2668. CLOSURE

The department may close any public pool or spa for failure to comply with the provisions of this chapter. [2007, c. 631, §10 (AMD).]

Before closing a public pool or spa, the department shall issue a notice in writing enumerating instances of failure to comply with the law or rules. The owner must have an opportunity to request a fair hearing before the department pursuant to Title 5, sections 9052 to 9064. [2007, c. 631, §10 (AMD).]

Closed public pools and spas must be reopened upon presentation of evidence that the deficiencies causing the closing have been corrected. [2007, c. 631, §10 (AMD).]

SECTION HISTORY
1985, c. 150, (NEW). 2007, c. 631, §10 (AMD).

§2669. PENALTIES

The department may seek injunctive or other appropriative judicial relief for violations of any provisions of this chapter. [1985, c. 150, (NEW).]

SECTION HISTORY

1985, c. 150, (NEW).

Chapter 602-A: ACCESS TO INVESTIGATIONAL TREATMENTS FOR TERMINALLY ILL PATIENTS

§2671. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2015, c. 418, §1 (NEW).]

1. **Eligible patient.** "Eligible patient" means a person who has:

A. Received a diagnosis of a terminal illness for which no standard treatment is effective and the diagnosis has been attested by the person's treating physician; [2015, c. 418, §1 (NEW).]

B. Considered all treatment options approved by the United States Food and Drug Administration; [2015, c. 418, §1 (NEW).]

C. Not been accepted into a clinical trial within one week of completion of the clinical trial application process; [2015, c. 418, §1 (NEW).]

D. Received a recommendation from the person's treating physician for an investigational drug, biological product or device; [2015, c. 418, §1 (NEW).]

E. Given written, informed consent for the use of the investigational drug, biological product or device under paragraph D or, if the person is a minor or lacks the mental capacity to provide informed consent, whose parent or legal guardian has given written, informed consent on the person's behalf; and [2015, c. 418, §1 (NEW).]

F. Received documentation from the person's treating physician that the person meets all of the conditions in this subsection. [2015, c. 418, §1 (NEW).]

[2015, c. 418, §1 (NEW) .]

2. **Investigational drug, biological product or device.** "Investigational drug, biological product or device" means a drug, biological product or device that has successfully completed Phase I of a United States Food and Drug Administration-approved clinical trial but has not yet been approved for general use by the United States Food and Drug Administration and remains under investigation in such a clinical trial.

[2015, c. 418, §1 (NEW) .]

3. **Terminal illness.** "Terminal illness" means a disease or condition that, without life-sustaining measures, will soon result in death or in a state of permanent unconsciousness from which recovery is unlikely.

[2015, c. 418, §1 (NEW) .]

4. **Treating physician.** "Treating physician" means a physician who has primary responsibility for the care of a patient and treatment of that patient's terminal illness.

[2015, c. 418, §1 (NEW) .]

5. **Written, informed consent.** "Written, informed consent" means a written document signed by a patient or, if the patient is a minor or lacks the mental capacity to provide informed consent, a parent or legal guardian of the patient. The document must be attested by the patient's treating physician and a witness and include the following information:

A. An explanation of the United States Food and Drug Administration-approved treatments for the disease or condition from which the patient suffers; [2015, c. 418, §1 (NEW).]

B. A statement that the patient concurs with the patient's treating physician that all United States Food and Drug Administration-approved and standard treatments for the disease or condition from which the patient suffers are unlikely to prolong the patient's life; [2015, c. 418, §1 (NEW).]

C. Clear identification of the specific investigational drug, biological product or device that the patient is seeking to use; and [2015, c. 418, §1 (NEW).]

D. A description of the best and worst potential outcomes of using the investigational drug, biological product or device identified under paragraph C with a description of the most likely outcome. The description must include the possibility that new, unanticipated, different or worse symptoms might result and that death could be hastened by the proposed treatment. The description must be based on the treating physician's knowledge of the proposed treatment in conjunction with the treating physician's knowledge of the patient's overall medical condition. [2015, c. 418, §1 (NEW).]

[2015, c. 418, §1 (NEW) .]

SECTION HISTORY
2015, c. 418, §1 (NEW).

§2672. AVAILABILITY OF INVESTIGATIONAL DRUG, BIOLOGICAL PRODUCT OR DEVICE BY MANUFACTURER

A manufacturer of an investigational drug, biological product or device may make available the investigational drug, biological product or device to an eligible patient. [2015, c. 418, §1 (NEW).]

1. **Compensation.** A manufacturer may provide an investigational drug, biological product or device to an eligible patient with or without receiving compensation.

[2015, c. 418, §1 (NEW) .]

2. **Costs.** A manufacturer may require an eligible patient to pay the costs of manufacturing the dosage of an investigational drug, a biological product or a device dispensed to that eligible patient.

[2015, c. 418, §1 (NEW) .]

SECTION HISTORY
2015, c. 418, §1 (NEW).

§2673. ACTION AGAINST HEALTH CARE PRACTITIONER OR HEALTH CARE PROVIDER LICENSE PROHIBITED

A licensing board may not revoke, refuse to renew or suspend the license of or take any action against a health care practitioner as defined in Title 24, section 2502, subsection 1-A based solely on the health care practitioner's recommendations to an eligible patient regarding access to or treatment with an investigational drug, biological product or device, as long as the recommendations are consistent with medical standards of care. [2015, c. 418, §1 (NEW).]

The licensing agency may not revoke, refuse to renew or suspend the license of or take any action against a health care provider as defined in Title 24, section 2502, subsection 2 based solely on the health care provider’s involvement in the care of an eligible patient using an investigational drug, biological product or device. [2015, c. 418, §1 (NEW).]

SECTION HISTORY
2015, c. 418, §1 (NEW).

§2674. OFFICIALS, EMPLOYEES AND AGENTS OF THE STATE

1. **Violation.** An official, employee or agent of the State may not block or attempt to block an eligible patient's access to an investigational drug, biological product or device.

[2015, c. 418, §1 (NEW) .]

2. **Medical standards of care.** This section does not prohibit an official, employee or agent of the State from providing counseling, advice or a recommendation consistent with medical standards of care.

[2015, c. 418, §1 (NEW) .]

SECTION HISTORY
2015, c. 418, §1 (NEW).

§2675. NO CAUSE OF ACTION CREATED

This chapter does not create a private cause of action against a manufacturer of an investigational drug, biological product or device or against any other person or entity involved in the care of an eligible patient using the investigational drug, biological product or device for any harm done to the eligible patient resulting from the investigational drug, biological product or device if the manufacturer or other person or entity is complying in good faith with the provisions of this chapter and has exercised reasonable care. [2015, c. 418, §1 (NEW).]

SECTION HISTORY
2015, c. 418, §1 (NEW).

§2676. CLINICAL TRIAL COVERAGE

This chapter does not affect the mandatory health care coverage for participation in clinical trials pursuant to Title 24-A, section 4310. [2015, c. 418, §1 (NEW).]

SECTION HISTORY
2015, c. 418, §1 (NEW).

§2677. OPTIONAL PARTICIPATION OF HEALTH CARE PRACTITIONERS AND PROVIDERS

This chapter does not require a health care practitioner who is licensed in the State or a health care provider that is licensed in the State to provide any service related to an investigational drug, biological product or device. [2015, c. 418, §1 (NEW).]

SECTION HISTORY
2015, c. 418, §1 (NEW).

Chapter 603: PRESCRIPTION DRUG ACCESS

Subchapter 1: MAINE RX PLUS PROGRAM

§2681. MAINE RX PLUS PROGRAM ESTABLISHED

The Maine Rx Plus Program, referred to in this subchapter as the "program," is established to reduce prescription drug prices and to improve the quality of health care for residents of the State. The program is administered by the department and must utilize manufacturer rebates and pharmacy discounts to reduce prescription drug prices. [2003, c. 494, §3 (AMD).]

1. **Program goals.** The Legislature finds that affordability is critical in providing access to prescription drugs for Maine residents. This subchapter is enacted by the Legislature to enable the State to take steps to make prescription drugs more affordable for qualified Maine residents, thereby increasing the overall health of Maine residents, promoting healthy communities and protecting the public health and welfare, and to integrate the program as part of any statewide program for the uninsured. It is not the intention of the State to discourage employers from offering or paying for prescription drug benefits for their employees or to replace employer-sponsored prescription drug benefit plans that provide benefits comparable to those made available to qualified Maine residents under this subchapter.

[2003, c. 494, §4 (AMD) .]

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

A. "Average wholesale price" means the wholesale price charged on a specific commodity that is assigned by the drug manufacturer and is listed in a nationally recognized drug pricing file. [1999, c. 786, Pt. A, §3 (NEW).]

A-1. "Covered drugs" means drugs that are on the MaineCare preferred drug list established and revised from time to time by the department pursuant to its authority to operate the MaineCare program. [2003, c. 494, §4 (NEW).]

B. "Initial discounted price" for a drug means the amount that participating retail pharmacies may charge qualified residents participating in the program for that drug, as established by the department through rulemaking. [2003, c. 513, Pt. G, §1 (AMD).]

C. "Labeler" means an entity or person that receives prescription drugs from a manufacturer or wholesaler and repackages those drugs for later retail sale and that has a labeler code from the federal Food and Drug Administration under 21 Code of Federal Regulations, 207.20 (1999). [1999, c. 786, Pt. A, §3 (NEW).]

D. "Participating retail pharmacy" or "retail pharmacy" means a retail pharmacy located in this State, or another business licensed to dispense prescription drugs in this State, that participates in the program. [2003, c. 494, §4 (AMD).]

E. [2003, c. 494, §4 (RP).]

F. "Qualified resident" means a resident of the State who has a family income equal to or less than 350% of the federal poverty level and who is enrolled in the program. "Qualified resident" also means a resident of the State whose family incurs unreimbursed expenses for prescription drugs that equal 5% or more of family income or whose total unreimbursed medical expenses equal 15% or more of family income. For purposes of this paragraph, the cost of drugs provided under this subchapter is considered an expense incurred by the family for eligibility determination purposes. [2003, c. 494, §4 (AMD).]

G. "Secondary discounted price" means the initial discounted price minus any further discounts paid for out of the fund. [2003, c. 494, §4 (AMD).]

[2003, c. 513, Pt. G, §1 (AMD) .]

3. **Rebate agreement.** A drug manufacturer or labeler that sells prescription drugs in this State through the elderly low-cost drug program under section 254-D or any other publicly supported pharmaceutical assistance program shall enter into a rebate agreement with the department for this program. The rebate agreement must require the manufacturer or labeler to make rebate payments to the State each calendar quarter or according to a schedule established by the department.

[2005, c. 401, Pt. C, §3 (AMD) .]

4. **Rebate amount.** The commissioner shall negotiate the amount of the rebate required from a manufacturer or labeler in accordance with this subsection.

A. The commissioner shall take into consideration the rebate calculated under the Medicaid Rebate Program pursuant to 42 United States Code, Section 1396r-8, the average wholesale price of prescription drugs and any other information on prescription drug prices and price discounts. [1999, c. 786, Pt. A, §3 (NEW).]

B. The commissioner shall use the commissioner's best efforts to obtain an initial rebate amount equal to or greater than the rebate calculated under the MaineCare program pursuant to 42 United States Code, Section 1396r-8. [2003, c. 494, §4 (AMD).]

C. With respect to the rebate taking effect no later than October 1, 2004, the commissioner shall use the commissioner's best efforts to obtain an amount equal to or greater than the amount of any discount, rebate or price reduction for prescription drugs provided to the Federal Government. [2003, c. 494, §4 (AMD).]

[2003, c. 494, §4 (AMD) .]

5. **Discounted prices for qualified residents.** Each participating retail pharmacy shall sell covered drugs to qualified residents at the lower of the initial discounted price and the secondary discounted price as such prices are determined by the department pursuant to this subchapter.

A. The department shall establish discounted prices for drugs covered by a rebate agreement and shall promote the use of efficacious and reduced-cost drugs, taking into consideration reduced prices for state and federally capped drug programs, differential dispensing fees, administrative overhead and incentive payments. [1999, c. 786, Pt. A, §3 (NEW).]

B. Beginning January 1, 2004, a participating retail pharmacy shall offer the initial discounted price. [2003, c. 494, §4 (AMD).]

C. No later than October 1, 2004, a participating retail pharmacy shall offer the secondary discounted price if available. [2003, c. 494, §4 (AMD).]

D. [2003, c. 494, §4 (RP).]

[2003, c. 494, §4 (AMD) .]

6. **Operation of program.** The requirements of this subsection apply to participating retail pharmacies.

A. The Maine Board of Pharmacy shall adopt rules requiring disclosure by participating retail pharmacies to qualified residents of the amount of savings provided as a result of the program. The rules must consider and protect information that is proprietary in nature. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2003, c. 494, §4 (AMD).]

B. The department may not impose transaction charges under this program on retail pharmacies that submit claims or receive payments under the program. [1999, c. 786, Pt. A, §3 (NEW).]

C. A participating retail pharmacy shall submit claims to the department to verify the amount charged to qualified residents under subsection 5. [1999, c. 786, Pt. A, §3 (NEW).]

D. On a weekly or biweekly basis, the department must reimburse a participating retail pharmacy for the difference between the initial discounted price and the secondary discounted price provided to qualified residents under subsection 5. [2003, c. 494, §4 (AMD).]

E. [2003, c. 494, §4 (RP).]

F. The department shall conduct ongoing quality assurance activities similar to those used in the MaineCare program. [2003, c. 494, §4 (NEW).]

[2003, c. 494, §4 (AMD) .]

7. **Action with regard to nonparticipating manufacturers and labelers.**

[2003, c. 494, §5 (RPR); T. 22, §2681, sub-§7 (RP) .]

7-A. **Action with regard to nonparticipating manufacturers and labelers.** The names of manufacturers and labelers who do and do not enter into rebate agreements pursuant to this subchapter are public information. The department shall release this information to health care providers and the public on a regular basis and shall publicize participation by manufacturers and labelers that is of particular benefit to the public. The department shall impose prior authorization requirements in the MaineCare program, as permitted by law, to the extent the department determines it is appropriate to do so in order to encourage manufacturer and labeler participation in the program and so long as the additional prior authorization requirements remain consistent with the goals of the MaineCare program and the requirements of the federal Social Security Act, Title 19.

This subsection takes effect on the date that the department begins offering prescription drug benefits under the program.

[2003, c. 494, §6 (NEW) .]

8. **Discrepancies in rebate amounts.**

[2003, c. 494, §7 (RP) .]

9. **Dedicated fund.** The Maine Rx Plus Dedicated Fund, referred to in this section as the "fund," is established to receive revenue from manufacturers and labelers who pay rebates as provided in subsection 4 and any appropriations or allocations designated for the fund. The purposes of the fund are to reimburse retail pharmacies for discounted prices provided to qualified residents pursuant to subsection 5; to reimburse the department for contracted services including pharmacy claims processing fees, administrative and associated computer costs and other reasonable program costs; and to benefit the elderly low-cost drug program under section 254-D. The fund is a nonlapsing dedicated fund. Interest on fund balances accrues to the fund. Surplus funds in the fund must be used for the benefit of the program. Notwithstanding Title 5, section 1585, surplus funds may also be transferred to the elderly low-cost drug program established under section 254-D.

[2005, c. 401, Pt. C, §4 (AMD) .]

10. **Annual summary report.** The department shall report the enrollment and financial status of the program to the Legislature by the 2nd week in January each year.

[1999, c. 786, Pt. A, §3 (NEW) .]

11. **Obligations of department.** The department shall establish simplified procedures for determining eligibility and issuing Maine Rx enrollment cards to qualified residents and shall undertake outreach efforts to build public awareness of the program and maximize enrollment of qualified residents. The department may adjust the requirements and terms of the program to accommodate any new federally funded prescription drug programs.

[1999, c. 786, Pt. A, §3 (NEW) .]

12. **Contracting.** The department may contract with a 3rd-party or 3rd-parties to administer any or all components of the program, including, but not limited to, outreach, eligibility, claims, administration and rebate recovery and redistribution.

[1999, c. 786, Pt. A, §3 (NEW) .]

13. **Medical assistance programs.** The department shall administer the program and other medical and pharmaceutical assistance programs under this Title in a manner that is advantageous to the programs and to the enrollees in those programs. In implementing this subsection the department may coordinate the other programs and this program and may take actions to enhance efficiency, reduce the cost of prescription drugs and maximize the benefits to the programs and enrollees, including providing the benefits of this program to enrollees in other programs.

[1999, c. 786, Pt. A, §3 (NEW) .]

14. **Rulemaking.** The department may adopt rules to implement the provisions of this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[1999, c. 786, Pt. A, §3 (NEW) .]

15. **Waivers.** The department may seek any waivers of federal law, rule or regulation necessary to implement the provisions of this subchapter.

[1999, c. 786, Pt. A, §3 (NEW) .]

16. **Fee imposed.** Beginning July 1, 2011, a fee is imposed on all enrollees in the program established under this section. The amount of the fee must be determined by rule adopted by the department to cover the administrative and other operating costs of the program. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2011, c. 380, Pt. SS, §1 (NEW) .]

SECTION HISTORY
1999, c. 786, §A3 (NEW). 2001, c. 358, §Q6 (AMD). 2001, c. 405, §2 (AMD). 2001, c. 405, §3 (AFF). 2003, c. 494, §§2-8 (AMD). 2003, c. 513, §G1 (AMD). 2005, c. 401, §§C3,4 (AMD). 2011, c. 380, Pt. SS, §1 (AMD).

§2682. DISPLAY OF MAINE RX PLUS PROGRAM PARTICIPATION INFORMATION

A drug dispensed pursuant to prescription, including a drug dispensed without charge to the consumer, must be accompanied by program participation information in a manner approved by the commissioner and as permitted by law. [2001, c. 471, Pt. E, §5 (AMD); 2001, c. 471, Pt. E, §8 (AFF).]

1. **Exceptions.** The requirements of this section do not apply to:

A. A drug dispensed to a consumer who has health coverage that pays part or all of the retail cost of the drug; [2001, c. 379, §1 (NEW).]

B. A generic drug; or [2001, c. 379, §1 (NEW).]

C. A drug of a manufacturer or labeler that has entered into an agreement with the department pursuant to section 2681, subsection 3. [2001, c. 379, §1 (NEW).]

[2001, c. 379, §1 (NEW) .]

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

[2001, c. 379, §1 (NEW) .]

3. **Program participation information.**

[2001, c. 471, Pt. E, §8 (AFF); 2001, c. 471, Pt. E, §6 (RP) .]

3-A. **Program participation information.** The rules must provide for the disclosure of program participation information, including, but not limited to, the following:

A. Notification that the manufacturer or labeler has not entered into an agreement with the Department of Health and Human Services pursuant to section 2681, subsection 3; and [2001, c. 471, Pt. E, §7 (NEW); 2001, c. 471, Pt. E, §8 (AFF); 2003, c. 689, Pt. B, §6 (REV).]

B. Advice to consult a health care provider or pharmacist about access to drugs at lower prices. [2001, c. 471, Pt. E, §7 (NEW); 2001, c. 471, Pt. E, §8 (AFF).]

[2001, c. 471, Pt. E, §7 (NEW); 2001, c. 471, Pt. E, §8 (AFF); 2003, c. 689, Pt. B, §6 (REV) .]

4. **Separate writing.** The requirements of this section may be met by the distribution of a separate writing that is approved by or produced and distributed by the department.

[2001, c. 379, §1 (NEW) .]

5. **Waivers.** The rules must provide for waivers to the requirements of this section, particularly when the manufacturer or labeler is negotiating with the commissioner pursuant to section 2681, subsection 3.

[2001, c. 379, §1 (NEW) .]

SECTION HISTORY
2001, c. 379, §1 (NEW). 2001, c. 471, §§E5-7 (AMD). 2001, c. 471, §E8 (AFF). 2003, c. 494, §9 (AMD). 2003, c. 689, §B6 (REV).

Subchapter 1-A: PRESCRIPTION DRUG ACADEMIC DETAILING

§2685. PRESCRIPTION DRUG ACADEMIC DETAILING PROGRAM

By January 1, 2008, the department shall establish a prescription drug academic detailing program, referred to in this section as "the program," to enhance the health of residents of the State, to improve the quality of decisions regarding drug prescribing, to encourage better communication between the department

and health care practitioners participating in publicly funded health programs and to reduce the health complications and unnecessary costs associated with inappropriate drug prescribing. [2007, c. 327, §1 (NEW).]

1. **Program design.** The department shall design the program after consultation with prescribers and dispensers of drugs, carriers and health plans, hospitals, pharmacy benefit managers, consumers, the MaineCare Advisory Committee and the MaineCare drug utilization review committee under section 3174-M, subsection 2-A.

[2007, c. 327, §1 (NEW) .]

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

A. "Academic detailing" means the provision of information regarding prescription drugs based on scientific and medical research, including information on therapeutic and cost-effective use of prescription drugs. [2007, c. 327, §1 (NEW).]

B. "Carrier" has the same meaning as in Title 24-A, section 4301-A, subsection 3. [2007, c. 695, Pt. A, §25 (AMD).]

C. "Dirigo Health insurance" means the program of health coverage provided under Title 24-A, section 6910. [2007, c. 327, §1 (NEW).]

D. "Dispenser" means a licensed mail order prescription pharmacy as defined in Title 32, section 13702-A, subsection 17; a licensed pharmacy as defined in Title 32, section 13702-A, subsection 24; and any other person or entity licensed to dispense prescription drugs under Title 32, chapter 117. [2007, c. 695, Pt. C, §8 (AMD).]

E. "Elderly low-cost drug program" means the elderly low-cost drug program provided under section 254-D. [2007, c. 327, §1 (NEW).]

F. "Health plan" means a health plan providing prescription drug coverage as authorized under the federal Medicare Prescription Drug, Improvement and Modernization Act of 2003, Public Law 108-173. [2007, c. 327, §1 (NEW).]

G. "MaineCare program" means the MaineCare program administered under chapter 855. [2007, c. 327, §1 (NEW).]

H. "Maine Rx Plus Program" means the Maine Rx Plus Program established under section 2681. [2007, c. 327, §1 (NEW).]

I. "Prescriber" means a person who is licensed, registered or otherwise authorized in the appropriate jurisdiction to prescribe and administer drugs in the course of professional practice. [2007, c. 327, §1 (NEW).]

J. "State employee health insurance program" means the state employee health insurance program provided under Title 5, section 285. [2007, c. 327, §1 (NEW).]

[2007, c. 695, Pt. A, §25 (AMD); 2007, c. 695, Pt. C, §8 (AMD) .]

3. **Program components.** Program components must include outreach and education regarding the therapeutic and cost-effective use of prescription drugs as issued in peer-reviewed scientific, medical and academic research publications and made available to prescribers and dispensers of drugs in the State, including through written information and through personal visits from program staff. To the extent possible, program components must also include information regarding clinical trials, pharmaceutical efficacy, adverse effects of drugs, evidence-based treatment options and drug marketing approaches that are intended to circumvent competition from generic and therapeutically equivalent drugs. Academic detailers shall observe standards of conduct in their educational materials and written and oral presentations as established by rules adopted by the department that are consistent with the following federal regulations regarding labeling and

false and misleading advertising: the Food and Drug Administration labeling requirements of 21 Code of Federal Regulations, Part 201 (2007) and prescription drug advertising provisions of 21 Code of Federal Regulations, Part 202 (2007) and the Office of the Inspector General's Compliance Program Guidance for Pharmaceutical Manufacturers issued in April 2003, as amended. The rules must require academic detailers to disclose evidence-based information about the range and cost of appropriate drug treatment options and the health benefits and risks of all appropriate drugs.

[2007, c. 327, §1 (NEW) .]

4. **Program coverage.** The program must provide outreach and education to prescribers and dispensers who participate in, contract with or are reimbursed by state-funded health care programs, including but not limited to the MaineCare program, the Maine Rx Plus Program, Dirigo Health insurance, the elderly low-cost drug program and the state employee health insurance program. The program may provide outreach and education to carriers, health plans, hospitals, employers and other persons interested in the program on a subscription or fee-paying basis under rules adopted by the department.

[2007, c. 327, §1 (NEW) .]

5. **Funding.** The program may be funded from the General Fund, from federal funds and from other special revenue funds. Beginning April 1, 2012 each manufacturer of prescription drugs that are provided to Maine residents through the MaineCare program or the elderly low-cost drug program shall pay a fee of $500 per calendar year to the department to provide funding for the program. The program may accept funds from nongovernmental health access foundations, the Tobacco Manufacturers Act under chapter 263, subchapter 3, undesignated funds associated with pharmaceutical marketing and pricing practices acquired through litigation or action of the Office of the Attorney General and fees from subscriptions, contracts and agreements with private payors as established by rule. Savings achieved as a result of the program may be retained for operation of the program or paid into the General Fund, at the option of the department.

[2011, c. 461, §2 (AMD) .]

6. **Annual report.** By April 1st each year the department shall provide to the Legislature an annual report on the operation of the program. The report must include information on the outreach and education components of the program; revenues, expenditures and balances; and savings attributable to the program in state-funded health care programs.

[2007, c. 327, §1 (NEW) .]

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

[2007, c. 327, §1 (NEW) .]

SECTION HISTORY
2007, c. 327, §1 (NEW). 2007, c. 695, Pt. A, §25 (AMD). 2007, c. 695, Pt. C, §8 (AMD). 2011, c. 461, §2 (AMD).

Subchapter 1-B: MAXIMUM ALLOWABLE COST LIST

§2687. MAXIMUM ALLOWABLE COST LIST

1. **Comment period.** The Department of Health and Human Services, office of MaineCare services shall establish a 17-day written comment period on any proposed change to the state maximum allowable cost list if the change results in a reduction in payment to pharmacies. The written comment period must be held in compliance with the Maine Administrative Procedure Act. A change in the maximum allowable cost list that will result in a reduction in payment to pharmacies may not take effect for at least 30 days and not

until 30 days after the office of MaineCare services has completed its response to any written comments. For the purposes of this section, "maximum allowable cost list" means a list of prescription drugs that bases reimbursement on the cost of the generic product.

[2011, c. 323, §1 (NEW) .]

2. **Report.** The Department of Health and Human Services, office of MaineCare services shall prepare an annual report that summarizes the number of drugs affected by changes made to the maximum allowable cost list under subsection 1 and the percentage change in payment for those drugs that resulted from changes to the list during the calendar year. The office of MaineCare services shall file the report annually by December 31st with the joint standing committee of the Legislature having jurisdiction over health and human services matters.

[2011, c. 323, §1 (NEW) .]

3. **Rulemaking.** The Department of Health and Human Services, office of MaineCare services shall amend its rules to implement the provisions of this subchapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2011, c. 323, §1 (NEW) .]

SECTION HISTORY
2011, c. 323, §1 (NEW).

Subchapter 2: PRESCRIPTION DRUG PRICE REDUCTION ACT

§2691. SHORT TITLE; PURPOSE

This subchapter may be known and cited as the "Prescription Drug Price Reduction Act." The Legislature finds that affordability is critical in providing access to prescription drugs for Maine residents. This subchapter is enacted by the Legislature as a positive measure to make prescription drugs more affordable for qualified Maine residents, thereby increasing the overall health of Maine residents, promoting healthy communities and protecting the public health and welfare of Maine residents. [1999, c. 786, Pt. A, §3 (NEW).]

SECTION HISTORY
1999, c. 786, §A3 (NEW).

§2692. PRESCRIPTION DRUG ADVISORY COMMISSION

(REPEALED)

SECTION HISTORY
1999, c. 786, §A3 (NEW). 2007, c. 395, §25 (RP).

§2693. EMERGENCY DRUG PRICING

In order to achieve the public health purposes listed in section 2691, maximum retail prices for prescription drugs sold in Maine may be established pursuant to this section. [1999, c. 786, Pt. A, §3 (NEW).]

1. **Emergency drug pricing procedures.** The following provisions apply to determinations regarding maximum retail prices for prescription drugs and to the procedures for establishing those prices.

A. By July 1, 2005, the department shall adopt rules establishing the procedures for adoption and periodic review of maximum retail prices, the procedures for establishing maximum retail prices for new prescription drugs and for reviewing maximum retail prices of selected drugs and the procedures for phasing out or terminating maximum retail prices. [2007, c. 395, §26 (AMD).]

B. By January 5, 2006, the commissioner shall determine whether the cost of prescription drugs provided to qualified residents under the Maine Rx Plus Program pursuant to subchapter 1 is reasonably comparable to the lowest cost paid for the same drugs delivered or dispensed in the State. In making this determination the following provisions apply.

(1) The commissioner shall review prescription drug use in the MaineCare program using data from the most recent 6-month period for which data is available.

(2) Using the data reviewed in subparagraph (1), the commissioner shall determine the 100 drugs for which the most units were provided and the 100 drugs for which the total cost was the highest.

(3) For each prescription drug listed in subparagraph (2), the commissioner shall determine the cost for each drug for qualified residents who are provided those drugs under the Maine Rx Plus Program on a certain date. The average cost for each such drug must be calculated.

(4) For each prescription drug listed in subparagraph (2), the commissioner shall determine the lowest cost for each drug paid by any purchaser on the date that is used for subparagraph (3) delivered or dispensed in the State, taking into consideration the federal supply schedule and prices paid by pharmaceutical benefits managers and by large purchasers and excluding drugs purchased through the Maine Rx Plus Program. The average cost for each such drug must be calculated.

(5) If the average cost for one or more prescription drugs under the Maine Rx Plus Program as determined in subparagraph (3) is not reasonably comparable to the average lowest cost for the same drug or drugs as determined in subparagraph (4), the commissioner shall establish maximum retail prices for any or all prescription drugs sold in the State. Maximum prescription drug prices established under this subparagraph must take effect July 1, 2006. [2003, c. 494, §10 (AMD).]

C. In establishing maximum retail prices under this paragraph, the commissioner shall follow procedures set forth by rules adopted by the department. [2007, c. 395, §27 (AMD).]

D. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A. [1999, c. 786, Pt. A, §3 (NEW).]

[2007, c. 395, §§26, 27 (AMD) .]

2. **Select prescription drugs.** In making a determination under this section the commissioner may rely on pricing information on a selected number of prescription drugs if that list is representative of the prescription drug needs of the residents of the State and is made public as part of the process of establishing maximum retail prices.

[1999, c. 786, Pt. A, §3 (NEW) .]

3. **Public health or welfare.** The commissioner may take actions that the commissioner determines necessary if there is a severe limitation or shortage of or lack of access to prescription drugs in the State that could threaten or endanger the public health or welfare.

[1999, c. 786, Pt. A, §3 (NEW) .]

4. **Appeals.** A retailer of prescription drugs may appeal the maximum retail price of a prescription drug established pursuant to this section in accordance with the Maine Administrative Procedure Act.

[1999, c. 786, Pt. A, §3 (NEW) .]

5. **Enforcement.** A violation of the maximum retail prices established under this section is a violation of the Maine Unfair Trade Practices Act.

[1999, c. 786, Pt. A, §3 (NEW) .]

SECTION HISTORY
1999, c. 786, §A3 (NEW). 2003, c. 494, §10 (AMD). 2007, c. 395, §§26, 27 (AMD).

§2694. RULEMAKING

With the exception of rules designated in this subchapter as major substantive rules, rules adopted pursuant to this subchapter are routine technical rules as defined by Title 5, chapter 375, subchapter II-A. [1999, c. 786, Pt. A, §3 (NEW).]

SECTION HISTORY
1999, c. 786, §A3 (NEW).

Subchapter 3: PROFITEERING IN PRESCRIPTION DRUGS

§2697. PROFITEERING IN PRESCRIPTION DRUGS

Prescription drugs are a necessity of life. Profiteering in prescription drugs is unlawful and is subject to the provisions of this section. The provisions of this section apply to manufacturers, distributors and labelers of prescription drugs. [1999, c. 786, Pt. A, §3 (NEW).]

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

A. "Labeler" means an entity or person that receives prescription drugs from a manufacturer or wholesaler and repackages those drugs for later retail sale and that has a labeler code from the federal Food and Drug Administration under 21 Code of Federal Regulations, 207.20 (1999). [1999, c. 786, Pt. A, §3 (NEW).]

B. "Manufacturer" means a manufacturer of prescription drugs and includes a subsidiary or affiliate of a manufacturer. [1999, c. 786, Pt. A, §3 (NEW).]

[1999, c. 786, Pt. A, §3 (NEW) .]

2. **Profiteering.** A manufacturer, distributor or labeler of prescription drugs engages in illegal profiteering if that manufacturer, distributor or labeler:

A. Exacts or demands an unconscionable price; [1999, c. 786, Pt. A, §3 (NEW).]

B. Exacts or demands prices or terms that lead to any unjust or unreasonable profit; [1999, c. 786, Pt. A, §3 (NEW).]

C. Discriminates unreasonably against any person in the sale, exchange, distribution or handling of prescription drugs dispensed or delivered in the State; or [1999, c. 786, Pt. A, §3 (NEW).]

D. Intentionally prevents, limits, lessens or restricts the sale or distribution of prescription drugs in this State in retaliation for the provisions of this chapter. [1999, c. 786, Pt. A, §3 (NEW).]

[1999, c. 786, Pt. A, §3 (NEW) .]

3. **Right of action and damages.** The State may bring a civil action in District Court or Superior Court for a direct or indirect injury to any person, group of persons, the State or a political subdivision of the State caused by a violation of this subchapter. There is a right to a jury trial in any action brought in Superior

Court under this section. If the State prevails, the defendant shall pay 3 times the amount of damages and the costs of suit, including necessary and reasonable investigative costs, reasonable expert fees and reasonable attorney's fees. For a willful or repeated violation of this section, punitive damages may be awarded. After deduction of the costs of distribution, the damages must be equitably distributed by the State to all injured parties.

[1999, c. 786, Pt. A, §3 (NEW) .]

4. **Civil violation.** Each violation of this section is a civil violation for which the Attorney General may obtain, in addition to other remedies, injunctive relief and a civil penalty in an amount not to exceed $100,000, plus the costs of suit, including necessary and reasonable investigative costs, reasonable expert fees and reasonable attorney's fees.

[1999, c. 786, Pt. A, §3 (NEW) .]

5. **Unfair trade practice.** A violation of this section is also a violation of the Maine Unfair Trade Practices Act.

[1999, c. 786, Pt. A, §3 (NEW) .]

SECTION HISTORY
1999, c. 786, §A3 (NEW).

§2698. INVESTIGATION BY ATTORNEY GENERAL

The Attorney General, upon the Attorney General's own initiative or upon petition of the commissioner or of 50 or more residents of the State, shall investigate suspected violations of this subchapter. [1999, c. 786, Pt. A, §3 (NEW).]

The Attorney General may require, by summons, the attendance and testimony of witnesses and the production of books and papers before the Attorney General related to any such matter under investigation. The summons must be served in the same manner as summonses for witnesses in criminal cases, and all provisions of law related to criminal cases apply to summonses issued under this section so far as they are applicable. All investigations or hearings under this section to which witnesses are summoned or called upon to testify or to produce books, records or correspondence are public or private at the choice of the person summoned and must be held in the county where the act to be investigated is alleged to have been committed, or if the investigation is on petition, it must be held in the county in which the petitioners reside. The expense of the investigation must be paid from the appropriation provided in Title 5, section 203. [1999, c. 786, Pt. A, §3 (NEW).]

A Justice of the Superior Court may by order, upon application of the Attorney General, compel the attendance of witnesses, the production of books and papers, including correspondence, and the giving of testimony before the Attorney General in the same manner and to the same extent as before the Superior Court. Any failure to obey such an order may be punishable by that court as a contempt. [1999, c. 786, Pt. A, §3 (NEW).]

SECTION HISTORY
1999, c. 786, §A3 (NEW).

§2698-A. MARKETING COSTS

(REPEALED)

SECTION HISTORY
RR 2003, c. 1, §18 (AFF). RR 2003, c. 1, §17 (RAL). 2003, c. 688, §C8 (AMD). 2005, c. 286, §§1,2 (AMD). 2011, c. 461, §3 (RP).

§2698-B. ACTUAL PRICE DISCLOSURE AND CERTIFICATION

(REPEALED)

SECTION HISTORY
2003, c. 667, §1 (NEW). 2003, c. 667, §2 (AFF). 2005, c. 402, §§1-4 (AMD). 2011, c. 461, §4 (RP).

Subchapter 4: PRESCRIPTION DRUG PRACTICES

§2699. PRESCRIPTION DRUG PRACTICES

(REPEALED)

SECTION HISTORY
RR 2003, c. 1, §18 (AFF). RR 2003, c. 1, §17 (RAL). 2003, c. 430, §1 (NEW). 2003, c. 430, §3 (AFF). 2003, c. 456, §1 (NEW). 2003, c. 673, §§FFF1,2 (AMD). 2003, c. 688, §§C9,10 (AMD). 2003, c. 688, §C11 (AFF). 2007, c. 431, §§1, 2 (AMD). 2007, c. 431, §3 (AFF). 2009, c. 581, §§1, 2 (AMD). 2011, c. 443, §2 (RP).

Chapter 604: DISPOSAL OF UNUSED PHARMACEUTICALS

§2700. UNUSED PHARMACEUTICAL DISPOSAL PROGRAM

1. **Establishment; purpose.** There is established the Unused Pharmaceutical Disposal Program, referred to in this chapter as "the program." The purpose of the program is to ensure the safe, effective and proper disposal of unused pharmaceuticals. For purposes of compliance with federal law and regulation, the return of pharmaceuticals under this section is deemed to be for law enforcement purposes.

[2003, c. 679, §1 (NEW); 2005, c. 297, §3 (AFF) .]

2. **Administration.** The program is administered by the Maine Drug Enforcement Agency, referred to in this chapter as "the agency," established in Title 25, section 2955.

[2003, c. 679, §1 (NEW); 2005, c. 297, §3 (AFF) .]

3. **Return of pharmaceuticals.** The agency may create systems for the safe, effective and proper disposal of unused pharmaceuticals. The systems may include the use of prepaid mailing envelopes into which the unused pharmaceuticals are placed and returned to a single collection location. The prepaid mailing envelopes must be made available to the public at various locations, including, but not limited to, pharmacies, physicians' offices and post offices. The agency may randomly assess the toxicity of materials received under the program as long as the assessment results do not identify the patient, person who mailed the material, prescriber or pharmacy.

[2013, c. 121, §1 (AMD) .]

4. **Disposal of pharmaceuticals.** All unused pharmaceuticals received under the program must be disposed of in a manner that is designed to be effective, secure and in compliance with local, state and federal environmental requirements, including the federal Resource Conservation and Recovery Act of 1976, as amended.

[2013, c. 121, §1 (AMD) .]

5. **Unused Pharmaceutical Disposal Program Fund; funding.** The Unused Pharmaceutical Disposal Program Fund, referred to in this chapter as "the fund," is established within the agency to be used by the director of the agency to fund or assist in funding the safe, effective and proper disposal of unused pharmaceuticals. Any balance in the fund does not lapse but is carried forward to be expended for the same purposes in succeeding fiscal years. The fund must be deposited with and maintained and administered by the agency. The agency may accept funds into the fund from any non-General Fund source, including grants or contributions of money or other things of value, that it determines necessary to carry out the safe, effective and proper disposal of unused pharmaceuticals. Money accepted into the fund by the agency must be used for the expenses of safe, effective and proper disposal of unused pharmaceuticals.

[2013, c. 121, §1 (AMD) .]

6. **Rulemaking.** The agency shall adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2003, c. 679, §1 (NEW); 2005, c. 297, §3 (AFF) .]

7. **Disposal; funding.** The program must operate with funding solely from the fund provided in subsection 5.

[2013, c. 121, §1 (AMD) .]

SECTION HISTORY
2003, c. 679, §1 (NEW). 2003, c. 679, §4 (AFF). 2005, c. 297, §§1,2 (AMD). 2005, c. 297, §3 (AFF). 2013, c. 121, §1 (AMD).

Chapter 605: PRESCRIPTION DRUG ADVERTISING

§2700-A. PROHIBITIONS

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

A. [2011, c. 461, §5 (RP).]

B. "Manufacturer of prescription drugs" or "manufacturer" means a manufacturer of prescription drugs or biological products or an affiliate of the manufacturer or a labeler that receives prescription drugs or biological products from a manufacturer or wholesaler and repackages those drugs or biological products for later retail sale and that has a labeler code from the federal Food and Drug Administration under 21 Code of Federal Regulations, 2027.20 (1999). [2005, c. 392, §1 (NEW).]

B-1. "Prescriber" means a person who is licensed, registered or otherwise authorized in the appropriate jurisdiction to prescribe and administer drugs in the course of professional practice. [2007, c. 362, §1 (NEW).]

C. "Regulated advertisement" means the presentation to the general public of a commercial message regarding a prescription drug or biological product by a manufacturer of prescription drugs that is:

(1) Broadcast on television or radio from a station that is physically located in the State;

(2) Broadcast over the Internet from a location in the State; or

(3) Printed in magazines or newspapers that are printed, distributed or sold in the State. [2005, c. 392, §1 (NEW).]

[2011, c. 461, §5 (AMD) .]

2. **Regulated advertisement requirement.** Beginning October 15, 2005, a manufacturer may not present or cause to be presented in the State a regulated advertisement, unless that advertisement meets the requirements concerning misbranded drugs and devices and prescription drug advertising of federal law and regulations under 21 United States Code, Sections 331 and 352(n) and 21 Code of Federal Regulations, Part 202 and state rules.

[2005, c. 392, §1 (NEW) .]

2-A. **Software prohibition.** Beginning January 1, 2008, a person may not sell or distribute in the State computer software that influences or attempts to influence a prescribing decision of a prescriber to prescribe a certain drug or that directs a patient to a certain pharmacy. Features of computer software that are prohibited include, but are not limited to, pop-up and other advertisements, instant messages and economic incentives that are triggered by or in specific response to a selection, act or other input or designation of pharmacy by the prescriber or an agent of the prescriber. This subsection does not apply to in-house equipment provided within a hospital for use by prescribers and the hospital pharmacy or to information provided to a prescriber about prescription drug formulary compliance, patient care management or pharmacy reimbursement.

[2007, c. 362, §2 (NEW) .]

3. **Disclosure of clinical trials of prescription drugs.**

[2011, c. 461, §5 (RP) .]

4. **Fees.**

[2011, c. 461, §5 (RP) .]

5. **Public education initiative.**

[2011, c. 461, §5 (RP) .]

6. **Penalties.**

[2011, c. 461, §5 (RP) .]

7. **Rulemaking.**

[2011, c. 461, §5 (RP) .]

SECTION HISTORY
2005, c. 392, §1 (NEW). 2005, c. 589, §2 (AMD). 2005, c. 683, §B17 (AMD). 2007, c. 327, §§2, 3 (AMD). 2007, c. 362, §§1, 2 (AMD). 2011, c. 461, §5 (AMD).

Part 6: BIRTHS, MARRIAGES AND DEATHS

Chapter 701: GENERAL PROVISIONS

§2701. DUTIES OF DEPARTMENT

The Department of Health and Human Services shall establish the Office of Data, Research and Vital Statistics, which shall maintain a statewide system for the registration of vital statistics. [2009, c. 601, §3 (AMD).]

1. **Registrar.** The Commissioner of Health and Human Services shall appoint a State Registrar of Vital Statistics, referred to in this chapter as the "state registrar," who must be qualified in accordance with the standards of education and experience prescribed by the Bureau of Human Resources.

[2001, c. 574, §17 (AMD); 2003, c. 689, Pt. B, §7 (REV) .]

2. **Supervision.** The state registrar has charge of the statewide system for the registration of vital statistics and is custodian of its files and records. The state registrar:

A. Shall preserve all certificates, records and other reports returned to the state registrar under this Title; [1995, c. 694, Pt. D, §29 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. Has general supervision of this Title and rules of the department relating to the registration of vital statistics; [1995, c. 694, Pt. D, §29 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. Has general supervision of Title 19-A, chapter 23; [1995, c. 694, Pt. D, §29 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

D. Shall direct, supervise and control the activities of all persons engaged in the operation of the system of vital statistics; [1995, c. 594, Pt. D, §29 (NEW); 1995, c. 594, Pt. E, §2 (AFF).]

E. Shall conduct training programs to promote uniformity of policy and procedures throughout the State in matters pertaining to the system of vital statistics; and [1995, c. 694, Pt. D, §29 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

F. Shall monitor the accuracy, completeness and validity of all information returned to the state registrar under this Title and Title 19-A, chapter 23. [1995, c. 694, Pt. D, §29 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[2001, c. 574, §18 (AMD) .]

3. **Forms and reports.** The state registrar shall prescribe and furnish forms and issue instructions necessary to the administration of the vital statistics system or prescribe other means of transmission of data that accomplishes the purpose of complete and accurate reporting and registration. The state registrar shall prepare and publish annual reports of vital statistics and such other reports as are requested by the department.

[1995, c. 260, §1 (AMD) .]

4. **Uniformity.** The forms of certificates, records and other reports required by the laws governing the registration of vital statistics shall be designed with due consideration for national uniformity in vital statistics and record service.

5. **Deputy State Registrar.** The state registrar may designate an employee of the Office of Data, Research and Vital Statistics to represent the Office of Data, Research and Vital Statistics. The representative is known as the Deputy State Registrar of Vital Statistics and has the authority of the state registrar in the state registrar's absence.

[2009, c. 601, §4 (AMD) .]

6. **Facsimile signature.** The state registrar may use a facsimile signature for purposes of making certifications. The facsimile signature and seal of the state registrar on a certification shall have the same force and effect as his holographic signature.

[1967, c. 186, §1 (NEW) .]

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

A. "File" means the presentation and acceptance of a vital record or report for registration by the Office of Data, Research and Vital Statistics or a municipal clerk as specified in departmental rule. [2009, c. 601, §5 (AMD).]

B. "Date of filing" means the date a vital record is accepted for registration by the Office of Data, Research and Vital Statistics or a municipal clerk. [2009, c. 601, §5 (AMD).]

[2009, c. 601, §5 (AMD) .]

8. **Paternity establishment.** The state registrar shall offer voluntary paternity establishment services. The state registrar shall maintain and use a form for voluntary acknowledgment of paternity that meets minimum requirements for the form established by the federal Secretary of Health and Human Services.

[1997, c. 537, §55 (NEW); 1997, c. 537, §62 (AFF) .]

SECTION HISTORY
1967, c. 186, §1 (AMD). 1975, c. 293, §4 (AMD). 1983, c. 669, (AMD). 1985, c. 785, §B89 (AMD). 1987, c. 268, §1 (AMD). 1995, c. 260, §§1,2 (AMD). 1995, c. 694, §D29 (AMD). 1995, c. 694, §E2 (AFF). 1997, c. 537, §55 (AMD). 1997, c. 537, §62 (AFF). 2001, c. 574, §§16-20 (AMD). 2003, c. 689, §§B6,7 (REV). 2009, c. 601, §§3-5 (AMD).

§2701-A. CONTENTS OF CERTIFICATES AND REPORTS

1. **Format.** Each certificate, report or other document required by this section must be prepared in the format approved by the state registrar.

[1995, c. 260, §3 (NEW) .]

2. **Filing date.** All vital records must contain the date of filing.

[1995, c. 260, §3 (NEW) .]

SECTION HISTORY
1995, c. 260, §3 (NEW).

§2702. DUTIES OF MUNICIPAL CLERKS

The clerk of each municipality in this State shall keep a chronological record of all live births, marriages, deaths and fetal deaths reported to the municipal clerk under this Title. Such record must be kept as prescribed by the state registrar. [2009, c. 601, §6 (AMD).]

1. **Enforce law and rules.** Each municipal clerk in this State shall enforce, so far as comes within the municipal clerk's jurisdiction, this Title and the rules of the department relating to the registration of vital statistics.

[2009, c. 601, §6 (AMD) .]

2. **Transmittal of certificates to state registrar.** Except as authorized by the state registrar, a record received in a municipal office must be transmitted by the clerk of the municipality to the state registrar within a reasonable period of time as specified by department rule and in the format specified by the state registrar.

[1995, c. 260, §4 (RPR) .]

3. **Transmittal of certificates to other municipalities.** Except as authorized by the state registrar or except if the birth is registered or will be registered on the electronic birth registration system implemented by the state registrar, when the parents of any child born are residents of any other municipality in this State, the clerk of the municipality where that live birth occurred shall transmit a copy of the certificate of the live birth to the clerk of the municipality where the parents reside.

[2011, c. 511, §2 (AMD) .]

SECTION HISTORY
1967, c. 186, §2 (AMD). 1975, c. 443, (AMD). 1985, c. 25, (AMD). 1989, c. 225, §5 (AMD). 1995, c. 260, §§4,5 (AMD). 2009, c. 601, §6 (AMD). 2011, c. 511, §2 (AMD).

§2702-A. DUTIES TO FURNISH INFORMATION

Any person having knowledge of the facts shall furnish such information as the individual may possess regarding any birth, death, spontaneous fetal death, abortion, marriage, divorce or annulment, upon demand of the state registrar. [2009, c. 601, §7 (AMD).]

SECTION HISTORY
1987, c. 268, §2 (NEW). 2009, c. 601, §7 (AMD).

§2702-B. ELECTRONIC TRANSMITTAL OF MARRIAGE CERTIFICATES

The municipal clerk that issued a marriage license pursuant to Title 19-A, section 652, subsection 1 and the clerk of the municipality where the marriage occurred may issue certified copies of the marriage certificate electronically using the statewide system for the registration of vital statistics described under section 2701. [2015, c. 104, §1 (NEW).]

SECTION HISTORY
2015, c. 104, §1 (NEW).

§2703. BIRTH IN UNINCORPORATED PLACE

When a birth occurs in an unincorporated place, it must be reported to a municipal clerk as specified by the state registrar and must be recorded, or registered in the electronic birth registration system, by the municipal clerk to whom the report is made. All such reports and records must be forwarded to the state registrar. [2011, c. 511, §3 (AMD).]

SECTION HISTORY
2009, c. 601, §8 (AMD). 2011, c. 511, §3 (AMD).

§2704. REGISTRATION OF BIRTHS AND DEATHS AT TOGUS

Certificates of live births, deaths and fetal deaths occurring at the federal facility known as Togus must be filed directly with the state registrar. The state registrar shall forward copies of all such certificates of live birth, death and fetal death to the clerk of the municipality where the parents of the child reside. [2011, c. 511, §4 (AMD).]

SECTION HISTORY
2001, c. 574, §21 (AMD). 2009, c. 601, §9 (AMD). 2011, c. 511, §4 (AMD).

§2705. AMENDMENT OF VITAL STATISTICS RECORDS

Except as provided by this Title, a certificate or record filed under chapters 701 to 707 may be altered or amended only in accordance with such regulations as the department may adopt to protect the integrity of vital statistics records.

1. **Amended certificate or record.** A certificate or record that has been altered or amended after its filing must be marked "amended," and the date on which the certificate or record was amended and a summary description of the evidence submitted in support of the correction must be endorsed on the certificate or record or permanently attached to it. Any certified copies of certificates or records amended under this section must be marked "amended." Administrative correction of clerical errors within 90 days after the date of filing does not cause the certificate or record to be considered altered or amended.

[2009, c. 601, §10 (AMD) .]

2. **Incomplete certificates.** Incomplete certificates and records may be completed from a supplementary form within 90 days after the date of filing without being considered altered or amended.

[2009, c. 601, §11 (AMD) .]

3. **Amendment by department.** The department has the exclusive power to amend, alter or complete any certificate or record of birth, marriage, death or fetal death filed under chapters 701 to 707.

When a certificate or record of birth, marriage, death or fetal death has been altered, amended or completed by the department, the department shall transmit a corrected copy to the clerk of any municipality in which a certified copy or original certificate has been recorded under chapters 701 to 707.

[1989, c. 818, §3 (AMD) .]

4. **Amendment by the Office of the Chief Medical Examiner.** Completions or amendments to certificates of death in medical examiner cases, as defined in section 3025, must be as provided in section 2842, subsection 4.

[1989, c. 818, §3 (AMD) .]

5. **Amendment following adoption or legitimation.** Amendment of a certificate following adoption or legitimation is governed by section 2765, subsection 2-A.

[1989, c. 818, §3 (AMD) .]

6. **Amendment of certificate of birth of adult.** Amendment of a certificate of birth of a person 18 years of age or older born in this State for the purpose of identifying a biological parent who was not known or listed at the time of birth is governed by section 2767.

[2003, c. 585, §1 (NEW) .]

SECTION HISTORY
1971, c. 413, (AMD). 1985, c. 437, §2 (AMD). 1985, c. 611, §1 (AMD). 1989, c. 818, §3 (AMD). 2003, c. 585, §1 (AMD). 2009, c. 601, §§10, 11 (AMD).

§2706. DISCLOSURE OF VITAL RECORDS

Custodians of certificates and records of birth, marriage and death shall permit inspection of records, or issue certified or noncertified copies of certificates or records, or any parts thereof, when satisfied that the applicant has a direct and legitimate interest in the matter recorded, the decision of the state registrar or the clerk of a municipality being subject to review by the Superior Court, under the limitations of this section. [2011, c. 58, §1 (AMD).]

1. **Child not born of marriage.**

[2009, c. 601, §12 (RP) .]

2. **Statistical research.** The state registrar may permit the use of data contained in vital records for purposes of statistical research. Such data may not be used in a manner that will identify any individual.

[2009, c. 601, §12 (AMD) .]

3. **National statistics.** The national agency responsible for compiling national vital statistics may be furnished such copies or data as it may require for national statistics. The State must be reimbursed for cost of furnishing such copies or data, and such data may not be used in a manner that will identify any individual, except as authorized by the state registrar.

[2009, c. 601, §12 (AMD) .]

4. **Unlawful disclosure of data.** It is unlawful for any employee of the State or of any municipality in the State to disclose data contained in such records, except as authorized in this section and except that a clerk of a municipality may cause to be printed in the annual town report the births reported within the year covered by the report, by number of births and location by city or town where birth occurred, deaths reported within the year covered by the report, by date of death, name, age and location by city or town where death occurred, and marriages reported within the year covered by the report by names of parties and date of marriage. All other details of birth, marriage, divorce or death may not be available to the general public, except as specified in department rules.

[2009, c. 601, §12 (AMD) .]

5. **Records disclosed.** Certified or noncertified copies of vital records of a person must be made available at any reasonable time upon that person's request or the request of that person's spouse, registered domestic partner, descendant, parent or guardian, grandparent, sibling, stepparent, stepchild, aunt, uncle, niece, nephew, mother-in-law, father-in-law, personal representative or that person's duly designated attorney or agent or attorney for an agent designated by that person or by a court having jurisdiction over that person whether the request be made in person, by mail, by telephone or otherwise, if the state registrar is satisfied as to the identity of the requester and, if an attorney or agent, if the state registrar is satisfied as to the attorney's or agent's authority to act as that person's agent or attorney. If the agent or attorney has been appointed by a court of competent jurisdiction, or the attorney's or agent's appearance for the person is entered therein, the state registrar shall upon request so ascertain by telephone call to the register, clerk or recorder of the court, and this must be deemed sufficient justification to compel compliance with the request for the record. Certified or noncertified copies of the death certificate of a minor's parent must be made available at any reasonable time upon the request of that minor's living parent, as defined in Title 19-A, section 1832, subsection 13, if the requester's parental rights with respect to that minor have not been terminated and the state registrar is satisfied as to the identity of the requester. The state registrar shall, as soon as possible, designate persons in the Office of Data, Research and Vital Statistics who may act in the state registrar's

absence or, in case of the state registrar's disqualification, to carry out the intent of this subsection. A record of birth, death, fetal death, marriage, divorce or domestic partner registration may be disclosed as necessary for the department to carry out its responsibilities.

[2015, c. 393, §1 (AMD) .]

6. **Address Confidentiality Program.** Access to vital records may be further restricted within the parties listed in subsection 5 according to procedures of the Address Confidentiality Program under Title 5, section 90-B.

[2009, c. 601, §12 (NEW) .]

7. **Public records.** After 75 years from the date of birth for birth certificates, after 50 years from the date of death for fetal death certificates, after 25 years from the date of death for death certificates, after 50 years from the date of marriage for marriage certificates and after 50 years from the registration of domestic partnerships, any person may obtain noncertified copies of these vital records in accordance with the department's rules. Certificates and records of birth, marriage and death, including fetal death, created prior to 1892 are open to the public without restriction. All persons may purchase a copy on municipal letterhead or a noncertified copy of a vital record created prior to 1892.

[2011, c. 58, §1 (AMD) .]

8. **Genealogical research.** Custodians of certificates and records of birth, marriage and death, including applications regarding notice of intentions to marry, shall permit inspection of records by and issue noncertified copies to researchers engaged in genealogical research who hold researcher identification cards, as specified by rule adopted by the department. The department shall adopt rules to implement this subsection. Rules adopted by the department pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

[2011, c. 511, §5 (AMD) .]

SECTION HISTORY
1973, c. 127, (AMD). 1973, c. 625, §120 (AMD). 1973, c. 681, §5 (AMD). 1997, c. 537, §56 (AMD). 1997, c. 537, §62 (AFF). 2001, c. 574, §22 (AMD). 2009, c. 601, §12 (AMD). 2011, c. 58, §1 (AMD). 2011, c. 511, §5 (AMD). 2015, c. 393, §1 (AMD).

§2706-A. ADOPTION CONTACT FILES

1. **File.** The state registrar shall maintain files of the names and addresses of adopted persons and their adoptive and biological parents, who have registered under this section.

[1979, c. 384, (NEW) .]

2. **Registration.** This subsection governs participation in the adoption registry.

A. The following persons may register their names and addresses with the state registrar and request contact:

(1) A person who is 18 years of age or older and:

(a) Who was adopted;

(b) Whose adoption was annulled;

(c) Whose adoptive parents surrendered and released parental rights to that person or had their parental rights terminated; or

(d) Who was freed for adoption but was never subsequently adopted;

(2) An adoptive parent if:

(a) The adopted person is under 18 years of age;

(b) The adopted person is deceased; or

(c) The adopted person is at least 18 years of age and is determined by a court to be incapacitated; and

(3) The legal custodian or guardian of:

(a) A person whose adoption was annulled, who was surrendered and released by that person's adoptive parents or whose adoptive parents' parental rights were terminated;

(b) An adopted person under 18 years of age who:

(i) Has been removed from the custody or guardianship of that person's adoptive parents by order of a court; or

(ii) Was freed for adoption but was never subsequently adopted; or

(c) An adopted person who is at least 18 years of age and has been determined by a court to be incapacitated. [1989, c. 818, §4 (RPR).]

B. The following persons may register their names and addresses with the state registrar and request contact with an adopted person or a person freed for adoption as specified in paragraph A:

(1) A biological parent of an adopted person or of a person freed for adoption but not subsequently adopted;

(2) The legal custodian or guardian of a person under 18 years of age whose full sibling or half-sibling is an adopted person or a person freed for adoption;

(3) If a biological parent of an adopted person or a person freed for adoption is deceased, a biological mother, legal father, grandparent, sibling, half-sibling, aunt, uncle or first cousin of the deceased biological parent; and

(4) A biological sibling or half-sibling, who is at least 18 years of age, of an adopted person or a person freed for adoption. [1989, c. 818, §4 (RPR).]

C. At the time of registration, each registrant shall indicate with which of the persons specified in paragraphs A and B contact is desired. [1989, c. 818, §4 (RPR).]

D. A registrant may withdraw from the adoption registry at any time by submitting a written request to the state registrar. [1989, c. 818, §4 (NEW).]

E. When an adopted person reaches 18 years of age and has not been determined by a court to be incapacitated, the state registrar, after mailing notice to the registrant, shall delete from the adoption registry any prior registration under paragraph A, subparagraph (2), division (a), or subparagraph (3), division (b). [1989, c. 818, §4 (NEW).]

[1989, c. 818, §4 (RPR) .]

3. **Certification of identity and relationship.** The state registrar shall require each person registering or requesting contact to provide certification of the registrant's identity and relationship to the person with whom contact is desired and any additional information that is necessary to ensure accurate identification of the registrant and assist in identifying the other party.

[1989, c. 818, §5 (RPR) .]

3-A. **Providing information about available counseling.** The state registrar shall provide information about sources of counseling to any person registering or requesting contact.

[1989, c. 818, §6 (NEW) .]

4. **Reviewing departmental files.** The state registrar may review both public and confidential departmental files to assist in identifying or verifying the identification of the other party. If both parties have registered, he may release those names and addresses even if the relationship was identified or verified by the use of confidential departmental files. He may charge a fee for the assistance which shall reasonably reflect the cost of providing it.

[1979, c. 384, (NEW) .]

5. **Request for contact.** When the state registrar has requests for contact from a person specified in subsection 2, paragraph A, and a person specified in subsection 2, paragraph B, that are related to the same adoption and both persons indicated at the time of registration that contact with the other person was desired, the state registrar shall notify each party of the name and address of the other party and of sources of counseling. If a biological parent, an adoptive parent or an adopted person registered under this section has made a request for contact and the party being sought died in the State, the state registrar shall disclose to the requesting party the fact that the biological parent, adoptive parent or the adopted person has died.

[1989, c. 818, §7 (AMD) .]

6. **Confidentiality.** Except as provided in subsection 5, the files established under this section shall be confidential and not open to public inspection.

[1979, c. 384, (NEW) .]

7. **Public information.** The state registrar shall, by appropriate means, make known to the public the existence of the adoption contact files, the assistance the department may offer and the purposes of those files.

[1979, c. 384, (NEW) .]

SECTION HISTORY
1979, c. 384, (NEW). 1985, c. 673, (AMD). 1989, c. 818, §§4-7 (AMD).

§2707. EVIDENTIARY CHARACTER OF VITAL RECORDS

Any certificate or record of any live birth, marriage, death or fetal death filed under this Title, or a copy thereof duly certified by its official custodian, shall be prima facie evidence of the fact of such birth, marriage, death or fetal death, if not "amended" or "delayed." The probative value of "amended" or "delayed" records shall be determined by the judicial or administrative body or official before whom the certificate is offered in evidence.

§2708. PENALTIES

1. **Intentional or knowing falsification.** A person who intentionally or knowingly falsifies, provides false information, makes or alters any certificate or certified copy except as provided for in this Title commits a Class E crime.

[2003, c. 452, Pt. K, §21 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

1-A. **Knowing possession, use.** A person who knowingly possesses and uses a false or altered certificate or certified copy or knowingly possesses and uses as that person's own a certificate or certified copy pertaining to another person commits a Class E crime.

[2003, c. 452, Pt. K, §22 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

1-B. **Hindering state registrar investigation.** A person who knowingly refuses to permit the state registrar to inspect vital records or hinders an investigation conducted by the state registrar pursuant to section 2709 commits a Class E crime.

[2009, c. 601, §13 (NEW) .]

2. **General.** A person may not:

A. Refuse to provide information required by this Title, violate a provision of this Title having to do with the registration of vital statistics or neglect or refuse to perform a duty imposed upon that person by this Title having to do with the registration of vital statistics. Violation of this paragraph is a Class E crime; or [2003, c. 452, Pt. K, §23 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. Violate paragraph A after having been previously convicted of violating this subsection. Violation of this paragraph is a Class D crime. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence. [2003, c. 452, Pt. K, §23 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

Violation of this subsection is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

[2003, c. 452, Pt. K, §23 (RPR); 2003, c. 452, Pt. X, §2 (AFF) .]

3. **Disposition of dead body without permit.** A person may not:

A. Knowingly transport or accept for transportation, interment or other disposition a dead body without an accompanying permit issued in accordance with this Title. Violation of this paragraph is a Class E crime; or [2003, c. 452, Pt. K, §24 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. Violate paragraph A after having been previously convicted of violating this subsection. Violation of this paragraph is a Class D crime. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence. [2003, c. 452, Pt. K, §24 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. K, §24 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY
1987, c. 382, (AMD). 2003, c. 452, §§K21-24 (AMD). 2003, c. 452, §X2 (AFF). 2009, c. 601, §13 (AMD).

§2709. DUTY OF STATE REGISTRAR WHEN LAW VIOLATED

When the state registrar believes that, in any place in this State, the certificates or records of live births, marriages, deaths or fetal deaths are not made or kept as is provided by law, or that any person neglects or fails to perform any duty required in the law relating to the registration of vital statistics, the state registrar may visit such places and make such investigations as the state registrar considers necessary, and all records, blanks and papers of municipal clerks relating to live births, marriages, deaths or fetal deaths must be open to the state registrar's examination. [2009, c. 601, §14 (AMD).]

SECTION HISTORY
1973, c. 567, §20 (AMD). 2009, c. 601, §14 (AMD).

§2710. DOMESTIC PARTNER REGISTRY

1. **Registry.** The Office of Data, Research and Vital Statistics within the department, referred to in this section as "the registry," shall establish a domestic partner registry.

[2009, c. 601, §15 (AMD) .]

2. **Registered domestic partners; eligibility.** Domestic partners may become registered domestic partners if:

A. At the time when a declaration under subsection 3 is filed, each domestic partner is a mentally competent adult and not impaired or related in a fashion that would prohibit marriage under Title 19-A, section 701, subsection 2, 3 or 4; [2003, c. 672, §17 (NEW).]

B. The domestic partners have been legally domiciled together in this State for at least 12 months preceding the filing; [2003, c. 672, §17 (NEW).]

C. Neither domestic partner is married or in a registered domestic partnership with another person; and [2003, c. 672, §17 (NEW).]

D. Each domestic partner is the sole domestic partner of the other and expects to remain so. [2003, c. 672, §17 (NEW).]

As used in this section, "domestic partners" means 2 unmarried adults who are domiciled together under long-term arrangements that evidence a commitment to remain responsible indefinitely for each other's welfare.

[2003, c. 672, §17 (NEW) .]

3. **Registration.** To become registered domestic partners, domestic partners must jointly file with the registry a declaration under oath of domestic partnership together with the required filing fee. The registry shall file the declaration in the domestic partner registry established pursuant to subsection 1 and return 2 copies of the declaration to the domestic partners at the address provided as their common residence. The registry must charge a fee for registration that is adequate to pay the projected costs for managing the registry.

[2003, c. 672, §17 (NEW) .]

4. **Termination.** A registered domestic partnership is terminated by the marriage of either registered domestic partner or by the filing with the registry of:

A. A notice under oath signed by both registered domestic partners before a notary that the registered domestic partners consent to the termination; or [2003, c. 672, §17 (NEW).]

B. A notice under oath from either registered domestic partner that the other registered domestic partner was served in hand with a notice of intent to terminate the partnership. If service in hand is not feasible, then substitute service may be accomplished in the same fashion as provided by the Maine Rules of Civil Procedure for commencement of a civil action. Termination under this paragraph is not effective until 60 days after service is complete. [2003, c. 672, §17 (NEW).]

[2003, c. 672, §17 (NEW) .]

5. **Indemnity.** If a 3rd party in reliance on the existence of a registered domestic partnership suffers loss because of a failure to receive adequate notice of termination under subsection 4, each registered domestic partner responsible for the failure to give notice is liable to pay the loss.

[2003, c. 672, §17 (NEW) .]

6. **Forms.** The registry shall develop standard forms for the declaration and termination of registered domestic partnerships.

A. The declaration must adequately identify each individual signing the form by name, including former names, residence and date and place of birth. [2003, c. 672, §17 (NEW).]

B. The declaration must contain an assertion under oath that each individual meets the requirements of subsection 2 at the time the declaration is filed. [2003, c. 672, §17 (NEW).]

C. The declaration must contain a warning that registration may affect property and inheritance rights, that registration is not a substitute for a will, a deed or a partnership agreement and that any rights conferred by registration may be completely superseded by a will, a deed or other instruments that may be executed by either party. The declaration must also contain instructions on how the partnership may be terminated. [2003, c. 672, §17 (NEW).]

[2003, c. 672, §17 (NEW) .]

SECTION HISTORY
2003, c. 672, §17 (NEW). 2009, c. 601, §15 (AMD).

Chapter 703: BIRTH RECORDS

§2761. REGISTRATION OF LIVE BIRTHS

A certificate of each live birth that occurs in this State must be filed with the clerk of the municipality in which the live birth occurred or with the state registrar within a reasonable period of time as specified by department rules and must be registered if the certificate has been completed and filed in accordance with this section. [2009, c. 601, §16 (AMD).]

1. **Certificate from hospital.** When the live birth occurs in a hospital or an institution, or en route to the hospital or institution, the person in charge of the institution or the person's authorized designee shall obtain the personal data, prepare the certificate, certify by signature or by electronic process that the child was born alive at the place and time and on the date stated and file the certificate as directed in this section. The physician or other person in attendance shall provide the medical information required by the certificate in a timely fashion, as specified by department rule.

[2009, c. 601, §17 (AMD) .]

2. **Date of birth.**

[1995, c. 260, §6 (RP) .]

3. **Birth outside an institution.** When a birth occurs outside an institution, the certificate must be prepared and filed by one of the following in the indicated order of priority:

A. The physician or other person in attendance at or immediately after the birth; [1995, c. 260, §6 (AMD).]

B. The father; [1995, c. 260, §6 (AMD).]

C. The mother; or [1995, c. 260, §6 (AMD).]

D. The person in charge of the premises where the live birth occurred.

[1995, c. 260, §6 (AMD) .]

3-A. **Parentage.** For the purposes of birth registration, the mother is deemed to be the woman who gives birth to the child, unless otherwise determined by a court of competent jurisdiction prior to the filing of the birth certificate or unless an attested copy of a gestational carrier agreement as defined in Title 19-A, section 1832, subsection 11 is presented that provides otherwise. If the mother was married at the time of

either conception or birth, or between conception and birth, the name of the spouse must be entered on the certificate as the parent of the child, unless parentage has been determined otherwise by a court of competent jurisdiction or unless an attested copy of a gestational carrier agreement is presented that provides otherwise.

[2015, c. 296, Pt. C, §25 (AMD); 2015, c. 296, Pt. D, §1 (AFF) .]

4. **Child not born of marriage.** Except as otherwise provided in this subsection, if the mother was not married at the time of either conception or birth, or between conception and birth, neither the name of the putative father nor any other information about the putative father may be entered on the certificate without his written consent and that of the mother. The signature of the putative father on the written consent must be acknowledged before an official authorized to take oaths. The signature of the mother on her written consent must also be acknowledged before an official authorized to take oaths. If a determination of paternity has been made by a court of competent jurisdiction, then the name of the father as determined by the court must be entered on the birth certificate without the father's or the mother's consent. If the putative father executes an acknowledgement of paternity with the department and the putative father is either named in writing by the mother as the father or is presumed to be the father based on the results of blood or tissue-typing tests, the name of the father must be entered on the birth certificate without the father's or the mother's consent. All voluntary acknowledgments and adjudications of paternity in this State must be filed with the Office of Data, Research and Vital Statistics for comparison with information in the state registry of support orders as established in Title 19-A, section 2104.

[2009, c. 601, §18 (AMD) .]

4-A. **Information verified.** Either of the parents of the child or an informant shall verify the accuracy of the personal data to be entered on the certificate.

[1995, c. 260, §6 (NEW) .]

5. **Certificate signed by father and mother.**

[1995, c. 260, §6 (RP) .]

6. **Disclosure of social security number.** In connection with the preparation and issuance of a birth certificate pursuant to this section, section 2764 or section 2765, each parent shall furnish the social security account number, or numbers if the parent has more than one number, issued to the parent unless the State Registrar of Vital Statistics, in accordance with regulations prescribed by the Secretary of the United States Department of Health and Human Services, finds good cause for not requiring the furnishing of those numbers. The state registrar shall make numbers furnished under this subsection available to the department in its capacity as the state agency administering the State's plan under the United States Social Security Act, Title IV, Part D. Except as required by federal law, those numbers may not be recorded on the birth certificate in such a manner that the numbers would appear on a certified copy of the certificate. Except as required by federal law, the department may not use any social security number, obtained with respect to the issuance of a birth certificate, for any purpose other than for the administration of the State's plan under the United States Social Security Act, Title IV, Part D. The department shall adopt rules to implement this subsection.

[1993, c. 94, §1 (NEW) .]

SECTION HISTORY
1977, c. 188, (AMD). 1985, c. 683, (AMD). 1987, c. 187, (AMD). 1987, c. 266, §§1-3 (AMD). 1993, c. 94, §1 (AMD). 1993, c. 410, §V13 (AMD). 1995, c. 260, §6 (AMD). 1997, c. 537, §57 (AMD). 1997, c. 537, §62 (AFF). 2001, c. 574, §23 (AMD). 2009, c. 601, §§16-18 (AMD). 2015, c. 296, Pt. C, §25 (AMD). 2015, c. 296, Pt. D, §1 (AFF).

§2761-A. BAPTISMAL RECORDS IN LIEU OF BIRTH CERTIFICATES

Any Native American whose birth is not recorded pursuant to this Title relating to the registration of live births may, in lieu of a birth certificate, present an official copy of the baptismal record from the files of the mission where the Native American was baptized. The baptismal record has the same evidentiary character as an unamended and undelayed birth certificate under section 2707. [2009, c. 601, §19 (AMD).]

SECTION HISTORY
1993, c. 738, §C4 (NEW). 2009, c. 601, §19 (AMD).

§2761-B. HOSPITAL-BASED PATERNITY ACKNOWLEDGEMENT

1. **Birthing center.** As used in this section, "birthing center" means a hospital or other facility that provides childbirth services.

[1995, c. 419, §29 (NEW) .]

2. **Procedure.** A birthing center shall provide an opportunity for all unmarried parents to complete a voluntary acknowledgement of paternity. A birthing center shall provide to each unmarried mother and alleged father, if present, written information about paternity establishment provided by the department, forms needed to voluntarily acknowledge paternity and the opportunity to speak with a person who is trained to clarify information and answer questions about paternity establishment. The birthing center shall forward all completed acknowledgement forms to the department.

[1995, c. 419, §29 (NEW) .]

3. **Written information.** The department shall develop an acknowledgement form and written information for use by birthing centers in carrying out the requirements of this section. The information must include a description of the benefits and responsibilities of paternity establishment. The information must include instructions on completing the acknowledgement form.

[1995, c. 419, §29 (NEW) .]

4. **Technical assistance.** The department shall provide birthing centers with training and technical assistance as needed to carry out the requirements of this section.

[1995, c. 419, §29 (NEW) .]

5. **Reimbursement.** The department may establish by rule a fee to reimburse birthing centers for each voluntary acknowledgement of paternity form completed.

[1995, c. 419, §29 (NEW) .]

6. **Rulemaking.** The department shall adopt rules to implement this section that comply with all applicable federal regulations.

[1995, c. 419, §29 (NEW) .]

SECTION HISTORY
1995, c. 419, §29 (NEW).

§2761-C. CERTIFICATE OF BIRTH RESULTING IN STILLBIRTH

Upon request of a parent, in the event of an unintentional intrauterine death of a fetus of 20 or more weeks of gestation, the department shall issue a certificate of birth resulting in stillbirth bearing the official seal of the State. The certificate must be based upon information drawn from a previously filed certificate of fetal death under section 2841. [2009, c. 311, §1 (NEW).]

SECTION HISTORY
2009, c. 311, §1 (NEW).

§2762. RETURN OF ALL BIRTHS

(REPEALED)

SECTION HISTORY
1975, c. 140, §4 (RP).

§2763. BIRTH CERTIFICATES OF FOUNDLINGS; REPORT

Whoever assumes the custody of a child of unknown parentage shall immediately report to the Office of Data, Research and Vital Statistics in writing: [2011, c. 511, §6 (AMD).]

1. **Date and place of finding.** The date and place of finding or assumption of custody;

2. **Sex, color, age.** Sex; color or race; and approximate age of child;

3. **Name and address of custodian.** Name and address of the person or institution with whom the child has been placed for care;

4. **Name.** Name given to the child by the finder or custodian.

The place where the child was found or custody assumed shall be known as the place of birth and the date of birth shall be determined by approximation. The report shall constitute the certificate of birth. If the child is thereafter identified, the record of birth made in compliance herewith and any certificate issued thereon shall be null and void and so recorded.

SECTION HISTORY
2011, c. 511, §6 (AMD).

§2764. DELAYED BIRTH REGISTRATION

In order to provide an official record of statements concerning births which have occurred in this State, the state registrar shall accept a registration of any birth of which no record can be found in either the files of the state registrar or the clerk of the municipality where the birth occurred, provided such registration is filed in accordance with this section.

1. **Certificate of live birth.** A certificate of live birth on the prescribed form must be filed with the Office of Data, Research and Vital Statistics if the date of filing is more than 7 days but not more than one year after the date of birth. The state registrar may prescribe the evidence of the facts of birth to be presented in the event none of the persons specified in section 2761 are available to sign the certificate.

[2011, c. 511, §7 (AMD) .]

2. **Delayed registration of birth.** When the birth occurred more than one year prior to the date of filing, it must be registered on a form entitled "Delayed Registration of Birth." The form must provide for the following information and such other data as may be required by the department:

A. A statement by the applicant including the name and sex of the person whose birth is to be registered, the place and date of birth, the name and birthplace of the father and the maiden name and birthplace of the mother; [2011, c. 511, §7 (AMD).]

B. The signature of the registrant, or a parent or guardian if the registrant is under 15 years of age or is mentally incompetent;

C. The signature of the registrant must be acknowledged before an official authorized to take oaths; [2011, c. 511, §7 (AMD).]

D. A description of each document submitted in support of the delayed birth registration; and

E. The date of filing.

[2011, c. 511, §7 (AMD) .]

3. **Description of evidence completed and filed.** The state registrar shall complete the description of evidence required on the delayed registration of birth and accept and file the certificate, provided the following evidence is submitted in support of the facts of birth.

A. If the birth occurred more than one year but less than 15 years prior to the date of filing, the facts of birth stated by the applicant must be supported by at least 2 documents, only one of which may be an affidavit of personal knowledge; or [2011, c. 511, §8 (AMD).]

B. If the birth occurred more than 15 years prior to the date of filing, the date and place of birth must be supported by at least 3 documents, only one of which may be an affidavit of personal knowledge, and the names of the parents must be supported by at least one document, which may be any one of the 3 submitted in evidence of the place and date of birth.

C. Any document accepted as evidence, other than the affidavit of personal knowledge, shall be at least 5 years old, or shall be a copy or abstract of a record made at least 5 years prior to the date of filing and certified as a true and correct copy by the custodian of the record.

[2011, c. 511, §8 (AMD) .]

4. **Deficiencies.** When the applicant does not submit documentation as specified in subsections 2 and 3 in support of his statements, or when the state registrar finds reason to question the adequacy of the documentation, the said state registrar shall not sign or accept the delayed registration of birth, but shall advise the applicant of its deficiencies and request that further documentation be submitted.

5. **Attested copy to municipality.** After the delayed birth registration has been accepted, the state registrar shall forward an attested copy to the clerk of the municipality where the birth occurred or, in case of a birth in an unincorporated place, to the municipal clerk specified by the state registrar.

[2011, c. 511, §9 (AMD) .]

6. **Form.** Any certified copy of a delayed birth registration filed under this section shall be issued on a form which indicates that it is a copy of a delayed birth registration, and shall contain a description of the documents submitted in evidence.

SECTION HISTORY
2011, c. 511, §§7-9 (AMD).

§2765. NEW CERTIFICATE OF BIRTH FOLLOWING ADOPTION OR LEGITIMATION

1. **New certificate of birth.** The state registrar shall establish a new certificate of birth for a person born in this State when the state registrar receives the following:

A. A certificate of adoption as provided in Title 18-A, section 9-304, or a certified copy of the decree of adoption along with the information necessary to identify the original certificate and establish the new certificate of birth, except that a new certificate may not be established if so requested by the adopting parents or the adopted person if the adopted person is at least 18 years of age; [1995, c. 694, Pt. D, §30 (AMD); 1995, c. 694, Pt. E, §2 (AFF).]

B. A request that a new certificate be established and such evidence as the department may require by rule proving that the person has been legitimated. [1993, c. 686, §6 (AMD); 1993, c. 686, §13 (AFF).]

[1995, c. 694, Pt. D, §30 (AMD); 1995, c. 694, Pt. E, §2 (AFF) .]

1-A. **Persons born in a foreign country.** The state registrar shall establish a Maine certificate of birth for a person born in a foreign country and for whom a decree of adoption has been entered in a court of competent jurisdiction in Maine when the registrar receives the following:

A. A certificate of adoption as provided in Title 18-A, section 9-304; and [1995, c. 694, Pt. D, §31 (AMD); 1995, c. 694, Pt. E, §2 (AFF).]

B. [1991, c. 167, §1 (RP).]

C. A request that a new certificate be established. A Maine certificate of birth may not be established, if so requested by the court decreeing the adoption, the adoptive parents or the adopted person, if the adopted person is 18 years of age or older. [1991, c. 167, §1 (AMD).]

[1995, c. 694, Pt. D, §31 (AMD); 1995, c. 694, Pt. E, §2 (AFF) .]

1-B. **Content of certificate.** Any birth certificate issued under subsection 1-A shall show the true or probable foreign country of birth and shall indicate that the certificate is not evidence of United States citizenship for the child for whom it is issued or for the adoptive parents.

[1979, c. 168, §1 (NEW) .]

2. **Original certificate not subject to inspection.**

[1989, c. 818, §9 (RP) .]

2-A. **Certificate after adoption or legitimation.** This subsection governs birth certificates after adoption or legitimation.

A. When a new birth certificate is established after adoption pursuant to subsection 1, paragraph A, or subsection 1-A, the actual place and date of birth, the names and personal data of the adoptive parents at the time of the child's birth and the name of the child after adoption must be entered on the new birth certificate.

(1) At the request of an adopted person who is at least 18 years of age or of the adoptive parents of an adopted child under 18 years of age, the new certificate must carry a notation that it has been amended, all items that have been revised pursuant to the adoption decree must be identified, and the notation "court action" and the date of the adoption decree must be shown on the new certificate.

(2) If the birth certificate has been annotated pursuant to subparagraph (1), the annotation may be deleted in accordance with department regulations at the request of an adopted person who is at least 18 years of age or of the adoptive parents of an adopted child under 18 years of age. [1991, c. 167, §2 (AMD).]

B. When a new certificate is established after legitimation pursuant to subsection 1, paragraph B, the actual place and date of birth, the name of the child and the names and personal data of both parents at the time of birth must be shown. Notwithstanding section 2705, the new certificate may not be marked "amended." The new certificate must be filed with all other birth certificates and is not subject to the provisions of section 2761, subsection 4. [2009, c. 601, §20 (AMD).]

C. When a new certificate of birth is established following adoption or legitimation, it must be substituted for the original certificate of birth. After that substitution, the original certificate of birth and the evidence of adoption are not subject to inspection except upon order of the Probate Court or the Superior Court or pursuant to section 2768. The application for legitimation may be released to persons listed on the original birth certificate upon completion of written application to the State Registrar of Vital Statistics or the registrar's designee. [2007, c. 409, §2 (AMD); 2007, c. 409, §6 (AFF).]

[2009, c. 601, §20 (AMD) .]

3. **Original certificate restored.** Upon receipt of notice of an annulment or revocation of adoption, the original certificate shall be restored to its place in the files and the new certificate and evidence of adoption shall not be subject to inspection except upon order of a probate court or the Superior Court.

4. **Delayed birth registration.** If no certificate of birth is on file for the person for whom a new certificate is to be established under this section, a delayed birth registration shall be filed as provided by law before a new certificate of birth is established.

5. **Copies of original certificate.** When the new certificate of birth is established, the state registrar shall provide each municipal clerk who is required by law to have a copy of the certificate of birth on file with a copy of the new certificate of birth. In the case of a Maine certificate of birth established for a person born in a foreign country, a copy of the certificate must be provided to and must be maintained on file by the clerk of the municipality where the adoptive parents resided on the date of the adoption. All copies of the original certificate in the custody of any municipal clerk must be sealed from inspection, except as provided in section 2768, or surrendered to the state registrar as the state registrar directs.

[2007, c. 409, §3 (AMD); 2007, c. 409, §6 (AFF) .]

SECTION HISTORY
1979, c. 168, §§1,2 (AMD). 1989, c. 818, §§8-10 (AMD). 1991, c. 167, §§1,2 (AMD). 1993, c. 686, §§6,7 (AMD). 1993, c. 686, §13 (AFF). 1995, c. 694, §§D30,31 (AMD). 1995, c. 694, §E2 (AFF). 2001, c. 574, §24 (AMD). 2007, c. 409, §§2, 3 (AMD). 2007, c. 409, §6 (AFF). 2009, c. 601, §20 (AMD).

§2766. STATEMENT OF BIRTH PARENTS' IDENTITY

A person 18 years of age or older, born and adopted in this State, may apply to the state registrar for a statement identifying his birth parents. The adoptee shall submit to the state registrar the following: [1983, c. 356, (NEW).]

1. **Proof.** Proof that the birth parents are deceased;

[1983, c. 356, (NEW) .]

2. **Affidavit.** An affidavit from a blood relative who is not a sibling and who is at least 10 years older than the adoptee, verifying that the adoptee lived with the birth parents for 5 years; and

[1983, c. 356, (NEW) .]

3. **Order.** An order from the Probate Court or Superior Court authorizing the state registrar to open the original birth certificate to verify the identity of the birth parents.

[1983, c. 356, (NEW) .]

Upon verification of the information in this section, the state registrar shall prepare a form identifying the birth parents of the adoptee. This form must be attached to the new certificate of birth established pursuant to section 2765. A copy of the form must be attached to an abstract of birth issued by the Office of Data, Research and Vital Statistics and must be provided to the adoptee. [2009, c. 601, §21 (AMD).]

A statement of identification of the birth parents shall not affect the rights of inheritance and descent. The form shall contain the following words in a conspicuous place: "This statement shall not affect the rights of inheritance and descent of the adoptee." [1983, c. 356, (NEW).]

SECTION HISTORY
1983, c. 356, (NEW). 2001, c. 574, §25 (AMD). 2009, c. 601, §21 (AMD).

§2767. AMENDMENT OF CERTIFICATE OF BIRTH OF ADULT

The State Registrar of Vital Statistics shall amend the certificate of birth of a person 18 years of age or older born in this State for the purpose of identifying a biological parent who was not known or listed at the time of birth when the state registrar has received the following: [2003, c. 585, §2 (NEW).]

1. **Request.** A written request from the subject of the birth certificate that the certificate be amended;

[2003, c. 585, §2 (NEW) .]

2. **Written consent.** Written consent of:

A. The subject of the birth certificate; and [2003, c. 585, §2 (NEW).]

B. The biological parent to be named on the amended birth certificate. [2003, c. 585, §2 (NEW).]

Written consent must be notarized or acknowledged before an official authorized to take oaths; and

[2003, c. 585, §2 (NEW) .]

3. **Evidence of parentage; test requirements.** Evidence of parentage based on testing of deoxyribonucleic acid, DNA, that includes:

A. A notarized report of the results of the DNA testing; and [2003, c. 585, §2 (NEW).]

B. Notarized documentation of the chain of custody of the blood and tissue samples examined in the testing. [2003, c. 585, §2 (NEW).]

The testing must be of a type generally acknowledged as reliable by accreditation bodies designated by the federal Secretary of Health and Human Services, and it must be performed by a laboratory approved by an accreditation body designated by the federal Secretary of Health and Human Services.

[2003, c. 585, §2 (NEW) .]

SECTION HISTORY
2003, c. 585, §2 (NEW).

§2768. ACCESS TO ORIGINAL BIRTH CERTIFICATE BY ADOPTED PERSON

An adopted person, the adopted person's attorney or, if the adopted person is deceased, the adopted person's descendants may obtain a copy of that person's original certificate of birth from the State Registrar of Vital Statistics, referred to in this section as "the state registrar," in accordance with this section. [2007, c. 409, §4 (NEW); 2007, c. 409, §6 (AFF).]

1. **Requirements.** The adopted person must be at least 18 years of age and have been born in this State.

[2007, c. 409, §4 (NEW); 2007, c. 409, §6 (AFF) .]

2. **Application.** The adopted person must file a written application with and provide appropriate proof of identification to the state registrar.

[2007, c. 409, §4 (NEW); 2007, c. 409, §6 (AFF) .]

3. **Issuance of birth certificate and forms.** Upon receipt of the written application and proof of identification pursuant to subsection 2 and fulfillment of the requirements of subsection 4, the state registrar shall issue a noncertified copy of the unaltered original certificate of birth to the applicant. If a contact preference or medical history form has been completed and submitted to the state registrar pursuant to section 2769, the state registrar also must provide that information.

[2007, c. 409, §4 (NEW); 2007, c. 409, §6 (AFF) .]

4. **Fees; waiting period.** The state registrar may require a waiting period and impose a fee for the noncertified copy provided pursuant to subsection 3. The fees and waiting period imposed under this subsection must be identical to the fees and waiting period generally imposed on persons seeking their own birth certificates.

[2007, c. 409, §4 (NEW); 2007, c. 409, §6 (AFF) .]

5. **Forms; rules.** The state registrar shall develop by rule the data elements required in the contact preference form, medical history form and application form as required by this section and may adopt other rules for the administration of this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 601, §22 (AMD) .]

SECTION HISTORY
2007, c. 409, §4 (NEW). 2007, c. 409, §6 (AFF). 2009, c. 601, §22 (AMD).

§2769. CONTACT PREFERENCE AND MEDICAL HISTORY FORMS

The State Registrar of Vital Statistics shall provide upon request each birth parent a contact preference form and a medical history form as described in this section. [2007, c. 409, §5 (NEW); 2007, c. 409, §6 (AFF).]

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

A. "Adoptee" means the person who is the subject of a birth certificate. [2007, c. 409, §5 (NEW); 2007, c. 409, §6 (AFF).]

B. "Birth parent" means the person who is the biological parent of an adoptee and who is named as the parent on the original birth certificate of the adoptee. [2007, c. 409, §5 (NEW); 2007, c. 409, §6 (AFF).]

C. "Contact preference form" means the form developed by the state registrar pursuant to subsection 3. [2007, c. 409, §5 (NEW); 2007, c. 409, §6 (AFF).]

D. "Medical history form" means the form developed by the state registrar pursuant to subsection 2. [2007, c. 409, §5 (NEW); 2007, c. 409, §6 (AFF).]

E. "State registrar" means State Registrar of Vital Statistics. [2007, c. 409, §5 (NEW); 2007, c. 409, §6 (AFF).]

[2007, c. 409, §5 (NEW); 2007, c. 409, §6 (AFF) .]

2. **Medical history form.** The state registrar shall develop and distribute upon request to birth parents a medical history form. A birth parent may use this form to describe the medical history of the birth parent. A birth parent shall fill out a medical history form if that birth parent fills out a contact preference form.

[2007, c. 409, §5 (NEW); 2007, c. 409, §6 (AFF) .]

3. **Contact preference form.** The state registrar shall develop a contact preference form on which a birth parent may state a preference regarding contact by an adoptee. The form must contain the following statements from which the birth parent may choose only one.

A. "I would like to be contacted. I have completed this contact preference form and a medical history form and am filing them with the State Registrar of Vital Statistics." [2007, c. 409, §5 (NEW); 2007, c. 409, §6 (AFF).]

B. "I would prefer to be contacted only through an intermediary. I have completed this contact preference form and a medical history form and am filing them with the State Registrar of Vital Statistics." [2007, c. 409, §5 (NEW); 2007, c. 409, §6 (AFF).]

C. "Do not contact me. I may change this preference by filling out another contact preference form. I have completed this contact preference form and a medical history form and am filing them with the State Registrar of Vital Statistics." [2007, c. 409, §5 (NEW); 2007, c. 409, §6 (AFF).]

[2007, c. 409, §5 (NEW); 2007, c. 409, §6 (AFF) .]

4. **Attachment of forms to birth certificate; treatment.** Upon receipt of a completed contact preference form or medical history form, the state registrar shall attach the completed form to the original birth certificate of the adoptee. A completed contact preference form and medical history form have the same level of confidentiality as the original birth certificate.

[2007, c. 409, §5 (NEW); 2007, c. 409, §6 (AFF) .]

5. **Forms; rules.** The state registrar shall develop by rule the data elements required for forms as required by this section and may adopt other rules for the administration of this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 601, §23 (AMD) .]

SECTION HISTORY
2007, c. 409, §5 (NEW). 2007, c. 409, §6 (AFF). 2009, c. 601, §23 (AMD).

Chapter 705: MARRIAGE RECORDS AND LICENSES

§2801. ISSUANCE OF MARRIAGE CERTIFICATES TO NONRESIDENTS; DIVORCE CERTIFICATE

(REPEALED)

SECTION HISTORY
1977, c. 9, (AMD). 1995, c. 694, §E2 (AFF). 1995, c. 694, §D32 (RP).

§2802. COPY OF RECORD OF MARRIAGES

(REPEALED)

SECTION HISTORY
1973, c. 161, (AMD). 1981, c. 456, §A70 (AMD). 1983, c. 480, §§A,3,31 (AMD). 1989, c. 225, §6 (AMD). 1995, c. 694, §E2 (AFF). 1995, c. 694, §D33 (RP).

§2803. RECORDS OF DIVORCES AND ANNULMENTS

The clerk of the Superior Court in each county and the clerk of the District Court in each judicial division shall file with the State Registrar of Vital Statistics a record of each divorce judgment or annulment issued in his jurisdiction within 45 days after judgment.

Such record shall contain the names and residences of the parties and name of the person to whom judgment was issued, the date and place of the marriage, the date of and legal grounds for the judgment and the names and ages of the minor children. Forms shall be furnished by the registrar.

The record of divorce prepared for the state registrar shall not become a part of the official record of the court.

§2804. --INDEX

The Registrar of Vital Statistics shall prepare and keep an alphabetical index, by the names of both parties, of all annulments and divorces reported. When requested, the registrar shall cause a search to be made of the files for the record of any divorce or annulment and shall furnish a copy thereof. The fee for such search and copy must reasonably reflect the cost of the service, as specified in Title 22-A, section 210. [2007, c. 539, Pt. N, §31 (AMD).]

SECTION HISTORY
1967, c. 186, §3 (AMD). 1987, c. 259, §1 (AMD). 2007, c. 539, Pt. N, §31 (AMD).

Chapter 706: UNIFORM DETERMINATION OF DEATH ACT

§2811. DETERMINATION OF DEATH

An individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards. [1983, c. 33, (NEW).]

SECTION HISTORY
1983, c. 33, (NEW).

§2812. UNIFORMITY OF CONSTRUCTION AND APPLICATION

This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it. [1983, c. 33, (NEW).]

SECTION HISTORY
1983, c. 33, (NEW).

§2813. SHORT TITLE

This Act may be cited as the Uniform Determination of Death Act. [1983, c. 33, (NEW).]

SECTION HISTORY
1983, c. 33, (NEW).

Chapter 707: DEATHS AND BURIALS

§2841. REGISTRATION OF FETAL DEATHS

Except as authorized by the department or as required under section 1596, a certificate of each death of a fetus of 20 or more weeks of gestation that occurs in this State must be filed with the State Registrar of Vital Statistics or the clerk of the municipality where the delivery occurred within 14 days after delivery and prior to removal of the fetus from the State. [2013, c. 14, §1 (AMD).]

1. **Certificate filed by funeral director.** The funeral director or other authorized person in charge of the disposition of the dead fetus or its removal from the State is responsible for filing the certificate. In the absence of such a person, the physician or other person in attendance at or after the delivery is responsible for filing the certificate. The funeral director or authorized person or physician or other person in attendance at or after delivery shall obtain the personal data from the best qualified person or source available and shall present the certificate to the person responsible for completing the medical certification of the cause of death.

[2009, c. 601, §24 (AMD) .]

2. **Medical certificate by physician.** The medical certification shall be completed and signed within 5 days after delivery by the physician in attendance at or after the delivery, except when an inquiry as to the cause of fetal death is required by law.

[1989, c. 274, §3 (AMD) .]

3. **Medical certificate by medical examiner.** When the fetal death occurs without medical attendance upon the mother at or after delivery, or when inquiry as to the cause of fetal death is required by law, the medical examiner shall complete and sign the medical certification within 5 days after delivery. A certification need not be completed before the remains are ready for release.

[1989, c. 274, §3 (AMD) .]

4. **Certificate from hospital or institution.** When the fetal death occurs in a hospital or an institution, the person in charge of the hospital or institution or the person authorized to obtain the medical data shall prepare the certificate, certify by signature or by electronic process that the fetal death occurred at the place

and time and on the date stated and file the certificate as directed in this section. The physician or other person in attendance shall provide the medical information required on the certificate in a timely fashion, as specified by department rule.

[2013, c. 14, §2 (NEW) .]

SECTION HISTORY
1977, c. 232, §1 (AMD). 1979, c. 363, §5 (AMD). 1989, c. 274, §§2,3 (AMD). RR 2009, c. 2, §54 (COR). 2009, c. 601, §24 (AMD). 2013, c. 14, §§1, 2 (AMD).

§2842. REGISTRATION OF DEATHS

Except as authorized by the department, a certificate of each death that occurs in this State must be filed with the State Registrar of Vital Statistics or clerk of the municipality where death occurred within a reasonable period of time, as specified by department rule, after the day on which death occurred and prior to the removal of the body from the State. [2009, c. 601, §25 (AMD).]

1. **Certificate filed by funeral director.** The funeral director or other authorized person in charge of the disposition of the dead human body or its removal from the State is responsible for filing the certificate. The funeral director or authorized person shall obtain the personal data from the best qualified person or source available.

[2009, c. 601, §25 (AMD) .]

2. **Medical certificate by physician, nurse practitioner or physician assistant.** The medical certification of the cause of death must be completed and signed in a timely manner, as specified by department rule, by a physician, nurse practitioner or physician assistant authorized to practice in the State who has knowledge of the patient's recent medical condition, in accordance with department rules and other laws detailing who can certify and in what time frame, except when the death falls under the jurisdiction of the medical examiner as provided in section 3025. If the patient was a resident of a nursing home licensed under section 1817 at the time of death and if the health care provider in charge of the patient's care or another health care provider designated by the health care provider in charge had not examined the patient within 48 hours prior to death, or within 2 weeks prior to death in the case of a terminally ill patient, the health care provider in charge or another health care provider designated by the health care provider in charge shall examine the body prior to completing the certification of death process. Any health care provider who fails to complete the medical certification of the cause of death fully, in a timely manner, or who fails to examine the body of a nursing home resident prior to certifying cause of death as required by this section must be reported to the Board of Licensure in Medicine, the Board of Osteopathic Licensure or the State Board of Nursing, whichever is appropriate, by the State Registrar of Vital Statistics of the Department of Health and Human Services.

For the purposes of this subsection, the following terms have the following meanings.

A. "Life-sustaining procedure" means any medical procedure or intervention that, when administered to a qualified patient, will serve only to prolong the dying process and does not include nutrition and hydration. [2001, c. 574, §26 (AMD).]

B. "Terminally ill patient" means a patient who has been diagnosed as having an incurable or irreversible condition that, without the administration of life-sustaining procedures, will, in the opinion of the attending health care provider, result in death within a short time. [2005, c. 359, §1 (AMD).]

C. "Health care provider" means a physician authorized to practice in this State, nurse practitioner or physician assistant. [2007, c. 56, §1 (AMD).]

D. "Nurse practitioner" means an advanced practice registered nurse who is a certified nurse practitioner authorized to practice without the supervision of a physician pursuant to Title 32, chapter 31. [2005, c. 359, §1 (NEW).]

E. "Physician assistant" means a person who has graduated from a physician assistant or surgeon assistant program accredited by the American Medical Association Committee on Allied Health Education and Accreditation or the Commission on Accreditation of Allied Health Education Programs or its successor and who has passed the certifying examination administered by the National Commission on Certification of Physician Assistants or its successor. [2007, c. 56, §1 (NEW).]

[2009, c. 601, §25 (AMD) .]

2-A. **Medical certification.** Notwithstanding subsection 2, with respect to a person who dies within the State naturally and for whom the physician, nurse practitioner or physician assistant was the attending health care provider, the medical certification of the cause of death may be completed and signed by a physician, nurse practitioner or physician assistant authorized to practice at the United States Department of Veterans Affairs at Togus or at another federal medical facility within the State or by a physician, an advanced practice registered nurse or physician assistant licensed to practice in New Hampshire, Vermont or Massachusetts who, at the request of the Chief Medical Examiner, is willing to do so.

[2009, c. 601, §25 (AMD) .]

3. **Medical certificate by medical examiner or the Office of the Chief Medical Examiner.** When a death occurs under circumstances that make it a medical examiner case as defined in section 3025, or when inquiry as to the cause of death is required by law, the medical examiner or the Office of the Chief Medical Examiner shall complete the medical certification of the cause of death as specified by department rule and sign the death certificate. A certification need not be completed before the remains are ready for release.

The medical examiner or the Office of the Chief Medical Examiner is responsible for the identity of the deceased and the time, date, place, cause, manner and circumstances of death on the death certificate. Entries may be left "pending" if further study is needed; or, at the specific direction of the Attorney General relative to cases under investigation by the Attorney General's office, entries must be left "withheld" until such time as the Attorney General, in the Attorney General's sole discretion, determines that any criminal investigation and prosecution will not be harmed by public disclosure of such information. Notwithstanding section 2706, subsection 4, unless directed otherwise by the Attorney General as specified in this subsection, this information for which the medical examiner is responsible may be made available to the general public by the Office of the Chief Medical Examiner.

[2013, c. 31, §1 (AMD) .]

4. **Correction of errors on death statistic records filed under chapter 711.** Certificates of death in medical examiner cases, as defined in section 3025, may be completed or amended at any time by means described in rule by the department to the Office of the Chief Medical Examiner. Either the Chief Medical Examiner or the medical examiner assigned to the case may sign the forms or submit an electronic amendment or file a certificate using the electronic death registration system in accordance with section 2847. A person authorized by the Chief Medical Examiner may amend a certificate of death with respect to the time, date, place and circumstances of death. The medical examiner assigned shall submit the form or electronic amendment to the Office of the Chief Medical Examiner for filing with the State Registrar of Vital Statistics. These forms or electronic amendments may be filed at any time after death and need not include a summary description of the evidence in support of the completion or amendment.

[2013, c. 31, §1 (AMD) .]

SECTION HISTORY

1977, c. 232, §2 (AMD). 1977, c. 382, (AMD). 1979, c. 538, §1 (AMD). 1985, c. 611, §§2,3 (AMD). 1987, c. 72, (AMD). 1987, c. 296, §§1,2 (AMD). 1987, c. 329, §1 (AMD). 1987, c. 769, §A75 (AMD). 1993, c. 600, §§B21,22 (AMD). 2001, c. 574, §§26,27 (AMD). 2003, c. 74, §§1,2 (AMD). 2003, c. 433, §2 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 359, §§1,2 (AMD). 2007, c. 56, §§1, 2 (AMD). 2009, c. 601, §25 (AMD). 2013, c. 31, §1 (AMD).

§2842-A. IDENTIFICATION OF DEAD HUMAN BODIES WITH COMMUNICABLE DISEASES

The department shall promulgate rules providing for notification to funeral directors or other authorized agents in charge of the disposition of dead human bodies in cases when the body has been diagnosed as having a communicable disease. [1987, c. 811, §20 (NEW).]

Notification pursuant to this section is not a violation of this Title or Title 5, chapter 501. [1987, c. 811, §20 (NEW).]

SECTION HISTORY
1987, c. 811, §20 (NEW).

§2842-B. NATIVE AMERICAN HUMAN REMAINS

1. **Transfer of remains.** Except as provided in subsections 2 and 3, a person or entity who possesses any human remains identified as Native American human remains shall transfer the remains to the intertribal repatriation organization that is appointed by the Passamaquoddy Tribe, Penobscot Nation, Houlton Band of Maliseet Indians and Aroostook Band of Micmacs for reburial. The intertribal repatriation organization shall make reasonable inquiry to locate the next of kin of the deceased. If next of kin are located, the intertribal repatriation organization shall transfer the remains to the next of kin.

[2009, c. 601, §26 (AMD) .]

2. **Medical Examiner cases.** In cases within the jurisdiction of the Medical Examiner Act, the Chief Medical Examiner has authority over Native American human remains until the remains are no longer required for legal purposes. At that time, the Chief Medical Examiner shall make reasonable inquiry to locate the next of kin of the deceased. If next of kin are located, the Chief Medical Examiner shall release the remains to the next of kin of the deceased. If no next of kin are located, the remains must be released to the intertribal repatriation organization for reburial.

[2009, c. 601, §26 (AMD) .]

3. **Native American Graves Protection and Repatriation Act.** Subsection 1 does not apply to any human remains or any person or entity subject to the Native American Graves Protection and Repatriation Act, 25 United States Code, Chapter 32.

[2001, c. 601, §1 (NEW) .]

4. **Memorandum of understanding.** The Chief Medical Examiner, the Maine Historic Preservation Commission and the Maine State Museum shall enter into a memorandum of understanding concerning the disposition of human remains in the possession of the Chief Medical Examiner that are subject to the Native American Graves Protection and Repatriation Act.

[2001, c. 601, §1 (NEW) .]

SECTION HISTORY

1993, c. 738, §C5 (NEW). 2001, c. 601, §1 (RPR). 2009, c. 601, §26 (AMD).

§2843. PERMITS FOR FINAL DISPOSITION OF DEAD HUMAN BODIES

Except as authorized by the department, a dead human body may not be buried, cremated or otherwise disposed of or removed from the State until a funeral director or other authorized person in charge of the disposition of the dead human body or its removal from the State has obtained a permit from the State Registrar of Vital Statistics or the clerk of the municipality where death occurred or where the establishment of a funeral director having custody of the dead human body is located as specified by department rule. The permit is sufficient authority for final disposition in any place where dead human bodies are disposed of in this State, as long as the requirements of Title 32, section 1405 are met in appropriate cases. The permit may not be issued to anyone other than a funeral director until the state registrar or the clerk of the municipality receives a medical certificate that has been signed by a physician or a medical examiner that indicates that the physician or medical examiner has personally examined the body after death. A permit must also be issued if a nurse practitioner or physician assistant has signed the medical certificate indicating that the nurse practitioner or physician assistant has knowledge of the deceased's recent medical condition or was in charge of the deceased's care and that the nurse practitioner or physician assistant has personally examined the body after death. The authorized person may transport a dead human body only upon receipt of this permit. [2009, c. 601, §27 (AMD).]

The State Registrar of Vital Statistics or a municipal clerk may issue a permit for final disposition by cremation, burial at sea, use by medical science or removal from the State only upon receipt of a certificate of release by a duly appointed medical examiner as specified in Title 32, section 1405. [2009, c. 601, §27 (AMD).]

The State Registrar of Vital Statistics or a municipal clerk may issue a disposition of human remains permit to a funeral director who presents a report of death and states that the funeral director has been unable to obtain a medical certification of the cause of death. The funeral director shall name the attending physician, attending nurse practitioner, attending physician assistant or medical examiner who will certify to the cause of death and present assurances that the attending physician, attending nurse practitioner, attending physician assistant or medical examiner has agreed to do so. The funeral director shall exercise due diligence to secure the medical certification and file the death certificate as soon as possible. [2009, c. 601, §27 (AMD).]

1. **Permit for transportation.** Each dead human body transported into this State for final disposition must be accompanied by a permit issued by the duly constituted authority at the place of death. Such permit is sufficient authority for final disposition in any place where dead human bodies are disposed of in this State.

[2009, c. 601, §27 (AMD) .]

2. **Permit for disinterment or removal.** A dead human body may not be disinterred or removed from any vault or tomb until the person in charge of the disinterment or removal has obtained a permit from the State Registrar of Vital Statistics or from the clerk of the municipality where the dead human body is buried or entombed. The permit must be issued upon receipt of a notarized application signed by the next of kin of the deceased who verifies that the signer is the closest surviving known relative and, when any other family member of equal or greater legal or blood relationship or a domestic partner of the decedent also survives, that all such persons are aware of, and do not object to, the disinterment or removal. This subsection does not preclude a court of competent jurisdiction from ordering or enjoining disinterment or removal pursuant to section 3029 or in other appropriate circumstances. For purposes of this subsection, "domestic partner" means one of 2 unmarried adults who are domiciled together under long-term arrangements that evidence a commitment to remain responsible indefinitely for each other's welfare.

[2013, c. 20, §1 (AMD) .]

3. **Permit for burial.** The person in charge of each burying ground or crematory in this State shall endorse, and provide the date the body was disposed of on, each such permit with which that person is presented, and return it to the State Registrar of Vital Statistics or to the clerk of the municipality in which such burying ground or crematory is located within 7 days after the date of disposition. If there is no person in charge of the burying ground, an official of the municipality in which the burying ground is located shall endorse, and provide the date the body was disposed of on, each such permit, and present it to the State Registrar of Vital Statistics or the clerk of the municipality. The funeral director or authorized person shall present a copy of each permit, after endorsement, to the State Registrar of Vital Statistics or the clerk of the municipality where death occurred and to the clerk who issued the permit.

[2013, c. 20, §1 (AMD) .]

4. **Records.** Each municipality shall maintain a record of any endorsed permit received pursuant to subsection 3. These records must be open to public inspection.

[2009, c. 601, §27 (AMD) .]

SECTION HISTORY
1977, c. 232, §3 (AMD). 1985, c. 44, (AMD). 1985, c. 231, §§1-3 (AMD). 1985, c. 602, (AMD). 2001, c. 574, §28 (AMD). 2003, c. 672, §18 (AMD). 2005, c. 359, §§3,4 (AMD). 2007, c. 56, §§3, 4 (AMD). 2009, c. 601, §27 (AMD). 2013, c. 20, §1 (AMD).

§2843-A. CUSTODY OF REMAINS OF DECEASED PERSONS

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

A. "At-need funeral arrangements" means funeral arrangements made after death. [1993, c. 609, §1 (NEW).]

B. "Custody and control" means the right to make all decisions, consistent with applicable laws, regarding the handling of a dead body, including, but not limited to, possession, at-need funeral arrangements, final disposition and disinterment. [1993, c. 609, §1 (NEW).]

B-1. "Dead body" or "dead human body" means a body or fetus for which it reasonably can be determined that death occurred. [2009, c. 601, §28 (NEW).]

C. "Estranged" means living in separate residences and having a relationship characterized by hostility or indifference. [1993, c. 609, §1 (NEW).]

D. "Next of kin" means a person having the following relationship to the subject, in the following order of priority:

(1) The spouse;

(1-A) A domestic partner. For purposes of this section, "domestic partner" means the partner of the subject who:

(a) Is a mentally competent adult;

(b) Had been legally domiciled with the subject for at least 12 months immediately preceding the death of the subject;

(c) Is not legally married to or legally separated from another individual;

(d) Was the sole partner of the subject; and

(e) Was jointly responsible with the subject for each other's common welfare as evidenced by joint living arrangements, joint financial arrangements or joint ownership of real or personal property;

(2) An adult son or daughter;

(3) A parent;

(4) An adult brother or sister;

(5) An adult grandchild;

(6) An adult niece or nephew who is the child of a brother or sister;

(7) A maternal grandparent;

(8) A paternal grandparent;

(9) An adult aunt or uncle;

(10) An adult first cousin;

(11) Any other adult relative in descending order of blood relationship; or

(12) If the subject is a veteran and has no known living spouse or adult relative, the Adjutant General or the Adjutant General's designee. For purposes of this paragraph, "veteran" has the same meaning as in section 2900, subsection 1, paragraph B. [2015, c. 208, §1 (AMD).]

E. "Subject" means the person whose remains are placed in the custody and control of another person pursuant to this section. [1993, c. 609, §1 (NEW).]

[2015, c. 208, §1 (AMD) .]

2. **Custody and control generally.** The custody and control of the remains of deceased residents of this State, dead bodies or dead human bodies are governed by the following provisions in the following order of priority:

A. If the subject has designated another person to have custody and control in a written and signed document, custody and control belong to that designated person; [2011, c. 387, §1 (AMD).]

B. If the subject has not left a written and signed document designating a person to have custody and control, or if the person designated by the subject refuses custody and control, custody and control belong to the next of kin; and [2011, c. 387, §1 (AMD).]

C. If the next of kin is 2 or more persons with the same relationship to the subject, the majority of the next of kin have custody and control. If the next of kin can not, by majority vote, make a decision regarding the subject's remains, the court shall make the decision upon petition under subsection 4, paragraph D. [1993, c. 609, §1 (NEW).]

If a person who has the right of custody and control under this subsection does not exercise the rights and responsibilities of custody and control within 4 days after the death of the subject, custody and control belong to a person from the next lower level of priority as established in paragraphs A to C.

A person who has been charged with murder, as described in Title 17-A, section 201, or manslaughter, as described in Title 17-A, section 203, subsection 1, paragraph B, forfeits the right of custody and control provided under this subsection; and a funeral director or practitioner of funeral service who is aware of the charges may not release the remains or a dead body to that person who has been charged with murder or manslaughter. If the charges against the person are dismissed or the person is acquitted of the charges before the final disposition takes place, the person regains the right of custody and control in the same position of priority established in this subsection.

The remains or a dead body is considered abandoned if no one takes custody and control of the remains or dead body for a period of 15 days. A funeral director or practitioner of funeral service who has physical possession of abandoned remains or an abandoned dead body may bury the remains or dead body. The funeral

director or practitioner of funeral service may embalm or refrigerate abandoned remains or an abandoned dead body without authorization. A certificate of abandonment that indicates the means of disposition must be filed in the municipality where the death occurred.

[2011, c. 387, §1 (AMD) .]

3. **Estranged spouse or domestic partner.** Notwithstanding subsection 2, if the surviving spouse or surviving domestic partner and the subject were estranged at the time of death, the spouse or domestic partner may not have custody and control of the subject's remains. In these cases, custody and control belong to the next of kin following the spouse or domestic partner.

[2003, c. 672, §20 (AMD) .]

4. **Court determination.** Notwithstanding other provisions of this section, the court of probate for the residence of the deceased may award custody and control to the person determined by the court most fit and appropriate to carry out the responsibilities of custody and control, and may make decisions regarding the subject's remains if those having custody and control can not agree. The following provisions apply to court determinations under this subsection.

A. Before the subject's death, the subject or the subject's legal representative may file a petition regarding custody and control of the subject's remains. [1993, c. 609, §1 (NEW).]

B. A relative of the subject may file a petition. [1993, c. 609, §1 (NEW).]

C. A person who claims and establishes through evidence that that person has or had a closer personal relationship to the subject than the next of kin may file a petition, if that person lived with the subject and was not in the employ of the subject or the subject's family. [1993, c. 609, §1 (NEW).]

D. If the next of kin is 2 or more persons with the same relationship to the subject, and the next of kin can not, by majority vote, make a decision regarding the subject's remains, 2 or more persons who have custody or control or a funeral director may file a petition asking the court to make a determination in the matter. The court shall consider the following in making its determination:

(1) The reasonableness and practicality of the proposed arrangements;

(2) The degree of the personal relationship between the subject and each of the 2 or more persons with custody and control;

(3) The desires of the person or persons who are ready, able and willing to pay the costs of the arrangements;

(4) The convenience and needs of other family and friends wishing to pay respect;

(5) The expressed written desires of the subject; and

(6) The degree to which the arrangements will allow maximum participation by all wishing to pay respect. [1993, c. 609, §1 (NEW).]

[1993, c. 609, §1 (NEW) .]

5. **Wishes of subject.** If the subject has left written and signed instructions regarding funeral arrangements and disposal of the subject's remains, the person having custody and control shall abide by those wishes to the extent that the subject paid for those arrangements in advance or left resources for the purpose of carrying out those wishes.

[1993, c. 609, §1 (NEW) .]

6. **Effect of payment by others.** Except to the degree it must be considered by the court under subsection 4, paragraph D, the fact that a person other than the subject has paid or agreed to pay for all or part of arrangements does not give that person a greater right to custody and control than that person would otherwise have.

[1993, c. 609, §1 (NEW) .]

7. **Authority of personal representative.** The personal representative of the estate of the subject does not, by virtue of being the personal representative, have a greater right to custody and control than the person would otherwise have.

[1993, c. 609, §1 (NEW) .]

8. **Immunity.** A party, including but not limited to a funeral director or practitioner of funeral service, who, in good faith, acts upon the instructions of the party having custody and control is not liable for having carried out those instructions, may not be held civilly or criminally liable and is not subject to disciplinary action for acting in accordance with those instructions.

[2015, c. 188, §1 (AMD) .]

9. **Application.** This section does not apply to the disposition of the remains of a deceased person under chapter 709. This section does not diminish or otherwise alter the authority of a medical examiner or other official authorized under chapter 711. This section does not alter the rights and obligations of the decedent's next of kin under Title 18-A.

[1993, c. 609, §1 (NEW) .]

10. **Funeral director or practitioner of funeral service.** The following provisions apply to the actions and liability of a funeral director or practitioner of funeral service, cemeteries and crematories and their employees.

A. If there is a dispute regarding custody and control, a funeral director or practitioner of funeral service may refuse to accept the remains or dead body, inter or otherwise dispose of the remains or dead body or complete funeral arrangements until the funeral director or practitioner of funeral service is provided with a court order under subsection 4 or a written agreement of the person who has custody and control. [2011, c. 387, §3 (NEW).]

B. If there is a dispute regarding custody and control, pending a court determination under subsection 4 a funeral director or practitioner of funeral service who has physical possession of the remains or a dead body may embalm or refrigerate and shelter the remains or a dead body and may bill the estate of the subject for those costs, plus attorney's fees and court costs. [2011, c. 387, §3 (NEW).]

C. A person who signs a statement of funeral goods and services, cremation authorization form or other authorization for disposition of the remains or a dead body is deemed to warrant the truthfulness of the facts set forth in the document, including but not limited to the existence of custody and control and the identity of the subject. [2011, c. 387, §3 (NEW).]

D. A funeral director or practitioner of funeral service, cemetery or crematory may rely on a statement of funeral goods and services, cremation authorization form or other authorization signed by a person who has custody and control of the remains or a dead body and may carry out the instructions provided for in the statement of funeral goods and services or on the form or authorization unless the funeral director or practitioner of funeral service, cemetery or crematory knows of objections from another person. [2011, c. 387, §3 (NEW).]

E. A funeral director or practitioner of funeral service, cemetery or crematory is not required to independently investigate custody and control of the remains or a dead body or who is next of kin. [2011, c. 387, §3 (NEW).]

[2011, c. 387, §3 (NEW) .]

SECTION HISTORY
1993, c. 609, §1 (NEW). 2003, c. 672, §§19,20 (AMD). 2009, c. 159, §1 (AMD). 2009, c. 601, §§28, 29 (AMD). 2011, c. 387, §§1-3 (AMD). 2015, c. 188, §1 (AMD). 2015, c. 208, §1 (AMD).

§2844. SUBREGISTRARS

The State Registrar of Vital Statistics or municipal clerk may appoint one or more suitable and proper persons in a municipality as subregistrars, who are authorized to issue permits for transportation and final disposition of dead human bodies in the same manner as is required of the state registrar or municipal clerk, as specified by department rule. The completed death certificate or report of death, upon which the permit is issued, together with a copy of the disposition of human remains permit must be forwarded to the municipal clerk at the earliest opening of the municipal office after the date of issue, and all permits by whomsoever issued must be returned to the municipal clerk as required by section 2843. The appointment of subregistrars must be made with reference to locality, so as to best suit the convenience of the inhabitants of the municipality, and such annual appointment must be in writing and recorded in the office of the state registrar or municipal clerk. The subregistrars in any municipality hold office at the pleasure of the state registrar or municipal clerk. [2009, c. 601, §30 (AMD).]

SECTION HISTORY
1985, c. 231, §4 (AMD). 1989, c. 54, (AMD). 2001, c. 574, §29 (AMD). 2009, c. 601, §30 (AMD).

§2845. CERTIFICATE OF DEATH TYPEWRITTEN OR HAND PRINTED

A death certificate required to be filed under this chapter by an authorized person as described in section 2846 must be typewritten or legibly hand printed prior to such filing. [2011, c. 371, §1 (AMD); 2011, c. 371, §3 (AFF).]

SECTION HISTORY
1973, c. 252, (NEW). 2001, c. 574, §30 (AMD). 2003, c. 74, §3 (AMD). 2011, c. 371, §1 (AMD). 2011, c. 371, §3 (AFF).

§2846. AUTHORIZED PERSON

For the purposes of this chapter, the "authorized person" responsible for obtaining or filing a permit or certificate means a member of the immediate family of the deceased, the domestic partner of the deceased, a person authorized in writing by a member of the immediate family of the deceased if no member of the immediate family of the deceased wishes to assume the responsibility or by the domestic partner of the deceased if the domestic partner does not wish to assume the responsibility or, in the absence of immediate family or a known domestic partner, a person authorized in writing by the deceased. For purposes of this section, "domestic partner" means one of 2 unmarried adults who are domiciled together under long-term arrangements that evidence a commitment to remain responsible indefinitely for each other's welfare. [2003, c. 672, §21 (AMD).]

For the purposes of this chapter, "nurse practitioner" means an advanced practice registered nurse who is a certified nurse practitioner authorized to practice without the supervision of a physician pursuant to Title 32, chapter 31. [2005, c. 359, §5 (NEW).]

For the purposes of this chapter, "health care provider" means a physician, a nurse practitioner or a physician assistant. [2007, c. 56, §5 (AMD).]

For the purposes of this chapter, "physician assistant" means a person who has graduated from a physician assistant or surgeon assistant program accredited by the American Medical Association Committee on Allied Health Education and Accreditation or the Commission on Accreditation of Allied Health Education Programs or its successor and who has passed the certifying examination administered by the National Commission on Certification of Physician Assistants or its successor. [2007, c. 56, §6 (NEW).]

SECTION HISTORY
1977, c. 232, §4 (NEW). 1985, c. 17, (AMD). 2003, c. 672, §21 (AMD). 2005, c. 359, §5 (AMD). 2007, c. 56, §§5, 6 (AMD).

§2847. ELECTRONIC DEATH REGISTRATION SYSTEM

Beginning July 1, 2012, a certificate of death required to be filed by any person authorized under section 2842 pursuant to this chapter may be filed using the electronic death registration system maintained by the State Registrar of Vital Statistics. This section does not apply to an authorized person under section 2846. The State Registrar of Vital Statistics shall adopt rules to carry out the purposes of this section. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2011, c. 371, §2 (NEW).]

SECTION HISTORY
2011, c. 371, §2 (NEW).

§2848. REGISTERING A PRESUMED DEATH

When a death is presumed to have occurred in the State but the body has not been located, the State Registrar of Vital Statistics shall register a death in accordance with this section upon receipt of a certified copy of an order of a court issued in accordance with Title 18-A, section 1-107, subsection (3). [2015, c. 193, §2 (NEW).]

1. **Required information.** In order to register a death on the basis of a court order, the court order must include:

A. The decedent's full legal name; [2015, c. 193, §2 (NEW).]

B. The date of death, as determined from the evidence presented; [2015, c. 193, §2 (NEW).]

C. The municipality, county and place of death, as determined from the evidence presented; [2015, c. 193, §2 (NEW).]

D. The decedent's address, including street address, municipality, county, state and zip code at the time of death; [2015, c. 193, §2 (NEW).]

E. The decedent's marital status at the time of death; [2015, c. 193, §2 (NEW).]

F. The given name of the decedent's surviving spouse, if any; and [2015, c. 193, §2 (NEW).]

G. If known, information necessary to complete the medical certification including the cause and manner of death. If the death occurred from an injury, the court order must include information on how and when the injury occurred. If such information is not known, the order must indicate the lack of available information. [2015, c. 193, §2 (NEW).]

[2015, c. 193, §2 (NEW) .]

2. **Death certificate; identification of court order.** A death certificate issued pursuant to this section must identify the court that issued the order on which the death certificate is based and include the date of the court order.

[2015, c. 193, §2 (NEW) .]

3. **Record marked "presumptive."** The record of a death registered pursuant to this section must be marked "presumptive."

[2015, c. 193, §2 (NEW) .]

SECTION HISTORY
2015, c. 193, §2 (NEW).

Chapter 709: DISPOSAL OF DEAD BODIES

§2881. DELIVERY TO PHYSICIAN FOR SCIENTIFIC PURPOSES

If any resident of the State requests or consents that after death his body may be delivered to a regular physician or surgeon for the advancement of anatomical science, it may be used for that purpose, unless some kindred or family connection makes objection.

§2882. COLLECTION, DISTRIBUTION AND DELIVERY

The professors of anatomy, the professors of surgery and the demonstrators of anatomy in the medical schools of the State which are now or may hereafter become incorporated by Act of the Legislature shall be and are constituted a board for the collection, distribution and delivery of dead human bodies to and among such persons as under this chapter are entitled thereto. When no medical schools of the State are in active operation, the Superintendent of the Dorothea Dix Psychiatric Center, the Superintendent of the Riverview Psychiatric Center, the Superintendent of the Eastern Maine Medical Center, the Superintendent of the Maine Medical Center and the Superintendent of the Central Maine Medical Center shall constitute the board. The said board shall have full power to establish rules and regulations for its government and to appoint and remove officers, and shall keep full and complete minutes of its transactions. Records shall be kept under its direction of all bodies received and distributed by said board and of the persons to whom the same are distributed. The minutes and records shall be open at all times to the inspection of each member of said board, the Attorney General and the district attorney of any county within the State. [1981, c. 470, Pt. A, §95 (AMD); 2005, c. 236, §§3, 4 (REV).]

SECTION HISTORY
P&SL 1973, c. 53, (AMD). 1973, c. 567, §20 (AMD). 1981, c. 470, §A95 (AMD). 2005, c. 236, §§3,4 (REV).

§2883. DEATHS IN ALMSHOUSES, PRISONS AND INSTITUTIONS

All public officers, agents and servants of any and every county and municipality, and of any and every almshouse, prison, morgue, hospital or any other public institution having charge or control over dead human bodies required to be buried at the public expense are required to notify immediately the board of distribution, or the person or persons as may from time to time be designated by the board, or its duly authorized officer or agent, whenever any body or bodies come into their possession, charge or control, and shall, without fee or reward, deliver the body or bodies to the board or its duly authorized officer or agent, and permit and suffer the board or its agents, or the physicians and surgeons from time to time designated by it or them, who comply with this chapter, to take and remove any and all bodies to be used within the State for the advancement of medical education. No notice need be given and no body must be delivered if any person, satisfying the authorities in charge of the body that the person is a member of the family or next of kin to the

deceased, shall claim the body for burial, but it must be surrendered to the person for interment, and no notice may be given and no body delivered to the board or its agents if the deceased person was a traveler and not a vagabond, who died suddenly, in which case the body must be buried. No notice may be given and no body delivered to the board or its agents by the Department of Corrections if, at its option, the department assumes responsibility for the expenses of burial. The option may be exercised by the Department of Corrections regardless of whether the body is claimed by a member of the family or next of kin, but in such a case it may only be exercised with the agreement of the person making the claim. The superintendents and medical staffs of the Riverview Psychiatric Center and the Dorothea Dix Psychiatric Center, having charge or control over dead human bodies required to be buried at public expense, when no person satisfies the superintendent of either hospital for the mentally ill, and the department that the person is a member of the family of, or has some family connection or is next of kin to the deceased, and wishes to claim the body for burial, may for the advancement of science hold an autopsy and examine the body of the deceased person, notwithstanding any provisions of this chapter. [1995, c. 395, Pt. G, §7 (AMD); 2005, c. 236, §§3,4 (REV).]

Notwithstanding the availability of lump sum death benefits under the United States Social Security Act, the term "buried at public expense" as written in this section shall be deemed to include the unclaimed dead bodies of all indigent persons otherwise within the intendment of this section. [1989, c. 56, (AMD).]

As used in this section, "burial" includes cremation and burial of the cremated remains of the body. [2001, c. 386, §5 (NEW).]

SECTION HISTORY
P&SL 1973, c. 53, (AMD). 1981, c. 493, §2 (AMD). 1989, c. 56, (AMD). 1995, c. 395, §G7 (AMD). 1995, c. 395, §G20 (AFF). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). 2001, c. 386, §5 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 236, §§3,4 (REV).

§2884. DISTRIBUTION OF BODIES

The board or its duly authorized agent may take and receive such bodies, so delivered, and shall upon receiving them after 7 days from the date of decease distribute and deliver them to or among the schools, physicians and surgeons in the following manner: Those schools needing bodies for lectures and demonstrations shall first be supplied as fast as practicable, the number assigned to each to be based upon the number of students in actual attendance, which number shall be returned to the board at such times as it shall direct. The board of distribution may from time to time designate physicians or surgeons who shall receive said bodies, applications to be considered in the order of their receipt by said board. Subject to this chapter, it shall be lawful for the University of Maine System, Colby College, Bates College and Bowdoin College or any recognized medical school in New England to receive such bodies for the promotion of medical education, which shall be construed to include nursing training and premedical education. [1985, c. 778, §62 (AMD).]

SECTION HISTORY
1985, c. 779, §62 (AMD).

§2885. ENCLOSED FROM PUBLIC VIEW; CARRIERS TO OBTAIN RECEIPTS

The said board may employ a carrier or carriers for the conveyance of said bodies, and the said bodies shall be well enclosed within a suitable encasement and carefully deposited free from public observation. Said carrier shall obtain receipts by name or, if the deceased is unknown, by a description for each body delivered by him, which receipt shall state the source from which said body was received, and shall deposit said receipts with the secretary of said board.

§2886. BOND FOR PROPER DISPOSAL; TRAFFIC OUTSIDE OF STATE

No school, college, university, or any recognized medical school in New England, physician or surgeon shall be allowed or permitted to receive any such body or bodies until a bond shall be given to the Treasurer of State by such physician or surgeon, or by and in behalf of such school, college, university or any recognized medical school in New England, to be approved by a justice of a court of record in and for the county in which said physician or surgeon resides, or in which such school, college, university or any recognized medical school in New England is situated. Such bond shall be in the penal sum of $1,000, conditioned that all such bodies, which the said physician or surgeon or the said school, college, university or any recognized medical school in New England shall receive thereafter, shall be used only for the promotion within the state of medical education, which shall be construed to include nursing training and premedical education, and when no longer needed for such educational purposes shall be decently buried. Said bond shall be examined annually in the month of December by the Treasurer of State and he shall certify in writing upon each bond in his possession his approval of the same. In case any bond is not approved by him, he shall immediately notify the party giving the same, who shall forthwith file a new bond. Whosoever shall sell or buy such body or bodies, or in any way traffic in the same, or shall transmit or convey such body or bodies to any place outside of the State, or cause the same to be done, except as provided in section 2884, shall be punished by a fine of not more than $200 or by imprisonment for not more than 11 months.

§2887. EXPENSES

Neither the State nor any county or municipality, nor any officer, agent or servant thereof shall be at any expense by reason of the delivery or distribution of any such body, but all the expenses thereof, and of said board of distribution, shall be paid by those receiving the bodies in such manner as shall be specified by said board of distribution.

§2888. NEGLECT TO DISCHARGE DUTIES

Any person having duties enjoined upon him by this chapter who shall neglect, refuse or omit to perform the same as required by this chapter shall, on conviction thereof, be punished by a fine of not less than $100 nor more than $500, for each offense.

§2889. DISPOSAL OF EYES AFTER DEATH

(REPEALED)

SECTION HISTORY
1971, c. 544, §78 (RP).

§2900. CREMATED REMAINS OF A VETERAN

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

A. "National cemetery" means a cemetery under the control of the United States Department of Veterans Affairs, National Cemetery Administration. [2011, c. 318, §1 (NEW).]

B. "Veteran" means a person who served in and was honorably discharged from active duty:

(1) In the Armed Forces of the United States;

(2) In the Army or Air Force National Guard in a full-time status; or

(3) As a reservist in the Armed Forces of the United States. [2011, c. 318, §1 (NEW).]

C. "Veterans' service organization" means an association, corporation or other entity that qualifies under Section 501(c)(3) or Section 501(c)(19) of the United States Internal Revenue Code of 1986, as amended, as a tax-exempt organization that has been organized for the benefit of veterans and

recognized or chartered by the United States Congress or a nonprofit corporation, association or entity that specifically assists in facilitating the identification and interment of unclaimed remains of veterans. [2011, c. 318, §1 (NEW).]

[2011, c. 318, §1 (NEW) .]

2. **Cremated remains of veterans.** A funeral director or other authorized person who has held in the funeral director's or other authorized person's possession the cremated remains of a veteran for more than one year from the date of cremation may determine pursuant to the provisions of this section if the cremated remains are those of a veteran and, if the funeral director or other authorized person determines that the cremated remains are those of a veteran, the funeral director or other authorized person may dispose of the remains pursuant to this section.

[2011, c. 318, §1 (NEW) .]

3. **Sharing information.** Notwithstanding any other provision of law, a funeral director, the Adjutant General or other authorized person under subsection 2 may share information concerning cremated remains in the funeral director's or other authorized person's possession with the United States Department of Veterans Affairs, the Adjutant General, a veterans' service organization or a national cemetery to determine whether the cremated remains are those of a veteran.

[2015, c. 208, §2 (AMD) .]

4. **Disposition of veterans' remains.** If a funeral director or other authorized person determines that cremated remains in the funeral director's or other authorized person's possession are those of a veteran pursuant to this section and the funeral director or other authorized person has not received instructions as to the final disposition of the cremated remains from the person lawfully in control of the final disposition of the cremated remains, the funeral director or other authorized person may dispose of the cremated remains or relinquish possession of the cremated remains to a veterans' service organization pursuant to section 2843 and this subsection. The cremated remains of a veteran disposed of or relinquished pursuant to this subsection must be finally disposed of in a national cemetery or other government-owned or government-operated veterans' cemetery or in a cemetery or with a cemetery corporation under Title 13, chapter 83 where veterans' graves are memorialized by a veterans' marker or that has a veterans' section.

[2011, c. 318, §1 (NEW) .]

5. **Release from liability.** A funeral director, other authorized person or veterans' service organization is not liable and is released from any legal obligation other than a legal obligation imposed under this section regarding the release or sharing of information or the disposing of or relinquishing of the remains of a veteran, except in the case of gross negligence or willful misconduct.

[2011, c. 318, §1 (NEW) .]

6. **Reimbursement.** The estate of a veteran whose remains are the subject of disposition under this section is responsible for reimbursing a funeral director, other authorized person or veterans' service organization for all reasonable expenses incurred in activities conducted under this section.

[2011, c. 318, §1 (NEW) .]

7. **Record.** A funeral director or other authorized person shall maintain a record identifying a veterans' service organization that receives a veteran's remains from the funeral director or other authorized person under this section and of the site designated for final disposition of the veteran's remains relinquished or disposed of by the funeral director or other authorized person under this section.

[2011, c. 318, §1 (NEW) .]

8. **Duty of funeral director or other authorized person.** This section does not require a funeral director or other authorized person to determine the veteran status of cremated remains in the funeral director's or other authorized person's possession or to relinquish or dispose of a veteran's remains in the funeral director's or other authorized person's possession pursuant to this section if the funeral director or other authorized person has a reasonable belief or is instructed by the person in lawful control of the disposition of the veteran's remains that the veteran did not desire a funeral, burial-related services or ceremonies recognizing the veteran as a veteran.

[2011, c. 318, §1 (NEW) .]

SECTION HISTORY
2011, c. 318, §1 (NEW). 2015, c. 208, §2 (AMD).

Chapter 710: UNIFORM ANATOMICAL GIFT ACT

§2901. DEFINITIONS

(REPEALED)

SECTION HISTORY
1969, c. 193, (NEW). 2005, c. 359, §6 (AMD). 2007, c. 56, §7 (AMD). 2007, c. 601, §9 (AFF). 2007, c. 601, §1 (RP).

§2902. PERSONS WHO MAY EXECUTE AN ANATOMICAL GIFT

(REPEALED)

SECTION HISTORY
1969, c. 193, (NEW). 1991, c. 32, §1 (AMD). 2005, c. 587, §1 (AMD). 2007, c. 601, §9 (AFF). 2007, c. 601, §1 (RP).

§2903. PERSONS WHO MAY BECOME DONEES, AND PURPOSES FOR WHICH ANATOMICAL GIFTS MAY BE MADE

(REPEALED)

SECTION HISTORY
1969, c. 193, (NEW). 2007, c. 601, §9 (AFF). 2007, c. 601, §1 (RP).

§2904. MANNER OF EXECUTING ANATOMICAL GIFTS

(REPEALED)

SECTION HISTORY
1969, c. 193, (NEW). 1975, c. 79, §1 (AMD). 1981, c. 32, (AMD). 1981, c. 639, §1 (AMD). 1985, c. 574, §1 (AMD). 2005, c. 208, §1 (AMD). 2007, c. 601, §9 (AFF). 2007, c. 601, §1 (RP).

§2905. DELIVERY OF DOCUMENT OF GIFT

(REPEALED)

SECTION HISTORY
1969, c. 193, (NEW). 2007, c. 601, §9 (AFF). 2007, c. 601, §1 (RP).

§2906. AMENDMENT OR REVOCATION OF THE GIFT

(REPEALED)

SECTION HISTORY
1969, c. 193, (NEW). 1991, c. 823, §§1,2 (AMD). 1991, c. 823, §7 (AFF). 1995, c. 32, §§1,2 (AMD). 1995, c. 65, §A60 (AMD). 1995, c. 65, §§A153,C15 (AFF). 1995, c. 625, §A23 (AMD). 2007, c. 601, §9 (AFF). 2007, c. 601, §1 (RP).

§2907. RIGHTS AND DUTIES AT DEATH

(REPEALED)

SECTION HISTORY
1969, c. 193, (NEW). 1985, c. 574, §2 (AMD). 2005, c. 359, §7 (AMD). 2007, c. 56, §8 (AMD). 2007, c. 601, §9 (AFF). 2007, c. 601, §1 (RP).

§2908. UNIFORMITY OF INTERPRETATION

(REPEALED)

SECTION HISTORY
1969, c. 193, (NEW). 2007, c. 601, §9 (AFF). 2007, c. 601, §1 (RP).

§2909. SHORT TITLE

(REPEALED)

SECTION HISTORY
1969, c. 193, (NEW). 2007, c. 601, §9 (AFF). 2007, c. 601, §1 (RP).

§2910. REQUEST FOR CONSENT REQUIRED TO AN ANATOMICAL GIFT

(REPEALED)

SECTION HISTORY
1985, c. 574, §3 (NEW). 2007, c. 601, §9 (AFF). 2007, c. 601, §1 (RP).

§2911. HONOR INTENT OF ORGAN DONORS

(REPEALED)

SECTION HISTORY
2003, c. 394, §1 (NEW). 2003, c. 394, §6 (AFF). 2005, c. 208, §2 (AMD). 2007, c. 601, §9 (AFF). 2007, c. 601, §1 (RP).

Chapter 710-A: LIVING WILLS

§2921. DEFINITIONS

(REPEALED)

SECTION HISTORY
1985, c. 186, (NEW). 1989, c. 830, §2 (RP).

§2922. DECLARATION RELATING TO USE OF LIFE- SUSTAINING PROCEDURES

(REPEALED)

SECTION HISTORY
1985, c. 186, (NEW). 1989, c. 830, §2 (RP).

§2923. REVOCATION OF DECLARATION

(REPEALED)

SECTION HISTORY
1985, c. 186, (NEW). 1989, c. 830, §2 (RP).

§2924. RECORDING DETERMINATION OF TERMINAL CONDITION AND CONTENTS OF DECLARATION

(REPEALED)

SECTION HISTORY
1985, c. 186, (NEW). 1989, c. 830, §2 (RP).

§2925. TREATMENT OF QUALIFIED PATIENTS

(REPEALED)

SECTION HISTORY
1985, c. 186, (NEW). 1989, c. 830, §2 (RP).

§2926. TRANSFER OF PATIENTS

(REPEALED)

SECTION HISTORY
1985, c. 186, (NEW). 1989, c. 830, §2 (RP).

§2927. IMMUNITIES

(REPEALED)

SECTION HISTORY
1985, c. 186, (NEW). 1989, c. 830, §2 (RP).

§2928. PENALTIES

(REPEALED)

SECTION HISTORY
1985, c. 186, (NEW). 1989, c. 830, §2 (RP).

§2929. GENERAL PROVISIONS

(REPEALED)

SECTION HISTORY
1985, c. 186, (NEW). 1989, c. 830, §2 (RP).

§2930. RECOGNITION OF DECLARATIONS EXECUTED IN OTHER STATES

(REPEALED)

SECTION HISTORY
1985, c. 186, (NEW). 1989, c. 830, §2 (RP).

§2931. PRESUMPTION OF VALIDITY

(REPEALED)

SECTION HISTORY
1985, c. 186, (NEW). 1989, c. 830, §2 (RP).

Chapter 710-B: REVISED UNIFORM ANATOMICAL GIFT ACT

§2941. SHORT TITLE

This chapter may be known and cited as "the Revised Uniform Anatomical Gift Act." [2007, c. 601, §2 (NEW).]

SECTION HISTORY
2007, c. 601, §2 (NEW).

§2942. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2007, c. 601, §2 (NEW).]

1. **Agent.** "Agent" means an individual:

A. Authorized to make health care decisions on the principal's behalf by a power of attorney for health care; or [2007, c. 601, §2 (NEW).]

B. Expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal. [2007, c. 601, §2 (NEW).]

[2007, c. 601, §2 (NEW) .]

2. **Anatomical gift.** "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purposes of transplantation, therapy, research or education.

[2007, c. 601, §2 (NEW) .]

3. **Chief Medical Examiner.** "Chief Medical Examiner" means the Office of the Chief Medical Examiner within the Office of the Attorney General.

[2007, c. 601, §2 (NEW) .]

4. **Decedent.** "Decedent" means a deceased individual whose body or part is or may be the source of an anatomical gift. "Decedent" includes a stillborn infant and, subject to restrictions imposed by law other than this chapter, a fetus.

[2007, c. 601, §2 (NEW) .]

5. **Disinterested witness.** "Disinterested witness" means a witness other than the spouse, registered domestic partner, child, parent, sibling, grandchild, grandparent or guardian of the individual who makes, amends, revokes or refuses to make an anatomical gift, or another adult who exhibited special care and concern for the individual and who is familiar with the individual's personal values. "Disinterested witness" does not include a person to which an anatomical gift could pass under section 2951.

[2007, c. 601, §2 (NEW) .]

6. **Document of gift.** "Document of gift" means a donor card, advance directive or other record used to make an anatomical gift. "Document of gift" also means inclusion in a donor registry.

[2007, c. 601, §2 (NEW) .]

7. **Donor.** "Donor" means an individual whose body or part is the subject of an anatomical gift.

[2007, c. 601, §2 (NEW) .]

8. **Donor registry.** "Donor registry" means the Maine Organ Donor Registry maintained under Title 29-A, section 1402-A as well as any other electronic database that identifies donors and complies with section 2958.

[2007, c. 601, §2 (NEW) .]

9. **Driver's license.** "Driver's license" means a license or permit issued by the Secretary of State to operate a vehicle whether or not conditions are attached to the license or permit.

[2007, c. 601, §2 (NEW) .]

10. **Eye bank.** "Eye bank" means a person that is licensed, accredited or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage or distribution of human eyes or portions of human eyes.

[2007, c. 601, §2 (NEW) .]

11. **Guardian.** "Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health and welfare of an individual. "Guardian" does not include a guardian ad litem.

[2007, c. 601, §2 (NEW) .]

12. **Hospital.** "Hospital" means a facility licensed as a hospital under chapter 405 or the law of any state or a facility operated as a hospital by the United States, a state or a subdivision of a state.

[2007, c. 601, §2 (NEW) .]

13. **Identification card.** "Identification card" means a nondriver identification card issued by the Secretary of State under Title 29-A, section 1410.

[2007, c. 601, §2 (NEW) .]

14. **Know.** "Know" means to have actual knowledge.

[2007, c. 601, §2 (NEW) .]

15. **Organ procurement organization.** "Organ procurement organization" means a person designated by the United States Secretary of Health and Human Services as an organ procurement organization.

[2007, c. 601, §2 (NEW) .]

16. **Parent.** "Parent" means a parent whose parental rights have not been terminated.

[2007, c. 601, §2 (NEW) .]

17. **Part.** "Part" means an organ, an eye or tissue of a human being. "Part" does not include the whole body.

[2007, c. 601, §2 (NEW) .]

18. **Person.** "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity.

[2007, c. 601, §2 (NEW) .]

19. **Physician.** "Physician" means an individual authorized to practice medicine or osteopathy under the law of any state.

[2007, c. 601, §2 (NEW) .]

20. **Procurement organization.** "Procurement organization" means an eye bank, organ procurement organization or tissue bank.

[2007, c. 601, §2 (NEW) .]

21. **Prospective donor.** "Prospective donor" means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research or education. "Prospective donor" does not include an individual who has made a refusal that is known by the procurement organization.

[2007, c. 601, §2 (NEW) .]

22. **Reasonably available.** "Reasonably available" means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

[2007, c. 601, §2 (NEW) .]

23. **Recipient.** "Recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted.

[2007, c. 601, §2 (NEW) .]

24. **Record.** "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

[2007, c. 601, §2 (NEW) .]

25. **Recovery agency.** "Recovery agency" means an eye bank, organ procurement organization, tissue bank, educational institution or research organization that participates in or facilitates the execution of an anatomical gift.

[2007, c. 601, §2 (NEW) .]

26. **Refusal.** "Refusal" means a record created under section 2947 that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part.

[2007, c. 601, §2 (NEW) .]

27. **Registered domestic partner.** "Registered domestic partner" means an individual registered as a domestic partner under section 2710, subsection 3.

[2007, c. 601, §2 (NEW) .]

28. **Sign.** "Sign" means, with the present intent to authenticate or adopt a record:

A. To execute or adopt a tangible symbol; or [2007, c. 601, §2 (NEW).]

B. To attach or logically associate with the record an electronic symbol, sound or process. [2007, c. 601, §2 (NEW).]

[2007, c. 601, §2 (NEW) .]

29. **State.** "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

[2007, c. 601, §2 (NEW) .]

30. **Technician.** "Technician" means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited or regulated under federal or state law. "Technician" includes an enucleator.

[2007, c. 601, §2 (NEW) .]

31. **Tissue.** "Tissue" means a portion of the human body other than an organ or an eye. "Tissue" does not include blood unless the blood is donated for purposes of research or education.

[2007, c. 601, §2 (NEW) .]

32. **Tissue bank.** "Tissue bank" means a person that is licensed, accredited or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage or distribution of tissue.

[2007, c. 601, §2 (NEW) .]

33. **Transplant hospital.** "Transplant hospital" means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

[2007, c. 601, §2 (NEW) .]

SECTION HISTORY
2007, c. 601, §2 (NEW).

§2943. APPLICABILITY

This chapter applies to an anatomical gift or amendment to, revocation of or refusal to make an anatomical gift, whenever made. [2007, c. 601, §2 (NEW).]

SECTION HISTORY
2007, c. 601, §2 (NEW).

§2944. WHO MAY MAKE ANATOMICAL GIFT BEFORE DONOR'S DEATH

Subject to section 2948, an anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research or education in the manner provided in section 2945 by: [2007, c. 601, §2 (NEW).]

1. **Donor.** The donor, if the donor is at least 18 years of age or is under 18 years of age and is:

A. An emancipated minor; or [2007, c. 601, §2 (NEW).]

B. Authorized under state law to apply for a driver's license because the donor is at least 16 years of age; [2007, c. 601, §2 (NEW).]

[2007, c. 601, §2 (NEW) .]

2. **Agent of donor.** An agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;

[2007, c. 601, §2 (NEW) .]

3. **Parent of the donor.** A parent of the donor, if the donor is under 18 years of age and not emancipated; or

[2007, c. 601, §2 (NEW) .]

4. **Guardian of donor.** The donor's guardian.

[2007, c. 601, §2 (NEW) .]

SECTION HISTORY
2007, c. 601, §2 (NEW).

§2945. MANNER OF MAKING ANATOMICAL GIFT BEFORE DONOR'S DEATH

1. **Donor.** A donor may make an anatomical gift:

A. By authorizing inclusion in the donor registry; [2007, c. 601, §2 (NEW).]

B. In a will; or [2007, c. 601, §2 (NEW).]

C. During a terminal illness or injury of the donor, by any form of communication addressed to at least 2 other individuals who are at least 18 years of age, one of whom is a disinterested witness. [2007, c. 601, §2 (NEW).]

[2007, c. 601, §2 (NEW) .]

2. **Donor or other authorized person.** A donor or other person authorized to make an anatomical gift under section 2944 may make a gift by a donor card, advance directive or other record signed by the donor or other person making the gift authorizing inclusion in the donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or the other person and must:

A. Be witnessed by at least 2 other individuals who are at least 18 years of age, one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and [2007, c. 601, §2 (NEW).]

B. State that it has been signed and witnessed as provided in paragraph A. [2007, c. 601, §2 (NEW).]

[2007, c. 601, §2 (NEW) .]

3. **Anatomical gift not invalidated.** Revocation, suspension, expiration or cancellation of the driver's license or identification card issued to a donor does not invalidate an anatomical gift.

[2007, c. 601, §2 (NEW) .]

4. **Anatomical gift by will.** An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

[2007, c. 601, §2 (NEW) .]

SECTION HISTORY
2007, c. 601, §2 (NEW).

§2946. AMENDING OR REVOKING ANATOMICAL GIFT BEFORE DONOR'S DEATH

1. **Donor or authorized person.** Subject to section 2948, a donor or other person authorized to make an anatomical gift under section 2944 may amend or revoke an anatomical gift by:

A. A record signed by:

(1) The donor;

(2) The other person; or

(3) Subject to subsection 2, another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or [2007, c. 601, §2 (NEW).]

B. A later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency. [2007, c. 601, §2 (NEW).]

[2007, c. 601, §2 (NEW) .]

2. **Individual acting at donor's or authorized person's direction.** A record signed pursuant to subsection 1, paragraph A, subparagraph (3) must:

A. Be witnessed by at least 2 other individuals who are at least 18 years of age, one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and [2007, c. 601, §2 (NEW).]

B. State that it has been signed and witnessed as provided in paragraph A. [2007, c. 601, §2 (NEW).]

[2007, c. 601, §2 (NEW) .]

3. **Revocation by destruction or cancellation of document.** Subject to section 2948, a donor or other person authorized to make an anatomical gift under section 2944 may revoke the gift by the destruction or cancellation of the document of gift, or a portion of the document of gift used to make the gift, with the intent to revoke the gift.

[2007, c. 601, §2 (NEW) .]

4. **Amendment or revocation by donor during terminal illness or injury.** A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least 2 other individuals who are at least 18 years of age, one of whom is a disinterested witness.

[2007, c. 601, §2 (NEW) .]

5. **Amendment or revocation of gift in will.** A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection 1.

[2007, c. 601, §2 (NEW) .]

SECTION HISTORY
2007, c. 601, §2 (NEW).

§2947. REFUSAL TO MAKE ANATOMICAL GIFT AND EFFECT OF REFUSAL

1. **Refusal of individual.** An individual may refuse to make an anatomical gift of the individual's body or part by:

A. A record signed by:

(1) The individual; or

(2) Subject to subsection 2, another individual acting at the direction of the individual if the individual is physically unable to sign; [2007, c. 601, §2 (NEW).]

B. The individual's will whether or not the will is admitted to probate or invalidated after the individual's death; or [2007, c. 601, §2 (NEW).]

C. Any form of communication made by the individual during the individual's terminal illness or injury addressed to at least 2 other individuals who are at least 18 years of age, one of whom is a disinterested witness. [2007, c. 601, §2 (NEW).]

[2007, c. 601, §2 (NEW) .]

2. **Individual acting at direction of individual.** A record signed pursuant to subsection 1, paragraph A, subparagraph (2) must:

A. Be witnessed by at least 2 other individuals who are at least 18 years of age, one of whom is a disinterested witness, who have signed at the request of the individual; and [2007, c. 601, §2 (NEW).]

B. State that it has been signed and witnessed as provided in paragraph A. [2007, c. 601, §2 (NEW).]

[2007, c. 601, §2 (NEW) .]

3. **Amendment or revocation by individual.** An individual may amend or revoke a refusal:

A. In the manner provided in subsection 1 for making a refusal; [2007, c. 601, §2 (NEW).]

B. By subsequently making an anatomical gift pursuant to section 2945 that is inconsistent with the refusal; or [2007, c. 601, §2 (NEW).]

C. By the destruction or cancellation of the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal. [2007, c. 601, §2 (NEW).]

[2007, c. 601, §2 (NEW) .]

4. **Effect of unrevoked refusal.** Except as otherwise provided in section 2948, subsection 7, in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or a part bars all other persons from making an anatomical gift of the individual's body or the part.

[2007, c. 601, §2 (NEW) .]

SECTION HISTORY
2007, c. 601, §2 (NEW).

§2948. PRECLUSIVE EFFECT OF ANATOMICAL GIFT, AMENDMENT OR REVOCATION

1. **Person other than donor barred.** Except as otherwise provided in subsection 7, in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending or revoking an anatomical gift of a donor's body or a part if the donor made an anatomical gift of the donor's body or the part under section 2945 or an amendment to an anatomical gift of the donor's body or the part under section 2946.

[2007, c. 601, §2 (NEW) .]

2. **Revocation not refusal.** A donor's revocation of an anatomical gift of the donor's body or a part under section 2946 is not a refusal and does not bar another person specified in section 2944 or 2949 from making an anatomical gift of the donor's body or a part under section 2945 or 2950.

[2007, c. 601, §2 (NEW) .]

3. **Effect of gift or amendment by person other than donor.** If a person other than the donor makes an unrevoked anatomical gift of the donor's body or a part under section 2945 or an amendment to an anatomical gift of the donor's body or a part under section 2946, another person may not make, amend or revoke the gift of the donor's body or part under section 2950.

[2007, c. 601, §2 (NEW) .]

4. **Effect of revocation by person other than donor.** A revocation of an anatomical gift of the donor's body or a part under section 2946 by a person other than the donor does not bar another person from making an anatomical gift of the body or a part under section 2945 or 2950.

[2007, c. 601, §2 (NEW) .]

5. **Effect of gift of a part or for a purpose.** In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 2944:

A. An anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person under section 2945 or 2950; and [2007, c. 601, §2 (NEW).]

B. An anatomical gift of a part for one or more of the purposes set forth in section 2944 is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under section 2945 or 2950. [2007, c. 601, §2 (NEW).]

[2007, c. 601, §2 (NEW) .]

6. **Donor unemancipated minor.** If a donor who is an unemancipated minor dies under 18 years of age, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

[2007, c. 601, §2 (NEW) .]

7. **Parent's revocation of unemancipated minor's refusal.** If an unemancipated minor who signed a refusal dies under 18 years of age, a parent of the individual who is reasonably available may revoke the individual's refusal.

[2007, c. 601, §2 (NEW) .]

SECTION HISTORY
2007, c. 601, §2 (NEW).

§2949. WHO MAY MAKE ANATOMICAL GIFT OF DECEDENT'S BODY OR PART

1. **Gift by members of class; priority.** Subject to subsections 2 and 3 and unless barred by subsection 4, an anatomical gift of a decedent's body or part for purposes of transplantation, therapy, research or education may be made, in the order of priority listed, by any member of the following classes of persons who is reasonably available:

A. An agent of the decedent at the time of death who could have made an anatomical gift under section 2944, subsection 2 immediately before the decedent's death; [2007, c. 601, §2 (NEW).]

B. The spouse of the decedent; [2007, c. 601, §2 (NEW).]

C. The registered domestic partner of the decedent; [2007, c. 601, §2 (NEW).]

D. Adult children of the decedent; [2007, c. 601, §2 (NEW).]

E. Parents of the decedent; [2007, c. 601, §2 (NEW).]

F. Adult siblings of the decedent; [2007, c. 601, §2 (NEW).]

G. Adult grandchildren of the decedent; [2007, c. 601, §2 (NEW).]

H. Grandparents of the decedent; [2007, c. 601, §2 (NEW).]

I. An adult who exhibited special care and concern for the decedent who is familiar with the decedent's personal values; [2007, c. 601, §2 (NEW).]

J. The person or persons acting as the guardian of the person of the decedent at the time of death; and [2007, c. 601, §2 (NEW).]

K. Any other person having the authority to dispose of the decedent's body. [2007, c. 601, §2 (NEW).]

[2007, c. 601, §2 (NEW) .]

2. **Anatomical gift by member of class unless object.** If there is more than one member of a class listed in subsection 1, paragraph A, D, E, F, G, H or J entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift can pass under section 2951 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

[2007, c. 601, §2 (NEW) .]

3. **Member of prior class reasonably available.** No person may make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection 1 is reasonably available to make or to object to the making of an anatomical gift.

[2007, c. 601, §2 (NEW) .]

4. **Gift barred.** An anatomical gift may not be made if doing so is barred by section 2947 or 2948.

[2007, c. 601, §2 (NEW) .]

SECTION HISTORY
2007, c. 601, §2 (NEW).

§2950. MANNER OF MAKING, AMENDING OR REVOKING ANATOMICAL GIFT OF DECEDENT'S BODY OR PART

1. **Authorized person: document; oral communication.** A person authorized to make an anatomical gift under section 2949 may make an anatomical gift by a document of gift signed by the person making the gift or that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

[2007, c. 601, §2 (NEW) .]

2. **Amendment or revocation by prior class member.** Subject to subsection 3, an anatomical gift by a person authorized under section 2949 may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift may be amended or revoked only if a majority of the reasonably available members object to the amending or revoking of the gift or they are equally divided as to whether to amend or revoke an anatomical gift.

[2007, c. 601, §2 (NEW) .]

3. **Revocation effective if known.** A revocation under subsection 2 is effective only if the procurement organization or transplant hospital or the physician or technician knows of the revocation before an incision has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the recipient.

[2007, c. 601, §2 (NEW) .]

4. **Requesting consent.** Consent for an anatomical gift by a recovery agency under section 2949 must be documented in writing or, if secured in a telephone conversation, in a suitable recording, must disclose in plain language the specific tissue, organ or body part being donated and the purpose for which the anatomical gift will be used and must comply in all respects with rules regarding consent requirements for anatomical gifting adopted by the department pursuant to subsection 5.

[2007, c. 601, §2 (NEW) .]

5. **Rulemaking.** The department, after consultation with the Office of the Attorney General, shall adopt rules to implement this section. The rules must provide specific requirements for all recovery agencies, require federally recognized recovery agencies to demonstrate compliance with applicable federal standards governing consent to anatomical gifts and require all other recovery agencies that do not operate under federal regulation to demonstrate adherence to the consent requirements of this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 601, §2 (NEW) .]

SECTION HISTORY
2007, c. 601, §2 (NEW).

§2951. PERSONS THAT MAY RECEIVE ANATOMICAL GIFT; PURPOSE OF ANATOMICAL GIFT

1. **Named recipient.** An anatomical gift of a body or part may be made to the following persons:

A. A named hospital, accredited medical school, dental school, college, university or organ procurement organization or other appropriate person for research or education; [2007, c. 601, §2 (NEW).]

B. A named individual designated by the person making the anatomical gift if the individual is the recipient of the part; or, if the part for any reason cannot be transplanted into the individual, the part passes in accordance with subsection 6 in the absence of an express, contrary indication by the person making the anatomical gift; or [2007, c. 601, §2 (NEW).]

C. A named eye bank or tissue bank. [2007, c. 601, §2 (NEW).]

[2007, c. 601, §2 (NEW) .]

2. **Named purpose.** If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection 1 but identifies the purpose for which an anatomical gift may be used, the following rules apply.

A. If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank. [2007, c. 601, §2 (NEW).]

B. If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank. [2007, c. 601, §2 (NEW).]

C. If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ. [2007, c. 601, §2 (NEW).]

D. If the part is an organ, an eye or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization. [2007, c. 601, §2 (NEW).]

[2007, c. 601, §2 (NEW) .]

3. **Priority of purposes.** For the purpose of subsection 2, if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift must be used for transplantation or therapy if suitable for those purposes and, if the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

[2007, c. 601, §2 (NEW) .]

4. **No named recipient or purpose.** If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in subsection 1 and does not identify the purpose of the gift, the gift passes in accordance with subsection 6 and the decedent's parts must be used for transplantation or therapy, if suitable, and, if not suitable, the gift may be used for research or education.

[2007, c. 601, §2 (NEW) .]

5. **General intent.** If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor," "organ donor" or "body donor" or by a symbol or statement of similar import, the gift passes in accordance with subsection 6 and the decedent's parts must be used for transplantation or therapy, if suitable, and, if not suitable, the gift may be used for research or education.

[2007, c. 601, §2 (NEW) .]

6. **Rules of passing anatomical gifts.** For purposes of subsection 1, paragraph B and subsections 3, 4 and 5, the following rules apply.

A. If the part is an eye, the gift passes to the appropriate eye bank. [2007, c. 601, §2 (NEW).]

B. If the part is tissue, the gift passes to the appropriate tissue bank. [2007, c. 601, §2 (NEW).]

C. If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ. [2007, c. 601, §2 (NEW).]

[2007, c. 601, §2 (NEW) .]

7. **Passing of organ for transplantation or therapy.** An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subsection 1, paragraph B, passes to the organ procurement organization as custodian of the organ.

[2007, c. 601, §2 (NEW) .]

8. **Custody of body or part if not passed or used.** If an anatomical gift does not pass pursuant to subsections 1 to 7 or the decedent's body or part is not used for transplantation, therapy, research or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

[2007, c. 601, §2 (NEW) .]

9. **Acceptance of gift prohibited.** A person may not accept an anatomical gift if the person knows that the gift was not effectively made under section 2945 or 2950 or if the person knows that the decedent made a refusal under section 2947 that was not revoked. For purposes of this subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

[2007, c. 601, §2 (NEW) .]

10. **Allocation of organs for transplant or therapy.** Except as otherwise provided in subsection 1, paragraph B, nothing in this chapter affects the allocation of organs for transplantation or therapy.

[2007, c. 601, §2 (NEW) .]

SECTION HISTORY
2007, c. 601, §2 (NEW).

§2952. SEARCH AND NOTIFICATION

1. **Persons to conduct reasonable search.** The following persons shall make a reasonable search of an individual who the searcher reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

A. A law enforcement officer, firefighter, paramedic or other emergency rescuer finding the individual; and [2007, c. 601, §2 (NEW).]

B. If no other source of the information is immediately available, a hospital, as soon as practical after the individual's arrival at the hospital. [2007, c. 601, §2 (NEW).]

[2007, c. 601, §2 (NEW) .]

2. **Document of gift or refusal found.** If a document of gift or a refusal to make an anatomical gift is located by the search required by subsection 1, paragraph A and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.

[2007, c. 601, §2 (NEW) .]

3. **Immunity.** A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section but may be subject to administrative sanctions.

[2007, c. 601, §2 (NEW) .]

SECTION HISTORY
2007, c. 601, §2 (NEW).

§2953. DELIVERY OF DOCUMENT OF GIFT NOT REQUIRED; RIGHT TO EXAMINE

1. **Delivery during lifetime not required.** A document of gift need not be delivered during the donor's lifetime to be effective.

[2007, c. 601, §2 (NEW) .]

2. **Examination and copying.** Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under section 2951.

[2007, c. 601, §2 (NEW) .]

SECTION HISTORY
2007, c. 601, §2 (NEW).

§2954. RIGHTS AND DUTIES OF PROCUREMENT ORGANIZATION AND OTHERS

1. **Reasonable search of registry and records.** When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of any donor registry and records of the Secretary of State that it knows exist for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

[2007, c. 601, §2 (NEW) .]

2. **Reasonable access to records of donor registry.** A procurement organization must be allowed reasonable access to information in the records of the donor registry to ascertain whether an individual at or near death is a donor.

[2007, c. 601, §2 (NEW) .]

3. **Reasonable examination to determine medical suitability.** When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to assess the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research or education from a donor or a prospective donor. During the examination period, measures necessary to maintain the potential medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

[2007, c. 601, §2 (NEW) .]

4. **Reasonable examination after death.** Unless prohibited by law other than this chapter, at any time after a donor's death, the person to which a part passes under section 2951 may conduct any reasonable examination necessary to assess the medical suitability of the body or part for its intended purpose.

[2007, c. 601, §2 (NEW) .]

5. **Examination of medical records.** Unless prohibited by law other than this chapter, an examination under subsection 3 or 4 may include an examination of all medical records of the donor or prospective donor.

[2007, c. 601, §2 (NEW) .]

6. **Reasonable search for parents of minor.** If a donor, at the time of death, is under 18 years of age, a procurement organization shall conduct a reasonable search for the parents of the donor and, unless the procurement organization knows the donor is an emancipated minor, provide the parents with an opportunity to revoke or amend the anatomical gift or revoke a refusal.

[2007, c. 601, §2 (NEW) .]

7. **Reasonable search for person to make gift on behalf of donor.** A procurement organization shall make a reasonable search for any person listed in section 2949 having priority to make an anatomical gift on behalf of a prospective donor.

[2007, c. 601, §2 (NEW) .]

8. **Advise of relevant information.** If a procurement organization receives information that an anatomical gift to any other person was made, amended or revoked, it shall promptly advise the other person of all relevant information.

[2007, c. 601, §2 (NEW) .]

9. **Superior rights.** Subject to section 2951, subsection 8 and section 2961, the rights of the person to which a part passes under section 2951 are superior to rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this chapter, a person that accepts an anatomical gift of an entire body may allow embalming or cremation and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under section 2951, upon the death of the donor and before embalming or cremation, shall cause the part to be removed without unnecessary mutilation.

[2007, c. 601, §2 (NEW) .]

10. **Removal or transplantation procedure.** Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.

[2007, c. 601, §2 (NEW) .]

11. **Physician or technician qualified.** A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.

[2007, c. 601, §2 (NEW) .]

SECTION HISTORY
2007, c. 601, §2 (NEW).

§2955. COORDINATION OF PROCUREMENT AND USE

Each hospital in this State, after consultation with procurement organizations, shall establish agreements or affiliations for coordination of procurement and use of human bodies and parts. [2007, c. 601, §2 (NEW).]

SECTION HISTORY
2007, c. 601, §2 (NEW).

§2956. IMMUNITY

1. **In accordance with chapter.** A person that acts in accordance with this chapter or with the applicable anatomical gift law of another state or attempts in good faith to do so is not liable for the act in a civil action, criminal prosecution or administrative proceeding.

[2007, c. 601, §2 (NEW) .]

2. **No liability for injury or damage.** Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

[2007, c. 601, §2 (NEW) .]

3. **Reliance on representations.** A person who documents the making, amending or revoking of an anatomical gift under this chapter may rely upon representations of the individuals listed in section 2949, subsection 1, paragraphs B, C, D, E, F, G, H and I relating to their relationship to the donor or prospective donor unless the person knows that the representation is untrue.

[2007, c. 601, §2 (NEW) .]

SECTION HISTORY
2007, c. 601, §2 (NEW).

§2957. LAW GOVERNING VALIDITY; CHOICE OF LAW AS TO EXECUTION OF DOCUMENT OF GIFT; PRESUMPTION OF VALIDITY

1. **Validity of document.** A document of gift is valid if executed in accordance with:

A. This chapter; [2007, c. 601, §2 (NEW).]

B. The laws of the state or country where it was executed; or [2007, c. 601, §2 (NEW).]

C. The laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence or was a national at the time the document of gift was executed. [2007, c. 601, §2 (NEW).]

[2007, c. 601, §2 (NEW) .]

2. **Law of State governs.** If a document of gift is valid under this section, the law of this State governs the interpretation of the document of gift.

[2007, c. 601, §2 (NEW) .]

3. **Presumption.** A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

[2007, c. 601, §2 (NEW) .]

SECTION HISTORY
2007, c. 601, §2 (NEW).

§2958. DONOR REGISTRY

1. **Elements of donor registry.** A donor registry must:

A. Provide a database that allows an individual who has made an anatomical gift to be included on the donor registry. The Maine Organ Donor Registry maintained under Title 29-A, section 1402-A must comply with this paragraph beginning January 1, 2010; [2007, c. 601, §2 (NEW).]

B. Be accessible to a procurement organization to allow it to obtain relevant information on the donor registry to determine, at or near death of the donor or prospective donor, whether the donor or prospective donor has made an anatomical gift; and [2007, c. 601, §2 (NEW).]

C. Be accessible for purposes of paragraph B 7 days a week on a 24-hour basis. [2007, c. 601, §2 (NEW).]

[2007, c. 601, §2 (NEW) .]

2. **Nondisclosure of personally identifiable information.** Personally identifiable information on a donor registry about a donor or prospective donor may not be used or disclosed without the express consent of the donor, prospective donor or the person that made the anatomical gift for any purpose other than to determine, at or near death of the donor or prospective donor, whether the donor or prospective donor has made an anatomical gift.

[2007, c. 601, §2 (NEW) .]

3. **Other registries.** This section does not prohibit any person from creating or maintaining a donor registry that is not established by or under contract with the State. A registry under this subsection must comply with this chapter.

[2007, c. 601, §2 (NEW) .]

4. **Certification of donor registries.** Prior to the establishment of a nongovernmental donor registry, the donor registry must be certified by the department to ensure the registry operates in accordance with the standards and requirements of this chapter except that a donor registry established by an organ procurement organization designated by and in good standing with the United States Department of Health and Human Services is exempt from the certification requirement.

[2007, c. 601, §2 (NEW) .]

5. **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.

[2007, c. 601, §2 (NEW) .]

SECTION HISTORY
2007, c. 601, §2 (NEW).

§2959. HONORING DECISION OF DONORS

A person's decision to make a donation of that person's own body, organ or tissue after death must be honored. In the absence of a revocation or amendment under section 2946, health care providers and procurement organizations shall act in accordance with the donor's decision and may take appropriate actions to effect the gift. [2007, c. 601, §2 (NEW).]

SECTION HISTORY
2007, c. 601, §2 (NEW).

§2960. COOPERATION BETWEEN CHIEF MEDICAL EXAMINER AND PROCUREMENT ORGANIZATION

1. **Cooperation to maximize opportunity.** The Chief Medical Examiner shall, consistent with the requirements of chapter 711, cooperate with a procurement organization to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research or education.

[2007, c. 601, §2 (NEW) .]

2. **Examination within compatible time period.** If the Chief Medical Examiner receives notice from a procurement organization that an anatomical gift might be available or was made with respect to a decedent whose body is under the jurisdiction of the Chief Medical Examiner and a postmortem examination may be performed, unless the Chief Medical Examiner denies recovery in accordance with section 2961, the Chief Medical Examiner or designee shall undertake reasonable efforts to conduct a postmortem examination of the body or the part in a manner and within a time period compatible with its preservation for the purposes of the gift.

[2007, c. 601, §2 (NEW) .]

3. **Subject of an anatomical gift.** A part may not be removed from the body of a decedent under the jurisdiction of the Chief Medical Examiner for transplantation, therapy, research or education unless the part is the subject of an anatomical gift. The body of a decedent under the jurisdiction of the Chief

Medical Examiner may not be delivered to a person for research or education unless the body is the subject of an anatomical gift. This subsection does not preclude the Chief Medical Examiner from performing the medicolegal investigation upon the body or parts of a decedent under the jurisdiction of the Chief Medical Examiner.

[2007, c. 601, §2 (NEW) .]

SECTION HISTORY
2007, c. 601, §2 (NEW).

§2961. FACILITATION OF ANATOMICAL GIFT FROM DECEDENT IN CHIEF MEDICAL EXAMINER CASES

1. **Release of information.** Subject to section 3022, subsections 8 and 13, upon request of a procurement organization, the Chief Medical Examiner shall release to the procurement organization the name, contact information and available medical and social history of a decedent whose body is under the jurisdiction of the Chief Medical Examiner pursuant to chapter 711. If the decedent's body or part is medically suitable for transplantation, therapy, research or education, the Chief Medical Examiner shall release postmortem examination results to the procurement organization. The procurement organization may make a subsequent disclosure of the postmortem examination results or other information received from the Chief Medical Examiner only if relevant to transplantation, therapy or with the express authorization of the Chief Medical Examiner, if relevant to research.

[2007, c. 601, §2 (NEW) .]

2. **Medicolegal examination.** The Chief Medical Examiner may conduct a medicolegal examination by reviewing all medical records, laboratory test results, x-rays, other diagnostic results and other information that any person possesses about a prospective donor or a donor whose body is under the jurisdiction of the Chief Medical Examiner that the Chief Medical Examiner determines may be relevant to the investigation.

[2007, c. 601, §2 (NEW) .]

3. **Provision of information.** A person that has any information requested by the Chief Medical Examiner pursuant to subsection 2 shall provide that information as expeditiously as possible to allow the Chief Medical Examiner to conduct the medicolegal investigation within a period compatible with the preservation of parts for purposes of transplantation, therapy, research or education.

[2007, c. 601, §2 (NEW) .]

4. **Removal not interfering with examination.** If an anatomical gift has been or might be made of a part of a decedent whose body is under the jurisdiction of the Chief Medical Examiner and a postmortem examination is not required, or the Chief Medical Examiner determines that a postmortem examination is required but that the recovery of the part that is the subject of an anatomical gift will not interfere with the examination, the Chief Medical Examiner and procurement organization shall cooperate in the timely removal of the part from the decedent for purposes of transplantation, therapy, research or education.

[2007, c. 601, §2 (NEW) .]

5. **Removal may interfere with examination.** If an anatomical gift of a part from a decedent under the jurisdiction of the Chief Medical Examiner has been or might be made, but the Chief Medical Examiner believes that the recovery of the part may interfere with the postmortem investigation as required by chapter

711, the Chief Medical Examiner shall make a reasonable effort to consult with the procurement organization or physician or technician designated by the procurement organization about the proposed recovery in an effort to facilitate recovery consistent with discharge of the obligations of the Chief Medical Examiner.

[2007, c. 601, §2 (NEW) .]

6. **If recovery denied.** If the Chief Medical Examiner or designee denies recovery, the Chief Medical Examiner or designee shall provide the specific reasons for not allowing recovery of the part to the procurement organization.

[2007, c. 601, §2 (NEW) .]

7. **Record provided to Chief Medical Examiner.** If the Chief Medical Examiner or designee allows recovery of a part under subsection 4 or 5, upon request the procurement organization shall cause the physician or technician who removes the part to provide the Chief Medical Examiner with a record describing the condition of the part, a biopsy, a photograph and any other information and observations that would assist in the postmortem examination.

[2007, c. 601, §2 (NEW) .]

SECTION HISTORY
2007, c. 601, §2 (NEW).

§2962. REGISTRATION OF RECOVERY AGENCIES

1. **Registration.** Except as provided under subsection 2, a recovery agency must be registered by the department prior to requesting, receiving or otherwise participating in an anatomical gift under this chapter.

[2007, c. 601, §2 (NEW) .]

2. **Rulemaking.** The department shall adopt rules governing the registration of recovery agencies. The rules must provide for exemptions for organ procurement organizations designated by the United States Department of Health and Human Services and tissue banks registered with the United States Department of Health and Human Services, Food and Drug Administration that are in good standing with their respective federal oversight agencies. The rules may provide for exemptions for other recovery agencies if such agencies operate in full compliance with this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 601, §2 (NEW) .]

3. **Fees.** The department may charge reasonable registration fees to defray administrative costs in administering this section.

[2007, c. 601, §2 (NEW) .]

SECTION HISTORY
2007, c. 601, §2 (NEW).

§2963. UNIFORMITY OF APPLICATION AND CONSTRUCTION

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2007, c. 601, §2 (NEW).]

SECTION HISTORY

2007, c. 601, §2 (NEW).

§2964. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

This Act modifies, limits and supersedes the Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001 et seq., but does not modify, limit or supersede Section 101(a) of that Act, 15 United States Code, Section 7001, or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 United States Code, Section 7003(b). [2007, c. 601, §2 (NEW).]

SECTION HISTORY
2007, c. 601, §2 (NEW).

§2965. EFFECTIVE DATE

This chapter takes effect January 1, 2009. [2007, c. 601, §2 (NEW).]

SECTION HISTORY
2007, c. 601, §2 (NEW).

Chapter 711: MEDICAL EXAMINER ACT

§3021. TITLE

This chapter shall be referred to as the Medical Examiner Act. [1967, c. 534, §2 (NEW).]

SECTION HISTORY
1967, c. 534, §2 (NEW).

§3022. OFFICE OF CHIEF MEDICAL EXAMINER

1. **Appointment and qualifications of the Chief Medical Examiner.** There is created, in the Department of the Attorney General, the Office of Chief Medical Examiner for the State. The Chief Medical Examiner is appointed by the Governor for a term of 7 years and until the Chief Medical Examiner's successor is appointed and qualified. The Chief Medical Examiner must possess a degree of doctor of medicine or doctor of osteopathy, be licensed to practice in the State and be expert in the specialty of forensic pathology. Expertise in the specialty of forensic pathology may be established either by certification in forensic pathology by the American Board of Pathology or the American Osteopathic Board of Pathology or by successful completion of an examination to test expertise in forensic pathology designed for the State by acknowledged experts in the field selected by the Governor. Any vacancy in the Office of Chief Medical Examiner must be filled by appointment by the Governor for a full term of 7 years. The Chief Medical Examiner may hire, subject to the Civil Service Law, necessary office and laboratory personnel to carry out the proper functioning of the Chief Medical Examiner's office.

[2001, c. 222, §1 (AMD) .]

2. **Appointment and qualifications of the Deputy Chief Medical Examiner.** The Chief Medical Examiner may select one or more of the medical examiners to serve as deputy chief medical examiners. The Deputy Chief Medical Examiner serves at the pleasure of the Chief Medical Examiner and, if salaried, is unclassified. The salary of the Deputy Chief Medical Examiner must be set in salary range 59 of the Standard Salary Schedule for Medical Personnel as published by the Bureau of Human Resources. In the event of the Deputy Chief Medical Examiner's temporary absence, the Chief Medical Examiner or, if the Chief Medical

Examiner is unavailable, the Attorney General may designate one of the deputy chief medical examiners to serve as acting Chief Medical Examiner. The acting Chief Medical Examiner has all of the powers and responsibilities of the Chief Medical Examiner.

[2011, c. 1, Pt. JJ, §1 (AMD) .]

2-A. **Appointment of office administrator.** The Chief Medical Examiner may appoint one office administrator who shall serve at the pleasure of the Chief Medical Examiner. The office administrator shall perform such duties as may be delegated by the Chief Medical Examiner. Notwithstanding any other provisions of law, the compensation of the Chief Medical Examiner's office administrator must be fixed by the Chief Medical Examiner.

[1997, c. 1, Pt. E, §1 (NEW) .]

3. **Certification and completion of reports of deaths.** The Office of Chief Medical Examiner shall be responsible for certification and completion of reports of deaths identified as medical examiner cases by section 3025. This shall be accomplished by examination of bodies and useful objects and by investigation and inquiry into the circumstances surrounding the deaths. The Office of Chief Medical Examiner may compile and preserve records and data relating to criminal prosecution, public health, public safety and vital statistics, as these relate to his responsibilities.

[1987, c. 329, §2 (RPR) .]

4. **Judgments of the medical examiners.** Judgments of the medical examiners as to the identity of the deceased and the cause, manner, date, time and place of death shall be made with reasonable care based on a preponderance of the evidence.

[1987, c. 329, §2 (RPR) .]

5. **Custodian of records.** The Chief Medical Examiner shall be the custodian of the records of the Office of Chief Medical Examiner. Copies of those records not declared confidential in subsection 8 shall be available upon written request.

[1987, c. 329, §2 (RPR) .]

6. **Certificate as evidence.** Notwithstanding any other provision of law or rule of evidence, the certificate of the Chief Medical Examiner, under seal of the State, shall be received in any court as prima facie evidence of any fact stated in the certificate or documents attached to the certificate. The certificate under the seal shall be presumed to be that of the Chief Medical Examiner. A facsimile of the signature of the Chief Medical Examiner imprinted on any certificate described in this subsection shall have the same validity as his written signature and shall be admissible in court.

[1987, c. 329, §2 (RPR) .]

7. **Medical records provided.** In any medical examiner case, upon oral or written request of the medical examiner, any individual, partnership, association, corporation, institution or governmental entity that has rendered treatment pertaining to the medical examiner case shall as soon as practicable provide the medical examiner with all medical records pertaining to the person and the treatment provided. No individual, partnership, association, corporation, institution, governmental entity or employee or agent of a governmental entity may be criminally or civilly responsible for furnishing any medical records in compliance with this subsection.

[1991, c. 723, (AMD) .]

8. **Certain information confidential.** The following records in the possession or custody of a medical examiner or the Office of the Chief Medical Examiner are not public records within the meaning of Title 1, section 402, subsection 3 and are confidential:

A. Medical records relating to a medical examiner case; [2001, c. 221, §1 (NEW).]

B. Law enforcement agency reports or records relating to a medical examiner case; [2001, c. 221, §1 (NEW).]

C. Communications with the Department of the Attorney General relating to a medical examiner case; [2001, c. 221, §1 (NEW).]

D. Communications with the office of a district attorney relating to a medical examiner case; [2001, c. 221, §1 (NEW).]

E. Death certificates and amendments made to the certificates, except for the information for which the medical examiner is responsible, as listed in section 2842, subsection 3, and not ordered withheld by the Attorney General relating to a medical examiner case or missing person; [2001, c. 221, §1 (NEW).]

F. Photographs and transparencies, histological slides, videotapes and other like items relating to a medical examiner case; and [2001, c. 221, §1 (NEW).]

G. Written or otherwise recorded communications that express or are evidence of suicidal intent obtained under section 3028, subsections 4 and 5. [2001, c. 221, §1 (NEW).]

[2001, c. 221, §1 (RPR) .]

9. **Release of medical examiner's reports.**

[2001, c. 221, §2 (RP) .]

10. **Cooperation with research requests.** The Office of Chief Medical Examiner shall cooperate with research requests by supplying abstracted data to interested persons consistent with the available resources of the office.

[2001, c. 221, §3 (AMD) .]

11. **Written or recorded material expressing suicidal intent.**

[2001, c. 221, §4 (RP) .]

12. **Access to or dissemination of confidential records.** Except as specified in subsections 10 and 13, access to or dissemination of records made confidential under subsection 8 is limited to:

A. A criminal justice agency for the purpose of the administration of criminal or juvenile justice; [2001, c. 221, §5 (NEW).]

B. A person for whom the Chief Medical Examiner determines access is necessary or desirable to carry out a duty under this Act; [2001, c. 221, §5 (NEW).]

C. A person for whom the Chief Medical Examiner determines access is necessary or desirable to allow for the harvesting of a decedent's organs and other tissues; [2001, c. 221, §5 (NEW).]

D. A person when authorized or required under any state or federal law, rule or regulation; and [2001, c. 221, §5 (NEW).]

E. A person pursuant to a court order. [2001, c. 221, §5 (NEW).]

Access to or dissemination of records as provided under paragraphs A to C can be done as a matter of course by the Chief Medical Examiner unless the Attorney General directs otherwise.

[2001, c. 221, §5 (NEW) .]

13. **Access to certain information by certain persons.** Unless a medical examiner case is under investigation by the Department of the Attorney General or the office of a district attorney and the Attorney General or the district attorney determines that there is a reasonable possibility that release or inspection interferes with a criminal investigation or prosecution by the disclosure:

A. Items identified in subsection 8, paragraphs F and G may be inspected and copies obtained, upon payment of any required fee under section 3035, by:

(1) A next of kin of the deceased, as defined under section 2843-A. The Chief Medical Examiner may provide the original of the items described in subsection 8, paragraph G to the next of kin or other person to whom that item is addressed or directed;

(2) An insurer that may be responsible for payment of benefits as a result of a death if relevant to the payment obligation;

(3) An attorney representing the estate of the decedent or the decedent's property if relevant to the representation; and

(4) An attorney representing a person or a person's estate and exploring a possible civil action against the estate of the decedent if relevant to the representation; and [2001, c. 221, §5 (NEW).]

B. A person may inspect and obtain a copy of communications identified in subsection 8, paragraphs C and D, except work product as defined in Rule 16(a)(3) of the Maine Rules of Unified Criminal Procedure, as long as the communications would otherwise be open to inspection and release if in the possession or custody of the Department of the Attorney General or the office of a district attorney. [2015, c. 431, §44 (AMD).]

[2015, c. 431, §44 (AMD) .]

14. **Access to report documents.** Report documents, as defined in section 3035, subsection 2, in the possession or custody of a medical examiner or the Office of the Chief Medical Examiner constitute investigative information. Release and inspection are governed by Title 16, section 804. Release and inspection are also contingent upon the person's request specifying a specific decedent or decedents and the payment of any required fee under section 3035.

[2013, c. 267, Pt. B, §16 (AMD) .]

15. **Testing for HIV.** Notwithstanding Title 5, chapter 501, the Chief Medical Examiner in a medical examiner case may test for the human immunodeficiency virus and may disclose the test result as authorized under subsection 12.

[2001, c. 221, §5 (NEW) .]

As used in subsections 10, 12, 13 and 14, "person" means a natural person, including a public servant, or a corporation, partnership, unincorporated association or other legal entity, including a governmental unit. [2001, c. 221, §6 (NEW).]

SECTION HISTORY
1967, c. 534, §2 (NEW). 1973, c. 722, (AMD). 1975, c. 771, §219 (AMD). 1977, c. 59, §1 (AMD). 1979, c. 538, §2 (AMD). 1985, c. 611, §4 (RPR). 1985, c. 785, §B90 (AMD). 1987, c. 329, §2 (RPR). 1991, c. 339, §§1,2 (AMD). 1991, c. 723, (AMD). 1997, c. 1, §E1 (AMD). 1997, c. 643, §G1

(AMD). 2001, c. 221, §§1-6 (AMD). 2001, c. 222, §1 (AMD). 2011, c. 1, Pt. JJ, §1 (AMD). 2013, c. 267, Pt. B, §16 (AMD). 2015, c. 431, §44 (AMD).

§3023. MEDICAL EXAMINERS; APPOINTMENT; JURISDICTION

The Chief Medical Examiner shall appoint medical examiners, who have statewide jurisdiction and serve at the pleasure of the Chief Medical Examiner, subject to the Chief Medical Examiner's control and the rules adopted by the Chief Medical Examiner. Medical examiners are appointed for a term of no more than 5 years, and such terms may be renewed indefinitely. The medical examiners must be learned in the science of medicine and anatomy, licensed as physicians in this State and residents of this State. Each medical examiner before entering upon the duties of the office and before each period of renewal must be duly sworn to the faithful performance of the medical examiner's duty. [2015, c. 285, §1 (AMD).]

The Chief Medical Examiner may make temporary appointments when the Chief Medical Examiner determines it is in the public interest. Temporary medical examiners shall serve on a case-by-case basis and must be licensed as physicians by the State but do not need to be residents of the State or take an oath of office. [2001, c. 222, §2 (AMD).]

The Chief Medical Examiner may retain official consultants to serve the various needs of the office. These consultants must possess a high degree of integrity and be learned in their fields. They need not reside within the State or take an oath of office. They serve at the pleasure of the Chief Medical Examiner. [2001, c. 222, §2 (AMD).]

SECTION HISTORY
1967, c. 534, §2 (NEW). 1979, c. 538, §3 (AMD). 1985, c. 611, §5 (AMD). 2001, c. 222, §2 (AMD). 2013, c. 113, §1 (AMD). 2015, c. 285, §1 (AMD).

§3023-A. MEDICOLEGAL DEATH INVESTIGATORS; APPOINTMENT; JURISDICTION

The Chief Medical Examiner may appoint persons who are not physicians as medicolegal death investigators, who have statewide jurisdiction and serve at the pleasure of the Chief Medical Examiner, subject to the Chief Medical Examiner's control and rules adopted by the Chief Medical Examiner. Medicolegal death investigators must meet the certification and training requirements established by the Chief Medical Examiner and must be residents of this State. Medicolegal death investigators may be employees of the Office of the Chief Medical Examiner or serve on a fee-for-service basis as determined by the Chief Medical Examiner. A medicolegal death investigator before entering upon the duties of the office must be duly sworn to the faithful performance of the medicolegal death investigator's duty. [2013, c. 113, §2 (NEW).]

SECTION HISTORY
2013, c. 113, §2 (NEW).

§3024. SALARIES; FEES; EXPENSES

The salary of the Chief Medical Examiner of the State must be set by the Governor. Other nonsalaried medical examiners and nonsalaried medicolegal death investigators, upon the submission of their completed report to the Chief Medical Examiner, must be paid a fee of up to $85 for an inspection and view and are entitled to receive travel expenses to be calculated at the mileage rate currently paid to state employees pursuant to Title 5, section 8. An additional fee of $50 may be authorized by the Chief Medical Examiner for payment to other nonsalaried medical examiners and nonsalaried medicolegal death investigators for visits to death scenes other than hospitals. [2013, c. 368, Pt. CC, §1 (AMD).]

The fees for autopsies performed by pathologists, at the request of a medical examiner or the Chief Medical Examiner, must be set by the Chief Medical Examiner at a level that provides reasonable payment for necessary costs and a reasonable fee in light of prevailing rates for the services of a pathologist in the State. [2001, c. 222, §3 (AMD).]

The Chief Medical Examiner may, in an unusual circumstance as determined by the Chief Medical Examiner, prescribe a special fee for the service of a medical examiner or medicolegal death investigator or for any consultant service the Chief Medical Examiner determines necessary. [2013, c. 113, §3 (AMD).]

The Chief Medical Examiner may authorize any other expenses necessary to carry out the Chief Medical Examiner's duties. The Chief Medical Examiner shall reimburse a funeral establishment that transports a body to Augusta at the request of the Office of Chief Medical Examiner at the following rates: for up to and including the first 25 miles, $120; for the next 25 miles, $2 per mile traveled while actually transporting a body; and for miles in excess of 50, $1.75 per mile traveled while actually transporting a body. [2011, c. 445, §1 (AMD); 2011, c. 445, §3 (AFF).]

All compensation and expenses authorized by this chapter must be paid from the funds of the State appropriated by the Legislature for this purpose. [2001, c. 222, §3 (AMD).]

If the Chief Medical Examiner or employees of that office provide expert opinion or testimony relating to Maine medical examiner cases on behalf of private litigants, the Chief Medical Examiner may set a reasonable fee for these services, preparation leading to them and expenses incurred in providing them. All fees, charges or other receipts must be credited to the General Fund. Medical examiners, medicolegal death investigators and consultants who serve the State on a fee per case basis are excluded from this paragraph and may make private arrangements for these services. [2013, c. 113, §3 (AMD).]

Notwithstanding Title 5, section 1585 or any other provision of law, available balances in the Chief Medical Examiner account, Personal Services line category in excess of funds needed to offset attrition may be transferred by financial order to the Chief Medical Examiner account, All Other line category to provide for contracted medical examiner services upon the recommendation of the State Budget Officer and approval of the Governor. [2013, c. 368, Pt. DD, §2 (NEW).]

SECTION HISTORY
1967, c. 534, §2 (NEW). 1969, c. 125, (AMD). 1975, c. 771, §220 (AMD). 1977, c. 59, §2 (RPR). 1979, c. 538, §4 (AMD). 1981, c. 242, §3 (AMD). 1981, c. 702, §M1 (AMD). 1983, c. 534, §1 (AMD). 1997, c. 24, §PP1 (AMD). 2001, c. 222, §3 (AMD). 2011, c. 445, §1 (AMD). 2011, c. 445, §3 (AFF). 2013, c. 113, §3 (AMD). 2013, c. 368, Pt. CC, §1 (AMD). 2013, c. 368, Pt. DD, §2 (AMD).

§3025. MEDICAL EXAMINER CASE

1. **Circumstances of death that must be reported.** A medical examiner case may exist and must be reported as provided in section 3026 when remains are found that may be human and raise suspicion that death has occurred under any of the following circumstances:

A. Death is suspected of having been caused by any type of physical injury, including poisoning, regardless of whether the suspected manner of death is homicide, suicide or accident. This circumstance must be reported irrespective of whether the deceased had been attended by a physician, was a patient in a hospital, survived for a considerable time following the physical injury or died from terminal natural causes consequent to and following the physical injury; [2003, c. 433, §1 (AMD).]

B. Suddenly when the person is in apparent good health and has no specific natural disease sufficient to explain death; [1985, c. 611, §6 (RPR).]

C. During diagnostic or therapeutic procedures under circumstances indicating gross negligence or when clearly due to trauma or poisoning unrelated to the ordinary risks of those procedures; [1985, c. 611, §6 (RPR).]

D. Death when the person is in custody pursuant to an arrest, confined in a state correctional or detention facility, county jail, other county correctional or detention facility or local lockup or is on the way to or from a courthouse or any of these places while in the custody of a law enforcement officer or county or state corrections official; [2011, c. 420, Pt. D, §2 (AMD); 2011, c. 420, Pt. D, §6 (AFF).]

E. Death while the person is a patient or resident of a facility of the Department of Health and Human Services or residential care facility maintained or licensed by the Department of Health and Human Services, unless clearly certifiable by an attending physician as due to specific natural causes; [1985, c. 611, §6 (RPR); 1995, c. 560, Pt. K, §82 (AMD); 1995, c. 560, Pt. K, §83 (AFF); 2001, c. 354, §3 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

F. Death suspected of being due to a threat to the public health when the authority of the medical examiner is needed to adequately study the case for the protection of the public health; [1985, c. 611, §6 (RPR).]

G. Death suspected of not having been certified, including, but not limited to, bodies brought into the State and any buried remains uncovered other than by legal exhumation; [1985, c. 611, §6 (RPR).]

H. Deaths suspected of being medical examiner cases which may have been improperly certified or inadequately examined, including, but not limited to, bodies brought into the State under those circumstances; [1991, c. 339, §3 (AMD).]

I. Sudden infant death syndrome deaths and all other deaths of children under the age of 18 unless clearly certifiable by an attending physician as due to specific natural causes unrelated to abuse or neglect; [1985, c. 611, §6 (RPR).]

J. Whenever human or possibly human remains are discovered not properly interred or disposed of, for which the responsibility to do so cannot be readily determined; or [1985, c. 611, §6 (RPR).]

K. Any cause when there is no attending physician capable of certifying the death as due to natural causes. When a person dies who is under the care of a religious practitioner who uses prayer and spiritual means of healing, the fact that the deceased has been under such religious care does not warrant suspicion of foul play or investigation beyond that warranted by the other facts of the case. [1985, c. 611, §6 (RPR).]

In any case in which the necessity of a report is questionable, a report must be made.

[2011, c. 420, Pt. D, §2 (AMD); 2011, c. 420, Pt. D, §6 (AFF) .]

1-A. Medical examiner case determination. Notwithstanding that a case must be reported under subsection 1, the acceptance of any reported death as a medical examiner case is to be determined by the Chief Medical Examiner unless acceptance is specifically ordered by the Attorney General or district attorney having jurisdiction.

The following deaths that must be reported need not be accepted by the Chief Medical Examiner as a medical examiner case:

A. Deaths due to the consequences of long-term alcohol use, long-term exposure to environmental or occupational toxins or long-term exposure to carcinogens; [2003, c. 433, §4 (NEW).]

B. Deaths in the elderly who have sustained limb or axial fractures, excluding the head, for which they are or have been hospitalized; or [2003, c. 433, §4 (NEW).]

C. Sudden natural deaths in the elderly who have not had previous specific symptoms or who were not under treatment by a physician for the specific natural cause that is considered to be the cause of death. [2003, c. 433, §4 (NEW).]

These reportable deaths may be referred back to the attending physician by the Chief Medical Examiner for certification of the death, even though the attending physician has not treated the patient for the specific natural disease that the attending physician will enter as the physician's diagnosis.

[2003, c. 433, §4 (NEW) .]

2. **Attendance by physician.**

[2003, c. 433, §5 (RP) .]

3. **Transplant operations.** No operation for the transplant of an organ or a portion of any organ may take place, when the donor's death occurs under circumstances indicating a medical examiner case, without approval of the medical examiner. Any doctor performing a transplant operation when the donor has died under these circumstances shall note the condition of the vital organs in the region of surgery and shall include this notation in a written report of the operation and manner in which death was pronounced, with the report to be given to the medical examiner upon his request. The medical examiner may choose to be present during the removal of the donated organ.

[1985, c. 611, §6 (RPR) .]

4. **Questionable cases and cases that may constitute exceptions.**

[2003, c. 433, §6 (RP) .]

5. **Delayed reports.** When a death has occurred that falls under this law as a medical examiner case and the body has already been released for final disposition, the case may be accepted and the body ordered held for examination by a medical examiner, but no exhumation may take place when the body has been finally interred, except pursuant to section 3029.

[1985, c. 611, §6 (NEW) .]

SECTION HISTORY
1967, c. 534, §2 (NEW). 1973, c. 567, §20 (AMD). 1979, c. 538, §5 (RPR). 1985, c. 611, §6 (RPR). 1987, c. 296, §3 (AMD). 1991, c. 339, §3 (AMD). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 222, §§4-6 (AMD). 2001, c. 354, §3 (AMD). 2003, c. 433, §§3-6 (AMD). 2003, c. 689, §B6 (REV). 2011, c. 60, §1 (AMD). 2011, c. 420, Pt. D, §2 (AMD). 2011, c. 420, Pt. D, §6 (AFF).

§3026. REPORTS OF DEATH

1. **Persons suspecting medical examiner case.** Any person who becomes aware of a suspected medical examiner case shall immediately notify a law enforcement officer or the Office of Chief Medical Examiner. As used in this subsection, "person" means a natural person, including a public servant, and a corporation, partnership, unincorporated association or any other nonhuman legal entity, including any governmental unit.

[2001, c. 222, §7 (AMD) .]

2. **Law enforcement officers suspecting medical examiner case.** Any law enforcement officer who becomes aware of a suspected medical examiner case shall immediately notify the Office of Chief Medical Examiner.

[2001, c. 222, §7 (AMD) .]

3. **Medical examiners suspecting medical examiner case.** Any medical examiner who becomes aware of a death caused by physical injury, or in which physical injury is the suspected cause, shall immediately notify the Office of Chief Medical Examiner and the appropriate law enforcement agency. The agency shall notify the district attorney for the district in which the body is located.

[2001, c. 222, §7 (AMD) .]

4. **Cases involving or suspected of involving physical injury attributable to criminal conduct.** Any law enforcement officer or medical examiner who becomes aware of a death involving physical injury attributable to criminal conduct, or in which physical injury attributable to criminal conduct is suspected, other than vehicular manslaughter, in addition to complying with the notification requirements in subsection 3, shall immediately notify the Attorney General.

[2001, c. 222, §7 (AMD) .]

SECTION HISTORY
1967, c. 534, §2 (NEW). 1973, c. 604, §1 (AMD). 1979, c. 538, §6 (RPR). 2001, c. 222, §7 (AMD).

§3027. PROCEDURE AT SCENE OF DEATH

1. **Movement or alteration of body prohibited.** Except as otherwise provided in this section:

A. In any medical examiner case a person may not move or alter the body or any objects at the scene of death prior to the arrival, or without the express authorization, of the medical examiner or Office of Chief Medical Examiner; [2001, c. 222, §8 (AMD).]

B. In any medical examiner case in which physical injury attributable to noncriminal conduct is suspected or in which any physical injury by motor vehicle, including vehicular manslaughter, is suspected, a person may not move or alter the body or any objects at the scene of death prior to the arrival, or without the express authorization, of the district attorney for the district in which the body is located or the district attorney's authorized representative; and [2001, c. 222, §8 (AMD).]

C. In any medical examiner case in which physical injury attributable to criminal conduct other than vehicular manslaughter is suspected, a person may not move or alter the body or any objects at the scene of death prior to the arrival, or without the express authorization, of the Attorney General or the Attorney General's authorized representative. [2001, c. 222, §8 (AMD).]

[2001, c. 222, §8 (AMD) .]

2. **Preservation or removal of body.** In any medical examiner case in which the body is in danger of being destroyed or lost or the location of the body renders it a serious threat to the safety or health of others, a person may take whatever steps are reasonably necessary for the retention or preservation of the body prior to the arrival or authorization of the medical examiner or the Office of Chief Medical Examiner. The person shall first, if practicable, exactly mark the location and position of the body.

In any medical examiner case in which physical injury attributable to criminal conduct other than vehicular manslaughter is not suspected and the presence of the body is likely to cause hardship or outrage, and a medical examiner or the Office of Chief Medical Examiner can not be reached in a reasonable period of

time, the district attorney for the district in which the body is located or the district attorney's authorized representative may authorize removal of the body by the law enforcement officer in charge of the scene. The officer shall first, if practicable, exactly mark the location and position of the body.

A. When death occurs in a medical facility such as a hospital or an ambulance, the body may be removed to a mortuary under the following conditions:

(1) The incident causing the death did not occur in the medical facility;

(2) The body is transported to a secure place in the same condition as when death occurred; and

(3) The only alterations are the disconnecting of fixed medical equipment. [1979, c. 538, §7 (NEW).]

[2001, c. 222, §8 (AMD) .]

3. **Procedures.** Before removal of the body as provided in subsection 2, the law enforcement officer shall whenever possible arrange for photographs, measurements and a record of the location and position of the body.

When the death is suspected of involving physical injury attributable to criminal conduct other than vehicular manslaughter, the procedure in this subsection must be undertaken with the supervision of an authorized representative of the Attorney General.

In all medical examiner cases in which physical injury attributable to criminal conduct other than vehicular manslaughter is suspected, the procedure in this subsection may be waived concurrently by the Chief Medical Examiner and the Attorney General or the Attorney General's authorized representative.

In all other medical examiner cases the procedure in this subsection may be waived concurrently by the medical examiner and the district attorney for the district in which the body is located or the district attorney's authorized representative.

[2001, c. 222, §8 (AMD) .]

SECTION HISTORY
1967, c. 534, §2 (NEW). 1979, c. 538, §7 (RPR). 2001, c. 222, §8 (AMD).

§3028. INVESTIGATION; AUTOPSY

1. **Authority to conduct investigation.** The medical examiner or medicolegal death investigator has authority to conduct an investigation and inquiry into the cause, manner and circumstances of death in a medical examiner case. The medical examiner or medicolegal death investigator shall, if it is determined necessary, immediately proceed to the scene and, subject to the authority of the Attorney General, assume custody of the body for the purposes of the investigation, and shall retain custody until the investigation has been completed or until the Chief Medical Examiner has assumed charge of the case.

[2013, c. 113, §4 (AMD) .]

2. **Investigation by law enforcement officer.** When death is not suspected to be the result of physical injury attributable to criminal conduct, the medical examiner may elect not to proceed to the scene, or the Chief Medical Examiner may elect not to dispatch a medical examiner or medicolegal death investigator to the scene. If the medical examiner elects not to proceed to the scene, or the Chief Medical Examiner elects not to dispatch a medical examiner or medicolegal death investigator to the scene, the law enforcement officer in charge of the scene shall:

A. Investigate, take photographs and take possession of useful objects as directed by the medical examiner, medicolegal death investigator or the Office of Chief Medical Examiner pursuant to subsection 4; [2013, c. 113, §5 (AMD).]

B. [2001, c. 291, §2 (RP).]

C. Remove the body in accordance with the instructions of the medical examiner, medicolegal death investigator or the Office of Chief Medical Examiner; and [2013, c. 113, §5 (AMD).]

D. Make a report of the investigation available to the medical examiner, medicolegal death investigator or the Office of Chief Medical Examiner. [2013, c. 113, §5 (AMD).]

[2013, c. 113, §5 (AMD) .]

3. **Assistance of law enforcement agency.** The medical examiner, the medicolegal death investigator or the pathologist as described in subsection 8 may request the assistance and use of the facilities of the law enforcement agency having jurisdiction over the case for the purposes of photographing, fingerprinting or otherwise identifying the body. That agency shall provide the medical examiner, medicolegal death investigator or pathologist with a written report of the steps taken in providing the assistance.

[2013, c. 113, §6 (AMD) .]

4. **Possession of useful objects.** Except as otherwise directed by the Attorney General, the Attorney General's deputies or assistants, the medical examiner, the medicolegal death investigator or the Office of Chief Medical Examiner may direct that a law enforcement officer at the scene make measurements, take photographs and take possession of all objects that in the opinion of the medical examiner, medicolegal death investigator or the Office of Chief Medical Examiner may be useful in establishing the cause, manner and circumstances of death. For these same purposes, the medical examiner, medicolegal death investigator or the Office of Chief Medical Examiner may direct that a law enforcement officer take possession of any objects or specimens that have been removed from the victim at the scene or elsewhere while under medical care.

[2013, c. 113, §7 (AMD) .]

5. **Requests for objects.** Any person having possession of any object or objects, as described in subsection 4, shall at the request of the medical examiner or medicolegal death investigator give that object or objects to a law enforcement officer, to the medical examiner, to the medicolegal death investigator or to the Office of Chief Medical Examiner. Medical personnel and institutions turning over any objects or specimens that have been removed from the victim while under medical care are immune from civil or criminal liability when complying with this subsection. Original written or recorded material that might express suicidal intent must be sent to the Office of the Chief Medical Examiner. The Chief Medical Examiner may elect to accept copies in place of originals.

[2013, c. 113, §8 (AMD) .]

6. **Examination of body.** In all cases, the medical examiner or medicolegal death investigator shall conduct a thorough examination of the body except in those cases when the body has already been disposed of and is not being exhumed or when the Chief Medical Examiner or Deputy Chief Medical Examiner determines, after review of available records and known circumstances, that the report of the death of the decedent may be certified and completed without examining the body.

[2013, c. 113, §9 (AMD) .]

7. **Written report.** Upon completing an investigation, the medical examiner or medicolegal death investigator shall submit a written report of the investigator's findings to the Chief Medical Examiner on forms provided for that purpose. The investigator shall retain one copy of the report.

If an investigator reports suspected abuse, neglect or exploitation to the Chief Medical Examiner, the Chief Medical Examiner, by reporting that information to the department on behalf of the investigator, fulfills the medical examiner's mandatory reporting requirement under section 3477 or 4011-A.

[2013, c. 113, §10 (AMD) .]

8. **Autopsy.** If, in any medical examiner case, in the opinion of the medical examiner, the Chief Medical Examiner, the district attorney for the district in which the death has occurred or the Attorney General, it is advisable and in the public interest that an autopsy be made, the autopsy must be conducted by the Chief Medical Examiner or by a physician that the medical examiner, with the approval of the Chief Medical Examiner, may designate. The medical examiner, with the approval of the Chief Medical Examiner, may elect to perform the autopsy. The person who performs the autopsy shall make a complete report of the findings of the autopsy and shall transmit the report to the medical examiner and the Office of Chief Medical Examiner, retaining one copy of the report.

[1991, c. 339, §4 (AMD) .]

9. **Autopsy of child.** In the case of a child under the age of 3 years, when death occurs without medical attendance or, if attended, without a specific natural cause, the medical examiner shall order an autopsy. The autopsy may be waived by the Chief Medical Examiner, as long as the Chief Medical Examiner includes the reason for the waiver in the record.

[2001, c. 222, §9 (AMD) .]

10. **Chief Medical Examiner; jurisdiction.** The Chief Medical Examiner may assume jurisdiction over a medical examiner case and may recertify the death when the Chief Medical Examiner finds that it is in the public interest to do so. The Chief Medical Examiner shall include the reasons for so doing in the record.

[2001, c. 222, §9 (AMD) .]

11. **Final release of body.** In any medical examiner case the body shall not be finally released for embalming or burial except by order of the medical examiner in charge of the case, or by the Chief Medical Examiner. No medical examiner may release a body without first ensuring that the case has been reported to the Office of Chief Medical Examiner.

[1985, c. 611, §7 (AMD) .]

12. **Report to domestic abuse panel.** If the Chief Medical Examiner determines that a death resulted from criminal conduct and that the victim was pregnant at the time of death, the Chief Medical Examiner shall send a copy of any report prepared under this section to the Domestic Abuse Homicide Review Panel created pursuant to Title 19-A, section 4013.

[2005, c. 88, Pt. A, §2 (NEW) .]

SECTION HISTORY
1967, c. 534, §2 (NEW). 1973, c. 567, §20 (AMD). 1979, c. 538, §8 (RPR). 1985, c. 611, §7 (AMD). 1991, c. 97, §§1,2 (AMD). 1991, c. 339, §4 (AMD). 1995, c. 272, §§1-3 (AMD). 2001, c. 222, §9 (AMD). 2001, c. 291, §§1-7 (AMD). 2001, c. 345, §2 (AMD). 2003, c. 510, §B7 (AMD). 2005, c. 88, §A2 (AMD). 2011, c. 182, §1 (AMD). 2013, c. 113, §§4-10 (AMD).

§3028-A. DISPOSAL OF UNIDENTIFIED REMAINS

Whenever unidentified human skeletal remains are recovered, the Chief Medical Examiner may store the remains, release them to an educational institution, inter them in an appropriate resting place or have them cremated. Ashes of remains cremated may be disposed of in any appropriate manner. Human skeletal remains uncovered in a cared-for cemetery or known to be Indian remains are excluded from the operation of this section. [1985, c. 611, §8 (NEW).]

SECTION HISTORY
1985, c. 611, §8 (NEW).

§3028-B. RETENTION OF BODY FRAGMENTS AND BODY FLUIDS

A medical examiner or his designated pathologist may retain body fragments or body fluids for evidence, further study or documentation. [1985, c. 611, §8 (NEW).]

SECTION HISTORY
1985, c. 611, §8 (NEW).

§3028-C. DISPOSAL OF NONSUBSTANTIAL FRAGMENTS AND FLUIDS; DISPOSAL OF SUBSTANTIAL FRAGMENTS

1. **Disposal of nonsubstantial body fragments and body fluids.** Body fragments or body fluids retained for evidence, further study or documentation, or those which have been recovered after the body has been released from the custody of the medical examiner, may be disposed of according to the practices of the laboratory responsible for analysis, by the Office of the Chief Medical Examiner, or by the medical examiner or pathologist retaining those fragments or fluids, unless claimed in writing by the person responsible for burial.

[1985, c. 611, §8 (NEW) .]

2. **Disposal of substantial body fragments.** The Chief Medical Examiner may dispose of substantial fragments of bodies that have been retained for evidence, further study or documentation or that have been recovered after the rest of the body has been finally released, in accordance with section 3028-A, unless claimed by the person responsible for burial.

[1985, c. 611, §8 (NEW) .]

SECTION HISTORY
1985, c. 611, §8 (NEW).

§3028-D. DISPOSAL OF IDENTIFIED HUMAN REMAINS WITHOUT CONNECTION TO STATE AND UNIDENTIFIED HUMAN REMAINS

1. **Assumption of responsibility.** The Chief Medical Examiner may assume responsibility for proper disposition of the identified human remains of a deceased nonresident of this State or unidentified human remains that are the subject of a medical examiner case if the Chief Medical Examiner has made reasonable inquiry and is unable to locate:

A. Next of kin or a person or governmental unit legally responsible for the human remains; or [2001, c. 292, §1 (NEW).]

B. A person or governmental unit otherwise willing to assume responsibility for the human remains. [2001, c. 292, §1 (NEW).]

[2001, c. 292, §1 (NEW) .]

2. **Necessary expenses.** The expenses incurred by the Chief Medical Examiner must be paid as follows.

A. The department shall pay any necessary expenses incurred by the Chief Medical Examiner as to:

(1) Unidentified human remains that, after reasonable inquiry, the Chief Medical Examiner has determined not to be the human remains of an illegal alien; and

(2) A deceased nonresident other than an illegal alien. [2001, c. 292, §1 (NEW).]

B. The Department of the Attorney General shall pay any necessary expenses incurred by the Chief Medical Examiner as to:

(1) A deceased nonresident who is an illegal alien; and

(2) Unidentified human remains that, after reasonable inquiry, the Chief Medical Examiner has determined to be the human remains of an illegal alien. [2001, c. 292, §1 (NEW).]

[2001, c. 292, §1 (NEW) .]

SECTION HISTORY
2001, c. 292, §1 (NEW).

§3029. BODY BURIED WITHOUT INQUIRY

1. **Notification of district attorney or Attorney General.** If in any medical examiner case:

A. The body is buried:

(1) Without inquiry or examination by the medical examiner;

(2) Before the inquiry or examination has been completed to the satisfaction of the medical examiner; or

(3) Without an autopsy if such was advisable pursuant to section 3028; and [1979, c. 538, §9 (NEW).]

B. The body is required for that inquiry, examination, completion or autopsy, the medical examiner shall notify the district attorney, for the district in which the body was found, or the Attorney General. [1979, c. 538, §9 (NEW).]

[1979, c. 538, §9 (NEW) .]

2. **Petition for order of exhumation.** The district attorney or Attorney General may, under the circumstances enumerated in subsection 1 and if the district attorney or Attorney General finds it to be in the public interest, petition a justice of the Superior Court for an order of exhumation.

[2001, c. 222, §10 (AMD) .]

3. **Report of findings.** The medical examiner, Chief Medical Examiner or pathologist who completes the inquiry, examination or autopsy shall report the findings to the justice and to the Office of Chief Medical Examiner.

[2001, c. 222, §10 (AMD) .]

SECTION HISTORY

1967, c. 534, §2 (NEW). 1973, c. 567, §20 (AMD). 1979, c. 538, §9 (RPR). 2001, c. 222, §10 (AMD).

§3030. VICTIMS OF CRIME

(REPEALED)

SECTION HISTORY
1967, c. 534, §2 (NEW). 1973, c. 567, §20 (AMD). 1977, c. 59, §3 (RP).

§3031. FACILITIES AND SERVICES AVAILABLE TO MEDICAL EXAMINERS

The facilities of all laboratories, under the control of any state agency or department and the services of the professional staffs thereof, shall be made available to the Chief Medical Examiner with the cooperation of the head of the agency involved. [1967, c. 534, §2 (NEW).]

SECTION HISTORY
1967, c. 534, §2 (NEW).

§3032. RULES

The Chief Medical Examiner is authorized and empowered to carry into effect this chapter and, in pursuance thereof, to make and enforce such reasonable rules consistent with this chapter as the Chief Medical Examiner determines necessary. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [2001, c. 222, §11 (AMD).]

SECTION HISTORY
1967, c. 534, §2 (NEW). 1985, c. 611, §9 (AMD). 2001, c. 222, §11 (AMD).

§3033. LIMITATION ON LIABILITY OF CERTAIN PERSONS APPOINTED OR RETAINED

1. **Additional immunities.** In addition to all existing tort immunities enumerated in the Maine Tort Claims Act:

A. A medical examiner may not be held liable for damages for any injury or damage that results from the exercise and discharge of any of the medical examiner's official duties, unless it can be shown that the injury or damage resulted from gross negligence on the part of the medical examiner; [2001, c. 222, §12 (NEW).]

B. A pathologist performing an autopsy at the request of a medical examiner or the Chief Medical Examiner may not be held liable for damages for any injury or damage that results from the performance of the autopsy unless it can be shown that the injury or damage resulted from the gross negligence of the pathologist; [2013, c. 113, §11 (AMD).]

C. A professional consultant, who at the request of a medical examiner or the Chief Medical Examiner conducts an examination and renders a report, may not be held liable for damages for any injury or damage that results from the performance of the examination unless it can be shown that the injury or damage resulted from the gross negligence of the consultant; and [2013, c. 113, §11 (AMD).]

D. A medicolegal death investigator may not be held liable for damages for any injury or damage that results from the exercise and discharge of any of the medicolegal death investigator's official duties unless it can be shown that the injury or damage resulted from gross negligence on the part of the medicolegal death investigator. [2013, c. 113, §12 (NEW).]

[2013, c. 113, §§11, 12 (AMD) .]

SECTION HISTORY
1977, c. 59, §4 (NEW). 1979, c. 538, §10 (AMD). 2001, c. 222, §12 (RPR). 2013, c. 113, §§11, 12 (AMD).

§3034. MISSING PERSONS

1. **Files; information.** The Office of Chief Medical Examiner shall maintain files on missing persons sufficient for the purpose of identification when there is reason to suspect that those persons may not be found alive. These files may include such material as medical and dental records and specimens, details of personal property and physical appearance, samples of hair, fingerprints and specimens that may be useful for identification. The Chief Medical Examiner may require hospitals, physicians, dentists and other medical institutions and practitioners to provide information, samples and specimens. A person participating in good faith in the provision of the information, samples or specimens under this section is immune from any civil or criminal liability for that act or for otherwise cooperating with the Chief Medical Examiner.

[1991, c. 339, §5 (NEW) .]

2. **Confidentiality; disclosure.** Except as provided in subsection 5, all information and materials gathered and retained pursuant to this section must be used solely for the purposes of identification of deceased persons and persons found alive who are unable to identify themselves because of mental or physical impairment. The files and materials are confidential, except that compiled data that does not identify specific individuals may be disclosed to the public. Upon the identification of a deceased person, those records and materials used for the identification may become part of the records of the Office of Chief Medical Examiner and may then be subject to public disclosure as pertinent law provides.

[2011, c. 524, §2 (AMD) .]

3. **Reporting of missing persons.** Missing persons may be reported directly to the Office of Chief Medical Examiner by interested parties. Law enforcement agencies or other public agencies that receive reports of missing persons, or that gain knowledge of missing persons, shall report that information to the Office of Chief Medical Examiner. Law enforcement agencies shall report all attempts to locate missing persons to the Office of Chief Medical Examiner. All absences without leave by individuals from state institutions must also be reported to the Office of Chief Medical Examiner when there exists a reasonable possibility of harm to that individual.

[1991, c. 339, §5 (NEW) .]

4. **Cooperation.** All state and law enforcement agencies and public and private custodial institutions shall cooperate with the Office of Chief Medical Examiner in reporting, investigating, clearing and gathering further information and materials on missing persons.

[1991, c. 339, §5 (NEW) .]

5. **Release to assist in search.** The Office of Chief Medical Examiner may release confidential information and materials about a missing person that are gathered and retained pursuant to this section if the Chief Medical Examiner determines that such release may assist in the search for the missing person.

[2011, c. 524, §3 (NEW) .]

SECTION HISTORY
1991, c. 339, §5 (NEW). 2011, c. 524, §§2, 3 (AMD).

§3035. FEES

1. **Fees.** Except as provided in subsections 3 and 4, the Office of Chief Medical Examiner shall charge a fee for providing report documents, histological slides and other items or additional services sought by a person entitled to obtain that item or service relating to a medical examiner case. Fees are to be paid in advance and according to the following fee schedule:

A. For report documents, the fees are as follows:

(1) Report documents when no autopsy has been performed, $10;

(2) Report documents when an autopsy has been performed, $25; and

(3) Report documents under subparagraphs (1) and (2) accompanied by a certificate under section 3022, subsection 6, an additional fee of $35, $25 of which accrues to the Secretary of State; [1997, c. 598, §1 (NEW).]

B. For histological slides, the fees are as follows:

(1) For each slide, $10;

(2) A handling fee per case, $20; and

(3) For 21 slides or more, an additional handling fee, $20; and [1997, c. 598, §1 (NEW).]

C. For other items and services such as photographs and transparencies, additional tests relating to toxicology or specimens and videotaping:

(1) A handling fee per case, $20; and

(2) Anticipated costs of providing the item or service, including shipping charges. [2015, c. 2, §11 (COR).]

[2015, c. 2, §11 (COR) .]

2. **Report documents.** For purposes of this section, "report documents" in a medical examiner case include the written report under section 3028, subsection 7; the written report of the findings of the autopsy under section 3028, subsection 8; and associated reports, including, but not limited to, toxicological reports, reports of forensic experts, reports of consultants and reports relating to harvested organs.

[1997, c. 598, §1 (NEW) .]

3. **Exemptions.** Exemptions from paying the fees established in subsection 1 are as follows.

A. A governmental agency is exempt from all fees in subsection 1. [1997, c. 598, §1 (NEW).]

B. A health care provider who has rendered service to the deceased is exempt from fees for the copy of report documents under subsection 1, paragraph A, subparagraphs (1) and (2). [1997, c. 598, §1 (NEW).]

C. A next of kin of the deceased, as defined under section 2843-A, is exempt from the fee for one copy per family of report documents under subsection 1, paragraph A, subparagraphs (1) and (2). [1997, c. 598, §1 (NEW).]

[1997, c. 598, §1 (NEW) .]

4. **Waiver.** Notwithstanding the fee schedule under subsection 1, paragraph A, fees for report documents relating to a medical examiner case may be waived at the discretion of the Chief Medical Examiner.

[1997, c. 598, §1 (NEW) .]

5. **Deposit of fees.** All fees collected must be deposited in a dedicated account within the Office of Chief Medical Examiner. At the end of each fiscal year, the State Controller shall transfer all unencumbered balances in excess of $500 to the General Fund as undedicated revenue.

[1997, c. 598, §1 (NEW) .]

SECTION HISTORY
1997, c. 598, §1 (NEW). RR 2015, c. 2, §11 (COR).

Part 7: PUBLIC REHABILITATION SERVICES

Chapter 713: REHABILITATION ACT

§3051. SHORT TITLE

(REPEALED)

SECTION HISTORY
1969, c. 457, §1 (NEW). 1993, c. 708, §A2 (RP).

§3052. REHABILITATION SERVICES UNIT CREATED

(REPEALED)

SECTION HISTORY
1969, c. 457, §1 (NEW). 1975, c. 293, §4 (AMD). 1993, c. 708, §A3 (RP).

§3053. AUTHORITY

(REPEALED)

SECTION HISTORY
1969, c. 457, §1 (NEW). 1975, c. 293, §4 (AMD). 1993, c. 708, §A3 (RP).

§3054. DEFINITIONS

(REPEALED)

SECTION HISTORY
1969, c. 457, §1 (NEW). P&SL 1975, c. 90, §§SEC.E,1,2 (AMD). 1975, c. 293, §4 (AMD). 1993, c. 708, §A3 (RP).

§3055. POWERS AND DUTIES OF DEPARTMENT

(REPEALED)

SECTION HISTORY
1969, c. 457, §1 (NEW). 1985, c. 768, §§2,3 (AMD). 1993, c. 708, §A4 (RP).

§3056. ACCEPTANCE OF FEDERAL PROVISIONS

(REPEALED)

SECTION HISTORY
1969, c. 457, §1 (NEW). 1977, c. 78, (AMD). 1981, c. 470, §A96 (AMD). 1993, c. 708, §A5 (RP).

§3057. RECEIPT AND DISBURSEMENT OF FUNDS

(REPEALED)

SECTION HISTORY
1969, c. 457, §1 (NEW). 1993, c. 708, §A6 (RP).

§3058. GIFTS

(REPEALED)

SECTION HISTORY
1969, c. 457, §1 (NEW). 1975, c. 771, §221 (AMD). 1993, c. 708, §A7 (RP).

§3059. DETERMINATION OF DISABILITY; FEDERAL-STATE AGREEMENT

The department is designated as the state agency to make determination of disability required under the Federal Social Security Act and acts amendatory thereof and additional thereto, and the commissioner, subject to the approval of the Governor, is authorized and empowered to enter into an agreement on behalf of the State with the designated federal official to carry out the Federal Social Security Act and acts amendatory thereof and additional thereto relating to the making of determinations of disability. [1975, c. 771, §222 (AMD).]

SECTION HISTORY
1969, c. 457, §1 (NEW). 1975, c. 771, §222 (AMD).

§3060. MAINTENANCE NOT ASSIGNABLE

(REPEALED)
(REPEALED)

SECTION HISTORY
1969, c. 457, §1 (NEW). 1993, c. 708, §A8 (RP).

§3061. HEARINGS AND JUDICIAL REVIEW

(REPEALED)

SECTION HISTORY
1969, c. 457, §1 (NEW). 1977, c. 694, §367 (AMD). 1993, c. 708, §A9 (RP).

§3062. MISUSE OF LISTS AND RECORDS

(REPEALED)

SECTION HISTORY
1969, c. 457, §1 (NEW). 1993, c. 708, §A10 (RP).

§3063. EMPLOYEES NOT TO ENGAGE IN POLITICAL ACTIVITIES

(REPEALED)

SECTION HISTORY
1969, c. 457, §1 (NEW). 1993, c. 708, §A10 (RP).

§3064. CONTINUING STUDY OF REHABILITATION NEEDS

(REPEALED)

SECTION HISTORY
1969, c. 457, §1 (NEW). 1993, c. 708, §A10 (RP).

§3065. VOCATIONAL REHABILITATION SERVICES UNIT

(REPEALED)

SECTION HISTORY
1969, c. 457, §1 (NEW). 1993, c. 708, §A10 (RP).

§3066. PROVISION OF VOCATIONAL REHABILITATION SERVICES

(REPEALED)

SECTION HISTORY
1969, c. 457, §1 (NEW). 1993, c. 708, §A10 (RP).

§3067. REGULATIONS

(REPEALED)

SECTION HISTORY
1969, c. 457, §1 (NEW). 1979, c. 553, §1 (AMD). 1993, c. 708, §A11 (RP).

Chapter 714: DIVISION OF DEAFNESS

§3071. DIVISION OF DEAFNESS

(REPEALED)

SECTION HISTORY
1985, c. 160, §2 (NEW). 1993, c. 708, §B2 (RP).

§3072. DEFINITIONS

(REPEALED)

SECTION HISTORY

1985, c. 160, §2 (NEW). 1993, c. 708, §B2 (RP).

§3073. POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1985, c. 160, §2 (NEW). 1993, c. 708, §B2 (RP).

§3074. ADVISORY COMMITTEE

(REPEALED)

SECTION HISTORY
1985, c. 160, §2 (NEW). 1993, c. 708, §B2 (RP).

§3075. ADVISORY COMMITTEE; POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1985, c. 160, §2 (NEW). 1993, c. 708, §B2 (RP).

§3076. DIRECTOR OF THE DIVISION OF DEAFNESS

(REPEALED)

SECTION HISTORY
1985, c. 160, §2 (NEW). 1993, c. 708, §B2 (RP).

Chapter 715: INDEPENDENT LIVING SERVICES FOR THE DISABLED

§3081. INTENT

(REPEALED)

SECTION HISTORY
1983, c. 549, §1 (NEW). 1993, c. 708, §C2 (RP).

§3082. DEFINITIONS

(REPEALED)

SECTION HISTORY
1983, c. 549, §1 (NEW). 1993, c. 708, §C2 (RP).

§3083. GRANTS

(REPEALED)

SECTION HISTORY
1983, c. 549, §1 (NEW). 1993, c. 708, §C2 (RP).

Chapter 715-A: ASSISTANCE FOR SURVIVORS OF ACQUIRED BRAIN INJURY

§3086. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 494, (NEW).]

1. **Acquired brain injury.** "Acquired brain injury" means an insult to the brain resulting directly or indirectly from trauma, anoxia, vascular lesions or infection, which:

A. Is not of a degenerative or congenital nature; [1989, c. 501, Pt. P, §26 (NEW).]

B. Can produce a diminished or altered state of consciousness resulting in impairment of cognitive abilities or physical functioning; [1989, c. 501, Pt. P, §26 (NEW).]

C. Can result in the disturbance of behavioral or emotional functioning; [1989, c. 501, Pt. P, §26 (NEW).]

D. Can be either temporary or permanent; and [1989, c. 501, Pt. P, §26 (NEW).]

E. Can cause partial or total functional disability or psychosocial maladjustment. [1989, c. 501, Pt. P, §26 (NEW).]

[2011, c. 293, §1 (AMD) .]

SECTION HISTORY
1987, c. 494, (NEW). 1989, c. 501, §P26 (AMD). 2011, c. 293, §1 (AMD).

§3087. REGISTRY; DUTY TO REPORT

(REPEALED)

SECTION HISTORY
1987, c. 494, (NEW). 1991, c. 155, (AMD). 2011, c. 293, §2 (RP).

§3088. COMPREHENSIVE NEUROREHABILITATION SERVICE SYSTEM

The department shall, within the limits of its available resources, develop a comprehensive neurorehabilitation service system designed to assist, educate and rehabilitate the person with an acquired brain injury to attain and sustain the highest function and self-sufficiency possible using home-based and community-based treatments, services and resources to the greatest possible degree. The comprehensive neurorehabilitation service system must include, but is not limited to, care management and coordination, crisis stabilization services, physical therapy, occupational therapy, speech therapy, neuropsychology, neurocognitive retraining, positive neurobehavioral supports and teaching, social skills retraining, counseling, vocational rehabilitation and independent living skills and supports. The comprehensive neurorehabilitation service system may include a posthospital system of nursing, community residential facilities and community residential support programs designed to meet the needs of persons who have sustained an acquired brain injury and assist in the reintegration of those persons into their communities. [2011, c. 293, §3 (RPR).]

SECTION HISTORY
1987, c. 494, (NEW). 2011, c. 293, §3 (RPR).

§3089. ACQUIRED BRAIN INJURY ASSESSMENTS AND INTERVENTIONS; PROTECTION OF RIGHTS

The department is designated as the official state agency responsible for acquired brain injury services and programs. [2005, c. 229, §1 (NEW).]

1. **Assessments and interventions.** In addition to developing the comprehensive neurorehabilitation service system under section 3088, the department may undertake, within the limits of available resources, appropriate identification and medical and rehabilitative interventions for persons who sustain acquired brain injuries, including, but not limited to, establishing services:

A. To assess the needs of persons who sustain acquired brain injuries and to facilitate effective and efficient medical care, neurorehabilitation planning and reintegration; and [2011, c. 293, §4 (NEW).]

B. To improve the knowledge and skills of the medical community, including, but not limited to, emergency room physicians, psychiatrists, neurologists, neurosurgeons, neuropsychologists and other professionals who diagnose, evaluate and treat acquired brain injuries. [2011, c. 293, §4 (NEW).]

[2011, c. 293, §4 (NEW) .]

2. **Rights of patients and responsibility of department to protect those rights.** To the extent possible within the limits of available resources and except to the extent that a patient with an acquired brain injury's rights have been suspended as the result of court-ordered guardianship, the department shall:

A. Protect the health and safety of that patient; [2011, c. 293, §4 (NEW).]

B. Ensure that the patient has access to treatment, individualized planning and services and positive behavioral interventions and protections; and [2011, c. 293, §4 (NEW).]

C. Protect the patient's rights to appeal decisions regarding the person's treatment, access to advocacy services and service quality control standards, monitoring and reporting. [2011, c. 293, §4 (NEW).]

[2011, c. 293, §4 (NEW) .]

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

[2011, c. 293, §4 (NEW) .]

SECTION HISTORY
2005, c. 229, §1 (NEW). 2011, c. 293, §4 (AMD).

Chapter 717: ASSISTANCE TO THE SEVERELY PHYSICALLY DISABLED TO ENABLE THEM TO WORK

§3091. DEFINITIONS

(REPEALED)

SECTION HISTORY
1979, c. 550, §2 (NEW). MRSA T. 1, §2501, sub22, ¶A (RP).

§3092. SUBSIDY

(REPEALED)

SECTION HISTORY
1979, c. 550, §2 (NEW). MRSA T. 1, §2501, sub22, ¶A (RP).

§3093. ELIGIBILITY

(REPEALED)

SECTION HISTORY
1979, c. 550, §2 (NEW). MRSA T. 1, §2501, sub22, ¶A (RP).

§3094. AMOUNT OF SUBSIDY

(REPEALED)

SECTION HISTORY
1979, c. 550, §2 (NEW). MRSA T. 1, §2501, sub22, ¶A (RP).

§3095. EVALUATION TEAM REPORT

(REPEALED)

SECTION HISTORY
1979, c. 550, §2 (NEW). MRSA T. 1, §2501, sub22, ¶A (RP).

§3096. RULES

(REPEALED)

SECTION HISTORY
1979, c. 550, §2 (NEW). MRSA T. 1, §2501, sub22, ¶A (RP).

§3097. LEGISLATIVE REVIEW

(REPEALED)

SECTION HISTORY
1979, c. 550, §2 (NEW). 1979, c. 663, §§135, 136 (AMD). MRSA T. 1, §2501, sub22, ¶A (RP).

Chapter 717-A: ASSISTANCE TO THE SEVERELY PHYSICALLY DISABLED TO ENABLE THEM TO WORK

§3091-A. DEFINITIONS

(REPEALED)

SECTION HISTORY
1983, c. 541, §1 (NEW). 1985, c. 34, §1 (AMD). 1993, c. 708, §D2 (RP).

§3092-A. SUBSIDY

(REPEALED)

SECTION HISTORY
1983, c. 541, §1 (NEW). 1985, c. 34, §2 (AMD). 1993, c. 708, §D2 (RP).

§3093-A. ELIGIBILITY

(REPEALED)

SECTION HISTORY
1983, c. 541, §1 (NEW). 1985, c. 34, §3 (AMD). 1993, c. 708, §D2 (RP).

§3094-A. EVALUATION TEAM REPORT

(REPEALED)

SECTION HISTORY
1983, c. 541, §1 (NEW). 1993, c. 708, §D2 (RP).

§3095-A. RULES

(REPEALED)

SECTION HISTORY
1983, c. 541, §1 (NEW). 1993, c. 708, §D2 (RP).

Chapter 718: ADVISORY COMMITTEE ON IMPROVING OUTDOOR RECREATIONAL OPPORTUNITITES FOR PERSONS WITH DISABILITIES

§3098. DEFINITIONS

(REPEALED)

SECTION HISTORY
1991, c. 370, §2 (NEW). 1993, c. 708, §E4 (RP).

§3099. ADVISORY COMMITTEE ON IMPROVING OUTDOOR RECREATIONAL OPPORTUNITIES FOR PERSONS WITH DISABILITIES

(REPEALED)

SECTION HISTORY
1991, c. 370, §2 (NEW). 1993, c. 708, §E4 (RP).

§3100. REPORT

(REPEALED)

SECTION HISTORY
1991, c. 370, §2 (NEW). 1993, c. 708, §E4 (RP).

Subtitle 3: INCOME SUPPLEMENTATION

Part 1: ADMINISTRATION

Chapter 851: GENERAL PROVISIONS

§3101. INVESTIGATION OF SYSTEM OF PUBLIC CHARITIES

The Department of Health and Human Services shall investigate and inspect the whole system of public charities in the State which derive their support wholly or in part from state, county or municipal appropriations but not including any institution of a purely educational or industrial nature. [1975, c. 293, §4 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY
1975, c. 293, §4 (AMD). 2003, c. 689, §B6 (REV).

§3102. TRANSFER OF PAUPERS AND PUBLIC ASSISTANCE RECIPIENTS BETWEEN STATES

The department shall have authority to enter into reciprocal agreements with corresponding agencies of other states, and to arrange with their local or county boards for the acceptance, transfer and support of persons going from one state to another and becoming public charges and to continue payments of public assistance until eligibility to receive assistance under a similar program has been established in the other state and the first payment from the other state has been received by such recipient. Such reciprocal agreements shall in no way commit the State to support persons who are not, in the opinion of the department, entitled to support under the laws of this State.

§3103. INFORMATION UPON REQUEST

The commissioner shall give to the Governor or to the Legislature or any committee thereof at any time upon their request information and advice with reference to any charitable or correctional institution about which he has information. The officers in charge of any institution of a charitable or correctional nature under the inspection of the department and local boards or committees having any powers or duties relative to the management of the same, and those who are in any way responsible for the administration of public funds used for the relief or maintenance of the poor, shall furnish to the department such information and statistics as may be demanded on such forms as the department may consider necessary to secure uniformity and accuracy in the statements. [1975, c. 771, §223 (AMD).]

SECTION HISTORY
1975, c. 771, §223 (AMD).

§3104. STATEWIDE FOOD SUPPLEMENT PROGRAM

1. **Program required.** The department shall:

A. Administer a statewide program in accordance with the related requirements and regulations of the United States Department of Agriculture, the United States Department of Health and Human Services and the United States Department of Education; and [2009, c. 291, §2 (AMD).]

B. Cooperate with and participate in the administration of food distribution programs in conformity with regulations promulgated by the United States Department of Agriculture. [1977, c. 462, (NEW).]

[2009, c. 291, §2 (AMD) .]

2. **Costs.**

[1981, c. 703, Pt. A, §21 (RP) .]

3. **Authorization of emergency food stamp benefits prior to full verification.**

[2009, c. 291, §2 (RP) .]

3-A. **Authorization of emergency food supplement benefits prior to full verification.** Whenever an applicant for benefits under the food supplement program states to the department that the applicant is in need of immediate food assistance, the department shall, pending verification, issue and mail an electronic benefits transfer card authorizing the applicant to purchase food at the time of the department's initial interview with the applicant or within one working day of the interview, as long as all of the following conditions are met.

A. As a result of the initial interview with the applicant, the department must have determined that the household of the applicant will probably be eligible for food supplement program benefits after full verification is completed. [2009, c. 291, §2 (NEW).]

B. When possible, the applicant shall submit to the department, at the time of the initial interview, adequate documentation to verify that the applicant is in need of immediate food assistance. [2009, c. 291, §2 (NEW).]

C. When adequate documentation is not available at the time of the initial interview, the department shall contact at least one other person for the purpose of obtaining information to confirm the applicant's statements about the applicant's need for immediate food assistance. [2009, c. 291, §2 (NEW).]

The authorization to receive food supplement program benefits under this section may not exceed 30 days from the date that the applicant receives the authorizing card. Additional food supplement program benefits may not be issued to the applicant's household until full verification has been obtained that confirms the eligibility of the household.

[2009, c. 291, §2 (NEW) .]

4. **Mail issuance of coupons.**

[2009, c. 291, §2 (RP) .]

4-A. **Electronic benefits transfer system.** The department shall operate a system of issuance of food allotments through an electronic benefits transfer system as authorized by and in conformity with regulations promulgated by the United States Department of Agriculture.

[2009, c. 291, §2 (NEW) .]

5. **Outreach.** It is the intent of the Legislature that the department fully carry out all outreach activities established by federal regulation to encourage the participation of all eligible households.

In carrying out its outreach activities, the department shall insure that all applicants and recipients are informed of their right to have the requirement for a face-to-face interview waived as provided by federal regulations.

[1979, c. 386, (NEW) .]

6. **Bilingual requirements.**

[2009, c. 291, §2 (RP) .]

7. **Verification of information.** The department shall establish and implement uniform verification procedures that will be applied to all applicants and recipients.

[1979, c. 386, (NEW) .]

8. **Certification periods.** Households must be certified for a 12-month period unless there is a likelihood of change in income or household status.

[2009, c. 291, §2 (AMD) .]

9. **Information on notice to recipients.** All notices of denial, reduction of benefits, termination of benefits, fraud claims, nonfraud claims or other actions must contain information on the appeal procedure, and the availability of free legal representation in the geographic area and must include, at a minimum, the address and telephone number for these services.

[2009, c. 291, §2 (AMD) .]

10. **Supplemental monthly issuance.** Whenever a household receiving benefits through the food supplement program informs the department of a change in circumstances that will result in an increase in its food supplement benefit, the department shall issue a supplemental allotment to that household for the month in which the change is reported. The supplemental allotment must represent the difference between the amount for which the household was originally certified in that month and the amount for which it is actually eligible as a result of its reported change in circumstances.

The department shall issue that supplemental allotment within 5 working days of the date that the change in circumstances was reported.

[2009, c. 291, §2 (AMD) .]

11. **Food supplement program overpayment recovery.** Any money recovered by the department as a result of the overpayment of food supplement benefits must be deposited to the General Fund, including any money up to a maximum of $81,475 recovered prior to March 14, 1991.

[2009, c. 291, §2 (AMD) .]

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.

[2011, c. 687, §10 (AMD) .]

13. **Categorical eligibility.** The department shall adopt rules that maximize access to the food supplement program for households in which there is a child who would be a dependent child under the Temporary Assistance for Needy Families program but that do not receive a monthly cash assistance grant from the Temporary Assistance for Needy Families program. Under rules adopted pursuant to this subsection, certain of these families must be authorized to receive referral services provided through the Temporary Assistance for Needy Families block grant and be categorically eligible for the food supplement program in accordance with federal law. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2015, c. 1, §20 (COR) .]

14. **Prohibition against denial of assistance based on drug conviction.** A person who is otherwise eligible to receive food assistance under the federal Food Stamp Act of 1977, 7 United States Code, Sections 2011 to 2036 and under the federal Food and Nutrition Act of 2008 may not be denied assistance because the person has been convicted of a drug-related felony as described in the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, Section 115, 110 Stat. 2105.

[2009, c. 291, §2 (AMD) .]

SECTION HISTORY
1971, c. 463, §1 (RPR). 1973, c. 183, (AMD). 1973, c. 314, (AMD). 1973, c. 674, §1 (RPR). 1975, c. 293, §4 (AMD). 1977, c. 462, (RPR). 1979, c. 386, (AMD). 1981, c. 136, (AMD). 1981, c. 703, §A21 (AMD). 1991, c. 9, §K1 (AMD). RR 1993, c. 2, §14 (COR). 1995, c. 418, §A4 (AMD). 1999, c. 637, §1 (AMD). 2001, c. 598, §1 (AMD). 2009, c. 291, §2 (AMD). 2011, c. 687, §10 (AMD). RR 2015, c. 1, §20 (COR).

§3104-A. FOOD SUPPLEMENT PROGRAM FOR LEGAL ALIENS

1. **Food assistance.** The department shall provide food assistance to households that would be eligible for assistance under the federal Food Stamp Act of 1977, 7 United States Code, Section 2011 et seq. and under the federal Food and Nutrition Act of 2008 but for provisions of Sections 401, 402 and 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 that are receiving food assistance under this subsection as of July 1, 2011. Any household receiving assistance as of that date may continue to receive assistance, as long as that household remains eligible, without regard to interruptions in coverage or gaps in eligibility for service. A noncitizen legally admitted to the United States who is neither receiving assistance on July 1, 2011 nor has an application pending for assistance on July 1, 2011 that is later approved is not eligible for food assistance through a state-funded program unless that noncitizen is:

A. Elderly or disabled, as described under the laws governing supplemental security income in 42 United States Code, Sections 1381 to 1383f (2010); [2011, c. 380, Pt. KK, §1 (NEW).]

B. A victim of domestic violence; [2013, c. 368, Pt. OO, §1 (AMD).]

C. Experiencing other hardship, such as time necessary to obtain proper work documentation, as defined by the department by rule. Rules adopted by the department under this paragraph are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A; or [2013, c. 368, Pt. OO, §1 (AMD).]

D. Unemployed but has obtained proper work documentation, as defined by the department by rule. Rules adopted by the department under this paragraph are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A. [2013, c. 368, Pt. OO, §2 (NEW).]

[2013, c. 368, Pt. OO, §§1, 2 (AMD) .]

2. **Amount of assistance.** The total amount of food assistance provided under this section must equal the amount that the household would be eligible to receive under the federal Food Stamp Act of 1977, 7 United States Code, Sections 2014 and 2017 and under the federal Food and Nutrition Act of 2008 if the household were eligible for either of those programs.

[2009, c. 291, §3 (AMD) .]

3. **Administration.** The department shall provide assistance under this section to eligible households on a monthly basis through an electronic benefit transfer system.

[2009, c. 291, §3 (AMD) .]

4. **Repeal.**

[1999, c. 401, Pt. S, §2 (RP) .]

SECTION HISTORY
1997, c. 731, §1 (NEW). 1997, c. 731, §3 (AFF). 1999, c. 401, §S2 (AMD). 2009, c. 291, §3 (AMD). 2011, c. 380, Pt. KK, §1 (AMD). 2013, c. 368, Pt. OO, §§1, 2 (AMD).

§3105. VOCATIONAL REHABILITATION

(REPEALED)

SECTION HISTORY
1975, c. 771, §224 (AMD). 1977, c. 78, §149 (AMD). 1989, c. 700, §A78 (AMD). 1993, c. 708, §F2 (RP).

§3106. TELEPHONE SUBSIDIES

The department may participate in the determination of eligibility for various subsidies of telephone costs for low-income people as established by the Public Utilities Commission pursuant to Title 35-A, section 7101. [1987, c. 856, §1 (NEW).]

SECTION HISTORY
1987, c. 856, §1 (NEW).

§3107. WOMEN, INFANTS AND CHILDREN SPECIAL SUPPLEMENTAL FOOD PROGRAM VENDOR, PROVIDER AND PARTICIPANT PENALTIES

The department, as part of its administration of the Women, Infants and Children Special Supplemental Food Program of the federal Child Nutrition Act of 1966, referred to in this section as "the program," shall adopt rules defining prohibited conduct under the program and establishing penalties for such conduct and as necessary to implement this section. After providing an opportunity for a hearing in accordance with Title 5, chapter 375, subchapter 4, 7 Code of Federal Regulations, Section 246.9 (2011), 7 Code of Federal Regulations, Section 246.18 (2011) and any other federal law that applies to adjudicatory proceedings for vendors, providers and participants and making a determination that the affected party has violated a provision of the program, including rules that apply to the program, the department may: [2011, c. 512, §2 (RPR).]

1. **Vendors.** Assess and impose a fine or penalty against a vendor under the program;

[2011, c. 512, §2 (NEW) .]

2. **Providers.** Disqualify a local agency provider under the program; or

[2011, c. 512, §2 (NEW) .]

3. **Participants.** Require repayment of benefits made under the program to a participant or disqualify a participant from program benefits.

[2011, c. 512, §2 (NEW) .]

Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2011, c. 512, §2 (NEW).]

SECTION HISTORY
1989, c. 777, (NEW). 2011, c. 512, §2 (RPR).

§3108. STANDARD UTILITY ALLOWANCE

When the department becomes aware of any decisions made by a public entity or an entity operating a publicly subsidized assistance program that adversely impacts eligibility for, or the amount of assistance to, households receiving assistance under the food stamp program pursuant to section 3104, the department shall work in cooperation with that entity to achieve a resolution that minimizes the adverse impact on households receiving food stamp assistance. [1995, c. 629, §1 (NEW).]

1. **Examination of options.** When federal law governing either the food stamp program or the Low-Income Home Energy Assistance Program is amended to eliminate the eligibility link whereby the food stamp standard utility allowance is automatically available to households receiving low-income home energy assistance benefits, the department shall immediately:

A. Examine and, if feasible, seek a waiver or grant of demonstration authority from the federal Department of Agriculture to continue to use the food stamp standard utility allowance in determining the amount of food stamp benefits available to households that previously qualified for that allowance solely by reason of receipt of low-income home energy assistance benefits; [1995, c. 629, §1 (NEW).]

B. Determine, in cooperation with all appropriate entities operating publicly subsidized housing programs, a method of providing individualized bills or appropriate documentation for tenants in subsidized housing that would identify the tenants' shares of incurred heating costs, if doing so would qualify these tenants for the food stamp standard utility allowance; [1995, c. 629, §1 (NEW).]

C. Determine if federal law would permit the use of the standard utility allowance by households that previously qualified for that allowance solely on the basis of receipt of low-income home energy assistance benefits and implement that section of law if doing so would not result in any increase in the households' rent and energy costs or any reduction in food stamp allotments to either those households or any other households receiving food stamp assistance; and [1995, c. 629, §1 (NEW).]

D. If none of the alternatives listed in paragraphs A to C result in making the food stamp standard utility allowance available to households that had received it before the change in federal law, immediately estimate the General Fund cost of providing allotments to affected households in an amount equal to the amount they would have received had the federal law not been amended, and promptly provide that information to the joint standing committee of the Legislature having jurisdiction over human resources matters. [1995, c. 629, §1 (NEW).]

[1995, c. 629, §1 (NEW) .]

2. **Notice.** The department shall provide prompt written notice to households affected by any change in federal law related to the eligibility link between the food stamp program and the Low-Income Energy Assistance Program, or by any waiver received pursuant to this section, of the steps that households may take to gain eligibility for the food stamp standard utility allowance.

[1995, c. 629, §1 (NEW) .]

3. **Waiver.** The department shall immediately seek a waiver or demonstration authority to operate a demonstration project from the federal Department of Agriculture that would make the food stamp standard utility allowance available to households that incur a heating or cooling cost separate from their rent or mortgage, even if those bills are not based on actual usage as determined by individualized metering.

[1995, c. 629, §1 (NEW) .]

4. **Revised waiver application.** When federal approval for the waiver or demonstration authority described in this section is not granted, the department may submit a revised waiver request to accomplish the objectives of this section as fully as possible.

[1995, c. 629, §1 (NEW) .]

5. **Limitation.** This section must be implemented within the limits of the department's existing General Fund resources.

[1995, c. 629, §1 (NEW) .]

SECTION HISTORY
1995, c. 629, §1 (NEW).

Chapter 853: SOLICITATION OF CHARITABLE FUNDS

§3151. DEFINITIONS

(REPEALED)

SECTION HISTORY
1973, c. 436, §1 (AMD). 1977, c. 488, §2 (RP).

§3152. LICENSE

(REPEALED)

SECTION HISTORY
1973, c. 436, §2 (AMD). 1977, c. 488, §2 (RP).

§3153. OUT OF STATE ORGANIZATIONS

(REPEALED)

SECTION HISTORY
1977, c. 488, §2 (RP).

§3154. ENFORCEMENT AND PENALTIES

(REPEALED)

SECTION HISTORY
1977, c. 488, §2 (RP).

§3155. CHARITABLE SOLICITATION DISCLOSURE

(REPEALED)

SECTION HISTORY

1973, c. 436, §3 (NEW). 1977, c. 488, §2 (RP).

§3156. VIOLATION AS UNFAIR TRADE PRACTICE

(REPEALED)

SECTION HISTORY
1973, c. 436, §4 (NEW). 1977, c. 488, §2 (RP).

Chapter 854: MAINE SMALL BUSINESS HEALTH COVERAGE PLAN

§3161. DEFINITIONS

(REPEALED)

SECTION HISTORY
RR 2001, c. 2, §A35 (COR). 2001, c. 677, §1 (NEW). 2007, c. 240, Pt. VV, §1 (RP).

§3162. MAINE SMALL BUSINESS HEALTH COVERAGE PLAN

(REPEALED)

SECTION HISTORY
2001, c. 677, §1 (NEW). 2001, c. 714, §II1 (AMD). 2007, c. 240, Pt. VV, §1 (RP).

§3163. CONTRIBUTIONS; PAYMENT FOR COVERAGE

(REPEALED)

SECTION HISTORY
2001, c. 677, §1 (NEW). 2007, c. 240, Pt. VV, §1 (RP).

§3164. COORDINATION WITH MEDICAID

(REPEALED)

SECTION HISTORY
2001, c. 677, §1 (NEW). 2007, c. 240, Pt. VV, §1 (RP).

§3165. APPLICATION OF INSURANCE LAWS

(REPEALED)

SECTION HISTORY
2001, c. 677, §1 (NEW). 2007, c. 240, Pt. VV, §1 (RP).

§3166. DATA COLLECTION

(REPEALED)

SECTION HISTORY
2001, c. 677, §1 (NEW). 2007, c. 240, Pt. VV, §1 (RP).

§3167. RULES

(REPEALED)

SECTION HISTORY
2001, c. 677, §1 (NEW). 2007, c. 240, Pt. VV, §1 (RP).

§3168. OPERATION

(REPEALED)

SECTION HISTORY
2001, c. 677, §1 (NEW). 2007, c. 240, Pt. VV, §1 (RP).

§3169. REPEAL

(REPEALED)

SECTION HISTORY
2001, c. 677, §1 (NEW). 2007, c. 240, Pt. VV, §1 (RP).

Chapter 855: AID TO NEEDY PERSONS

§3172. DEFINITIONS

1. **Aid.** "Aid" means money payments to, or in behalf of, or medical care or any type of remedial care or any related services to needy individuals who qualify for such assistance under this chapter.

[1973, c. 790, §2 (NEW) .]

1-A. **Application.** "Application" is the action by which an individual indicates in writing to the department his desire to receive or to be recertified for assistance under this chapter. An application is distinguished from an inquiry, which is simply a request for information about eligibility requirements for assistance.

[1977, c. 714, §1 (NEW) .]

1-B. **Approved Medicaid service.** "Approved Medicaid service" means a medical service which will be provided to Medicaid recipients under the provisions of the United States Social Security Act, Title XIX and successors to it and related rules of the department.

[1981, c. 703, Pt. A, §22 (NEW) .]

2. **Home health care.** "Home health care" means nursing services and other therapeutic services provided without a requirement that hospitalization should be an antecedent to care and provided on an intermittent visiting basis to individuals in their homes or other place of residence, excluding hospitals, extended care facilities, rehabilitation centers and skilled nursing homes. In addition to skilled nursing, these services may include physical therapy, speech therapy, occupational therapy, medical social services, home health aide services and such other services and standards of care as may be defined by the department which are pursuant to, consistent with and necessary to the administration of home health care within the intent of section 3173.

[1977, c. 582, §1 (NEW) .]

3. **Medicaid recipient.** "Medicaid recipient" means an individual authorized by the department to receive services under the provisions of the United States Social Security Act, Title XIX and successors to it.

[1981, c. 703, Pt. A, §23 (NEW) .]

SECTION HISTORY
1973, c. 790, §2 (NEW). 1977, c. 582, §1 (AMD). 1977, c. 714, §1 (AMD). 1981, c. 703, §§A22,23 (AMD).

§3172-A. MENTAL HEALTH AND MENTAL RETARDATION IMPROVEMENT FUND

(REPEALED)
(REPEALED)

SECTION HISTORY
1975, c. 757, §1 (NEW). 1977, c. 482, §1 (RPR). 1977, c. 680, §1 (RP).

§3172-B. MONEYS RECEIVED; CREDIT TO GENERAL FUND; UNENCUMBERED BALANCE

1. **Fund.** All money received by the department under section 3172 that is generated by services rendered at any of the mental health institutions operated by that department must be credited to the General Fund.

[2011, c. 542, Pt. A, §31 (AMD) .]

2. **Transfer of cash receipts.** An amount equal to 100% of the total cash receipts in any fiscal year shall be transferred to the General Fund.

[1977, c. 680, §2 (NEW) .]

3. **Transfer of unencumbered balances.** All unencumbered balances generated from revenues received in prior years must be transferred to the General Fund.

[2009, c. 2, §55 (COR) .]

4. **Budget.** Those mental health programs and those programs providing services for persons with intellectual disabilities or autism receiving legislative approval for funding for fiscal year 1979 must be considered current services by the Bureau of the Budget.

[2011, c. 542, Pt. A, §32 (AMD) .]

SECTION HISTORY
1977, c. 680, §2 (NEW). 1979, c. 127, §143 (AMD). 1979, c. 293, §B1 (AMD). 1981, c. 493, §2 (AMD). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). 2003, c. 689, §B6 (REV). RR 2009, c. 2, §55 (COR). 2011, c. 542, Pt. A, §§31, 32 (AMD).

§3173. POWERS AND DUTIES OF DEPARTMENT

The department is authorized to administer programs of aid, medical or remedial care and services for medically indigent persons. It is empowered to employ, subject to the Civil Service Law, such assistants as may be necessary to carry out this program and to coordinate their work with that of the other work of the department. [1985, c. 785, Pt. B, §91 (AMD).]

The department is authorized and empowered to make all necessary rules and regulations consistent with the laws of the State for the administration of these programs including, but not limited to, establishing conditions of eligibility and types and amounts of aid to be provided, and defining the term "medically indigent," and the type of medical care to be provided. In administering programs of aid, the department shall, among other services, emphasize developing and providing financial support for preventive health care and home health care in order to assure that a comprehensive range of health care services is available to Maine citizens. Preventive health services shall include, but need not be limited to, programs such as early periodic screening, diagnosis and treatment; public school nursing services; child and maternal health services; and dental health education services. To meet the expenses of emphasizing preventive health care and home health care, the department is authorized to expend for each type of care no less than 1.5% of the total sum of all funds available to administer medical or remedial care and services eligible for participation under the United States Social Security Act, Title XIX and amendments and successors to it. [1979, c. 127, §144 (RPR).]

The department shall provide all applicants for aid under this chapter with information in written form, and verbally as appropriate or if requested, about coverage, conditions of eligibility, scope of programs, existence of related services and the rights and responsibilities of applicants for and recipients of assistance under this chapter. [1979, c. 127, §144 (RPR).]

All applications for aid under this chapter shall be acted upon and a decision made as soon as possible, but in no case shall the department fail to notify the applicant of its decision within 45 days after receipt of his application. Failure of the department to meet the requirements of this 45-day time standard, except where there is documented noncooperation by the applicant or the source of his medical information, shall lead to the immediate and automatic issuance of a temporary medical card which shall be valid only until such time as the applicant receives actual notice of a departmental denial of his application or he receives a replacement medical card. Notwithstanding an applicant's appeal of a denial of his application, the validity of the temporary medical card shall cease immediately upon receipt of the notice of denial. Any benefits received by the applicant during the interim period when he has actual use of a valid, temporary medical card shall not be recoverable by the department in any legal or administrative proceeding against the applicant. [1979, c. 127, §144 (RPR).]

Whenever an applicant is determined by the department to be ineligible for a program for which he has applied, he shall be immediately so notified in writing. Any notification of denial shall contain a statement of the denial action, the reasons for denial, the specific regulations supporting the denial, an explanation of the applicant's right to request a hearing and a recommendation to the applicant of any other program administered by the department for which he may be eligible. Whenever an individual's application for Temporary Assistance for Needy Families is denied by the department, the notice of this denial shall also include, in a clear and conspicuous manner, a statement that the applicant is likely to be eligible for medical assistance and shall include information about the availability of applications for the program upon request to the department either in writing or through a toll-free telephone number. [1979, c. 127, §144 (RPR); 1997, c. 530, Pt. A, §34 (AMD).]

Any applicant for benefits under the medically needy program whose countable income exceeds the applicable state protected income level maximum shall be eligible for the program when his incurred medical expenses are found to exceed the difference between his countable income and the applicable state maximum. Whenever the applicant incurs sufficient medical expenses to be eligible for the medically needy program and provides reasonable proof thereof to the department, a medical card shall be issued within 10 days of the presentation of proof that eligibility has been met. Failure of the department to meet the requirements of this 10-day time standard, except where there is documented noncooperation by the applicant or the source of his medical information, shall lead to the immediate and automatic issuance of a temporary medical card which shall be valid only until such time as the applicant receives actual notice of a departmental denial of his application or he receives a replacement medical card. Any benefits received by the applicant during the interim period when he has actual use of a valid temporary medical card shall not be recoverable by the department in any legal or administrative proceeding against the applicant. [1979, c. 127, §144 (RPR).]

In all situations where prior authorization of the department is required before a particular medical service can be provided, the department shall authorize or deny the request for treatment within 30 days of the completion and presentation of the request to the department. The department's response to such a request shall be supplied to both the provider and the recipient. Whenever the provider is unable or unwilling to provide the service requested within a reasonable time after approval of the request by the department, the recipient shall have the right to locate another approved provider whose sole duty shall be to notify the department of his intention to provide the service subject to the original approval. It shall be the duty of the department to vigorously assist any recipient in his search for an approved provider of a necessary medical service where, through reasonable effort, the recipient has been unable to locate a provider on his own. [1979, c. 127, §144 (RPR).]

No time standard established by this section shall be used as a waiting period before granting aid, or as a basis for denial of an application or for terminating assistance. [1979, c. 127, §144 (RPR).]

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. The use of those 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. [1979, c. 127, §144 (RPR).]

The department shall initiate and monitor ongoing efforts performed cooperatively with other public and private agencies, religious, business and civic groups, pharmacists and other medical providers, professional associations, community organizations, unions, news media and other groups, organizations and associations to inform low-income households eligible for programs under this chapter of the availability and benefits of these programs and to insure the participation of eligible households which wish to participate by providing those households with reasonable and convenient access to the programs. [1979, c. 127, §144 (RPR).]

All moneys made available to fund programs authorized by this chapter shall be expended under the direction of the department, and the department is empowered to direct the expenditures therefrom of those sums which may be necessary for purposes of administration. [1979, c. 127, §144 (RPR).]

Relating to the determination of eligibility for medical care to be provided to a beneficiary of state or federal supplemental income for the blind, disabled and elderly, the department may enter into an agreement with the Secretary of the United States Department of Health and Human Services, whereby the secretary shall determine eligibility on behalf of the department. [1991, c. 528, Pt. E, §23 (AMD); 1991, c. 528, Pt. RRR, (AFF); 1991, c. 591, Pt. E, §23 (AMD).]

The Department of Health and Human Services may establish fee schedules governing reimbursement for services provided under this chapter. In establishing the fee schedules, the department shall consult with individual providers and their representative associations. The fee schedules shall be subject to annual review. [1979, c. 127, §144 (RPR); 2003, c. 689, Pt. B, §6 (REV).]

During the annual review of fee schedules required by this section, the department shall consult with individual providers participating in the Medical Assistance Program and their representative associations to consider, among other factors, the cost of providing specific services, the effect of inflation or other economic factors on the adequacy of the existing fee schedule and its obligation under the federal Medicaid program to ensure sufficient provider participation in the program. [1981, c. 329, §1 (NEW).]

The annual review of fee schedules shall be incorporated into the annual Medicaid report established by section 3174-B. [1985, c. 727, (RPR).]

The department may enter into contracts with health care servicing entities for the provision, financing, management and oversight of the delivery of health care services in order to carry out these programs. For the purposes of this section, "health care servicing entity" means a partnership, association, corporation, limited liability company or other legal entity that enters into a contract to provide or arrange for the provision of a defined set of health care services; to assume responsibility for some aspects of quality assurance, utilization review, provider credentialing and provider relations or other related network management functions; and to assume financial risk for provision of such services to recipients through capitation reimbursement or other

risk-sharing arrangements. "Health care servicing entity" does not include insurers or health maintenance organizations. In all contracts with health care servicing entities, the department shall include standards, developed in consultation with the Superintendent of Insurance, to be met by the contracting entity in the areas of financial solvency, quality assurance, utilization review, network sufficiency, access to services, network performance, complaint and grievance procedures and records maintenance. Prior to contracting with any health care servicing entity, the department must have in place a memorandum of understanding with the Superintendent of Insurance for the provision of technical assistance, which must provide for the sharing of information between the department and the superintendent and the analysis of that information by the superintendent as it relates to the fiscal integrity of the contracting entity. The department may require periodic reporting by the health care servicing entity as to activities and operations of the entity, including the entity's activities undertaken pursuant to commercial contracts with licensed insurers and health maintenance organizations. The department may share with the Superintendent of Insurance all documents filed by the health care servicing entity, including documents subject to confidential treatment if that information is treated with the same degree of confidentiality as is required of the department. [1997, c. 676, §1 (NEW).]

SECTION HISTORY
1973, c. 790, §2 (NEW). 1977, c. 582, §2 (AMD). 1977, c. 674, §20 (AMD). 1977, c. 696, §370 (AMD). 1977, c. 712, §F2 (AMD). 1977, c. 714, §2 (RPR). 1979, c. 127, §144 (RPR). 1981, c. 329, §§1,2 (AMD). 1985, c. 727, (AMD). 1985, c. 785, §B91 (AMD). 1991, c. 528, §E23 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §E23 (AMD). 1997, c. 530, §A34 (AMD). 1997, c. 676, §1 (AMD). 2003, c. 689, §B6 (REV).

§3173-A. REIMBURSEMENT FOR THERAPY; INTERMEDIATE CARE FACILITIES AND SKILLED NURSING FACILITIES

When therapy is nonreimbursable under Title XVIII of the Social Security Act (Medicare), the Department of Health and Human Services shall reimburse an intermediate care facility or skilled nursing facility directly for the costs of physical and occupational therapy to individual residents or for professional consultants, or both, to the staff of the facility in accordance with professional standards of practice. [1977, c. 646, (NEW); 2003, c. 689, Pt. B, §6 (REV).]

Reimbursement shall be included either as an allowable cost of operation in determining the per diem rate or as a separate service for which the facility bills the Medical Assistance Program, whichever method is the less costly to that program while providing adequate and timely reimbursement to the therapist. [1977, c. 646, (NEW).]

In developing regulations to administer this section, the Department of Health and Human Services shall consult with the Maine Chapter of American Physical Therapists Association, the Maine Occupational Therapists Association and other groups as appropriate. The regulations shall be published within 60 days of the effective date of this section. [1977, c. 646, (NEW); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY
1977, c. 646, (NEW). 1977, c. 719, §1 (NEW). 1979, c. 127, §145 (RAL). 2003, c. 689, §B6 (REV).

§3173-B. MEDICALLY NEEDY PROGRAM; CERTAIN INDIVIDUALS IN INTERMEDIATE CARE FACILITIES

In determining what types of medical care shall be provided to "medically indigent" individuals, the department shall provide that medically necessary care in an intermediate care facility shall be included under the provisions of the medically needy program. [1979, c. 127, §145 (RAL).]

SECTION HISTORY
1979, c. 127, §145 (RAL).

§3173-C. COPAYMENTS

1. **Authorization required.** The department may not require any MaineCare member to make any payment toward the cost of a MaineCare service unless that payment is specifically authorized by this section, except that any copayment or premium expressly approved by the federal Secretary of the Department of Health and Human Services as part of a waiver must be implemented.

[2003, c. 20, Pt. K, §5 (AMD) .]

2. **Prescription drug services.** Except as provided in this subsection and subsections 3 and 4, a pharmacy shall charge a MaineCare member $3.00 for each drug prescription that is an approved MaineCare service. The department shall adopt and follow procedures to ensure compliance with the requirements of 42 United States Code, Section 1396o-1. A pharmacy that has followed the procedures adopted by the department to ensure compliance with the requirements of 42 United States Code, Section 1396o-1 may refuse to dispense the drug if the copayment is not paid. Copayments must be capped at $30 per month per member. If a member is prescribed a drug in a quantity specifically intended by the provider or pharmacist, for the recipient's health and welfare, to last less than one month, only one payment for that drug for that month is required.

[2011, c. 458, §1 (AMD); 2011, c. 458, §4 (AFF) .]

3. **Exemptions.** No copayment may be imposed with respect to the following services:

A. Family planning services; [1983, c. 240, (NEW).]

B. Services furnished to individuals under 21 years of age; [1983, c. 240, (NEW).]

C. Services furnished to any individual who is an inpatient in a hospital, nursing facility or other institution, if that individual is required, as a condition of receiving services in that institution, to spend for costs of care all but a minimal amount of income required for personal needs; [1991, c. 780, Pt. R, §3 (AMD).]

D. Services furnished to pregnant women, and services furnished during the post-partum phase of maternity care to the extent permitted by federal law; [1983, c. 240, (NEW).]

E. Emergency services, as defined by the department; [1983, c. 240, (NEW).]

F. Services furnished to an individual by a Health Maintenance Organization, as defined in the United States Social Security Act, Section 1903(m), in which he is enrolled; and [1983, c. 240, (NEW).]

G. Any other service or services required to be exempt under the provisions of the United States Social Security Act, Title XIX and successors to it. [1983, c. 240, (NEW).]

[1991, c. 780, Pt. R, §3 (AMD) .]

4. **Persons in state custody.** Any copayment imposed on a Medicaid recipient in the custody of the State is to be collected from the state agency having custody of the recipient.

[1983, c. 240, (NEW) .]

5. **Limitation.**

[1993, c. 6, Pt. C, §7 (RP) .]

6. **Designated copayment.**

[1991, c. 780, Pt. R, §10 (AFF); 1991, c. 780, Pt. R, §4 (RP) .]

7. **Copayments.** Notwithstanding any other provision of law, the following copayments per service per day are imposed and reimbursements are reduced, or both, to the following levels:

A. Outpatient hospital services, $3; [1993, c. 6, Pt. C, §8 (NEW).]

B. Home health services, $3; [1993, c. 6, Pt. C, §8 (NEW).]

C. Durable medical equipment services, $3; [1993, c. 6, Pt. C, §8 (NEW).]

D. Private duty nursing and personal care services, $5 per month; [1993, c. 6, Pt. C, §8 (NEW).]

E. Ambulance services, $3; [1993, c. 6, Pt. C, §8 (NEW).]

F. Physical therapy services, $2; [1993, c. 6, Pt. C, §8 (NEW).]

G. Occupational therapy services, $2; [1993, c. 6, Pt. C, §8 (NEW).]

H. Speech therapy services, $2; [1993, c. 6, Pt. C, §8 (NEW).]

I. Podiatry services, $2; [1993, c. 6, Pt. C, §8 (NEW).]

J. Psychologist services, $2; [1993, c. 410, Pt. I, §8 (AMD).]

K. Chiropractic services, $2; [1993, c. 410, Pt. I, §8 (AMD).]

L. Laboratory and x-ray services, $1; [1993, c. 410, Pt. I, §9 (NEW).]

M. Optical services, $2; [1993, c. 410, Pt. I, §9 (NEW).]

N. Optometric services, $3; [1993, c. 410, Pt. I, §9 (NEW).]

O. Mental health clinic services, $2; [1993, c. 410, Pt. I, §9 (NEW).]

P. Substance abuse services, $2; [2003, c. 20, Pt. K, §7 (AMD).]

Q. Hospital inpatient services, $3 per patient day; [2003, c. 20, Pt. K, §7 (AMD).]

R. Federally qualified health center services, $3 per patient day, effective July 1, 2004; and [2003, c. 451, Pt. H, §1 (AMD); 2003, c. 451, Pt. H, §3 (AFF).]

S. Rural health center services, $3 per patient day. [2003, c. 20, Pt. K, §8 (NEW).]

The department may adopt rules to adjust the copayments set forth in this subsection. The rules may adjust amounts to ensure that copayments are deemed nominal in amount and may include monthly limits or exclusions per service category. The need to maintain provider participation in the Medicaid program to the extent required by 42 United States Code, Section 1396a(a)(30)(A) or any successor provision of law must be considered in any reduction in reimbursement to providers or imposition of copayments.

[2009, c. 415, Pt. A, §12 (AMD) .]

8. **Notification.** The department shall notify each MaineCare member who is subject to the copayment requirement in subsection 2 of the copayment requirements, any exemptions and limitations prior to coding the member's information for required copayments and shall notify the member again during annual recertification of eligibility.

[2011, c. 458, §2 (NEW); 2011, c. 458, §4 (AFF) .]

SECTION HISTORY
1981, c. 703, §A24 (NEW). 1983, c. 240, (RPR). 1991, c. 528, §§P10,11 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §§P10,11 (AMD). 1991, c. 622, §M11 (AMD). 1991, c. 780, §§R3,4 (AMD). 1991, c. 780, §R10 (AFF). 1993, c. 6, §§C5-8 (AMD). 1993, c. 410, §§I8,9 (AMD). 2003, c. 20, §§K5-8 (AMD). 2003, c. 451, §H1 (AMD). 2003, c. 451, §H3 (AFF). 2007, c. 240, Pt. GGG, §1 (AMD). 2009, c. 415, Pt. A, §12 (AMD). 2011, c. 458, §§1, 2 (AMD). 2011, c. 458, §4 (AFF).

§3173-D. REIMBURSEMENT FOR ALCOHOLISM AND DRUG DEPENDENCY TREATMENT

The department shall provide reimbursement, to the maximum extent allowable, under the United States Social Security Act, Title XIX, for alcoholism and drug dependency treatment. Treatment shall include, but need not be limited to, residential treatment and outpatient care as defined in Title 24-A, section 2842. [1983, c. 752, §1 (NEW).]

SECTION HISTORY
1983, c. 752, §1 (NEW).

§3173-E. TREATMENT OF JOINT BANK ACCOUNTS IN MEDICAID ELIGIBILITY DETERMINATIONS

When determining eligibility for Medicaid, the department shall establish ownership of joint bank accounts in accordance with Title 18-A, section 6-103, subsection (a). If the department determines that funds were withdrawn from a joint account without the consent of the applicant and the applicant owned the funds, the person to whom the funds were transferred is a liable 3rd party and the department shall pursue recovery of the funds in accordance with section 14. The department shall adopt rules to implement this section. [1993, c. 410, Pt. FF, §9 (NEW).]

SECTION HISTORY
1993, c. 410, §FF9 (NEW).

§3173-F. CHARGING OR INCREASING PREMIUMS

1. **Premiums.** The department may apply to the federal Centers for Medicare and Medicaid Services for a waiver or amend a pending or current waiver under the Medicaid program authorizing the department to impose cost sharing on some or all persons eligible for MaineCare under the Katie Beckett option authorized by the federal Tax Equity and Fiscal Responsibility Act of 1982. Premiums must be implemented on a sliding scale. The department must consult with stakeholders prior to implementing changes under this section and comply with applicable federal requirements regarding public participation in the development of the Katie Beckett waiver policy.

[2005, c. 633, §1 (AMD) .]

2. **Rules.** The department shall adopt rules providing for sanctions when complete, timely payment of premiums has not been made and providing grace periods applicable to such late or incomplete payments and allowing waiver of premiums for good cause. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2003, c. 20, Pt. K, §9 (NEW) .]

3. **Copayments.** The department may request, as part of the waiver request under subsection 1, permission to charge members copayments above those allowed in current federal regulation and statute.

[2003, c. 20, Pt. K, §9 (NEW) .]

SECTION HISTORY
2003, c. 20, §K9 (NEW). 2005, c. 633, §1 (AMD).

§3173-G. MEDICAID COVERAGE FOR REPRODUCTIVE HEALTH CARE AND FAMILY PLANNING SERVICES

The department shall provide for the delivery of federally approved Medicaid services to a qualified adult or adolescent when the adult's or adolescent's individual income is equal to or below 209% of the nonfarm income official poverty line for reproductive health care and family planning services, including pregnancy prevention, testing and treatment for sexually transmitted infection or cancer and access to contraception, in accordance with the federal Patient Protection and Affordable Care Act, Public Law 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, Public Law 111-152. [2015, c. 356, §1 (NEW); 2015, c. 356, §4 (AFF).]

SECTION HISTORY
2015, c. 356, §1 (NEW). 2015, c. 356, §4 (AFF).

§3174. ELIGIBILITY

Medical indigency and eligibility for assistance under this chapter are to be defined and determined in manners consistent with the requirements for the receipt of federal matching funds under Title XIX, or its successors, of the Social Security Act. [1977, c. 714, §3 (NEW).]

An applicant shall be an adult who requires care and assistance, an adult legally responsible for the care of another or an adult who is legally responsible for the care of, and is applying on behalf of, one or more dependent minor children. Applications may be made on behalf of those applicants by their legal representatives. [1977, c. 714, §3 (NEW).]

The income factor of eligibility is met if, after reducing all income received by or available to the applicant by the liabilities for the kinds of goods and services provided for in this section, the residual income does not exceed 100% of an amount equal to the Temporary Assistance for Needy Families payment standards applicable to the applicant in the case of a family of 2 or more, or does not exceed 100% of an amount equal to the Temporary Assistance for Needy Families full-need standard for a unit of one in the case of an individual. [1991, c. 1, §29 (COR); 1997, c. 530, Pt. A, §34 (AMD).]

The application of any available insurance, other 3rd party liabilities or other benefits to which the applicant may be entitled or the determination of other eligibility factors shall be in accordance with federal matching requirements. [1977, c. 714, §3 (NEW).]

The department, under rules and regulations established pursuant to section 3173, shall set forth conditions of eligibility for assistance under this chapter. Such conditions shall provide that aid may be granted only to any applicant who: [1973, c. 790, §2 (NEW).]

1. **Income.** Has not sufficient income or other resources to provide a reasonable subsistence compatible with decency and health;

[1973, c. 790, §2 (NEW) .]

2. **Residence.** Is living in the State at the date of the application; and

[1973, c. 790, §2 (NEW) .]

3. **Inmate.** Is not an inmate of any public institution, except as a patient in a medical institution or an inmate during the month in which he becomes an inmate only to the extent permitted by federal law, but an inmate of such an institution may file application for aid and any allowance made thereon shall take effect and be paid upon his ceasing to be an inmate of such institution.

[1983, c. 178, (AMD) .]

SECTION HISTORY
1973, c. 790, §2 (NEW). 1977, c. 714, §3 (AMD). 1979, c. 566, §1 (AMD). 1981, c. 703, §A25 (AMD). 1983, c. 178, (AMD). 1987, c. 834, §1 (AMD). RR 1991, c. 1, §29 (COR). 1991, c. 528, §P12 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §P12 (AMD). 1997, c. 530, §A34 (AMD).

§3174-A. MEDICAL COVERAGE PROGRAM FOR CERTAIN BOARDING HOME RESIDENTS

The department shall administer a program of medical coverage for persons residing in cost reimbursement boarding homes who, but for their income, would be eligible for supplemental security income benefits on account of blindness, disability or age, and who do not have sufficient income to meet the per resident payment rate for boarding home care, including an amount for personal needs of at least $30 a month. Notwithstanding supplemental security income eligibility regulations, the department may impose a penalty for certain transfers of assets. Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter II-A. [2001, c. 559, Pt. X, §5 (AMD).]

SECTION HISTORY
1983, c. 749, §1 (NEW). 2001, c. 559, §X5 (AMD).

§3174-B. MEDICAID REPORT

1. **Special report.** The commissioner shall prepare an annual report detailing all receipts and expenditures in the Medicaid program for the prior year and proposals for the coming year.

A. This document shall include, but not be limited to, the following information: A listing of revenues and expenditures for every professional, institutional or other service provided in the Medicaid program. This shall include levels of service, rates of reimbursement, numbers of providers and recipients of service and shall specify areas where there is discretion on the use of these funds by the State. This report shall also list all transfers of funds between Medicaid line accounts or service reimbursements and the reasons for those transfers. [1985, c. 392, (NEW).]

B. The information provided under paragraph A shall be broken into lines for both federal and state funds, as well as combined totals. [1985, c. 392, (NEW).]

[1985, c. 392, (NEW) .]

2. **Submission to Legislature.** The Medicaid report prepared pursuant to subsection 1 must be submitted to the Legislature prior to January 15th of each year. The report submitted under this section must be transmitted to the joint standing committees of the Legislature having jurisdiction over appropriations and financial affairs and health and human services matters.

[1999, c. 731, Pt. AA, §1 (AMD) .]

3. **Monthly expenditure projections.** The commissioner shall prepare a monthly report detailing all expenditures in the Medical Care - Payments to Providers program for each month of every fiscal year. This document must include sufficient detail, including expenditures by fund and category of service, for the month as well as historical data, fiscal year-to-date amounts and projections for the remainder of the biennium and the ensuing biennium. The report also must include monthly statistics on the number of individuals eligible for Medicaid and Cub Care benefits. The report must be submitted to the joint standing committees of the Legislature having jurisdiction over appropriations and financial affairs and health and human services matters no later than 15 days following the end of each month.

[1999, c. 731, Pt. AA, §2 (NEW) .]

SECTION HISTORY
1985, c. 392, (NEW). 1999, c. 731, §§AA1,2 (AMD).

§3174-C. COVERAGE FOR INPATIENT HOSPITAL MENTAL DISEASE TREATMENT SERVICES

Provided that the federal maintenance-of-effort requirements are satisfied, the department shall provide reimbursement, under the United States Social Security Act, Title XIX, for inpatient psychiatric facility care and treatment of patients with mental diseases. [1985, c. 769, §1 (NEW).]

SECTION HISTORY
1985, c. 769, §1 (NEW).

§3174-D. MEDICAID COVERAGE FOR SERVICES PROVIDED BY THE MAINE EDUCATIONAL CENTER FOR THE DEAF AND HARD OF HEARING AND THE GOVERNOR BAXTER SCHOOL FOR THE DEAF

The Department of Health and Human Services may administer a program of Medicaid coverage for speech and hearing services, psychological services, occupational therapy and any other services provided by the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf that qualify for reimbursement under the United States Social Security Act, Title XIX. The Department of Education has fiscal responsibility for providing the State's match for federal revenues acquired under this section. Any funds received as Medicaid reimbursement must be retained by the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf. [2005, c. 279, §13 (AMD).]

SECTION HISTORY
1987, c. 395, §B2 (NEW). 1987, c. 834, §2 (NEW). 1989, c. 502, §A70 (RPR). 1989, c. 700, §A79 (AMD). 1995, c. 676, §9 (AMD). 1995, c. 676, §13 (AFF). 2003, c. 689, §B6 (REV). 2005, c. 279, §13 (AMD).

§3174-E. INTERIM ASSISTANCE AGREEMENT

The department, with the approval of the Governor and on behalf of the State, may enter into an agreement with the United States Social Security Administration for the purpose of receiving reimbursement for interim assistance payments as provided by the United States Social Security Act. [1989, c. 502, Pt. A, §71 (RPR).]

SECTION HISTORY
P&SL 1987, c. 118, (NEW). 1987, c. 831, §1 (NEW). 1987, c. 836, §§1,4 (NEW). 1987, c. 847, §4 (NEW). 1989, c. 502, §A71 (RPR).

§3174-F. COVERAGE FOR ADULT DENTAL SERVICES

1. **Coverage provided.** The Department of Health and Human Services shall provide dental services, reimbursed under the United States Social Security Act, Title XIX, or successors to it, to individuals 21 years of age and over, limited to:

A. Acute surgical care directly related to an accident where traumatic injury has occurred. This coverage will only be provided for the first 3 months after the accident; [1989, c. 502, Pt. A, §72 (NEW).]

B. Oral surgical and related medical procedures not involving the dentition and gingiva; [1989, c. 502, Pt. A, §72 (NEW).]

C. Extraction of teeth that are severely decayed and pose a serious threat of infection during a major surgical procedure of the cardiovascular system, the skeletal system or during radiation therapy for a malignant tumor; [1997, c. 159, §1 (AMD).]

D. Treatment necessary to relieve pain, eliminate infection or prevent imminent tooth loss; and [1997, c. 159, §1 (AMD).]

E. [1991, c. 528, Pt. P, §14 (RP); 1991, c. 528, Pt. RRR, (AFF); 1991, c. 591, Pt. P, §14 (RP).]

F. Other dental services, including full and partial dentures, medically necessary to correct or ameliorate an underlying medical condition, if the department determines that provision of those services will be cost-effective in comparison to the provision of other covered medical services for the treatment of that condition. [1997, c. 159, §2 (NEW).]

[1997, c. 159, §§1, 2 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

2. **Demonstration projects.** The department shall promptly take all appropriate steps to obtain necessary waivers, if necessary, from the federal Department of Health and Human Services that enable the State to provide within the limits of available funds, on a demonstration basis, comprehensive dental services to Medicaid-eligible individuals who are 21 years of age or older in public or private, nonprofit clinic settings. The department's goal in pursuing these waivers or demonstration projects not requiring waivers is to determine whether providing services in these settings promotes cost effectiveness or efficiency or promotes other objectives of the federal Social Security Act, Title XIX.

By January 15, 1992, the department shall report to the joint standing committee of the Legislature having jurisdiction over health matters regarding the progress of its efforts under this subsection. The report must outline the department's progress and recommend further action required in pursuit of any demonstration project under this subsection.

[1991, c. 528, Pt. P, §15 (AMD); 1991, c. 528, Pt. RRR, (AFF); 1991, c. 591, Pt. P, §15 (AMD) .]

SECTION HISTORY

1989, c. 502, §A72 (NEW). 1989, c. 904, (AMD). 1991, c. 528, §§P13-15 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §§P13-15 (AMD). 1997, c. 159, §§1,2 (AMD). 2003, c. 689, §B6 (REV).

§3174-G. MEDICAID COVERAGE OF CERTAIN ELDERLY AND DISABLED INDIVIDUALS, CHILDREN AND PREGNANT WOMEN

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

1. **Delivery of services.** The department shall provide for the delivery of federally approved Medicaid services to the following persons:

A. A qualified woman during her pregnancy and up to 60 days following delivery when the woman's family income is equal to or below 200% of the nonfarm income official poverty line; [1999, c. 731, Pt. OO, §1 (NEW).]

B. An infant under one year of age when the infant's family income is equal to or below 200% of the nonfarm income official poverty line, except that the department may adopt a rule that provides that infants in families with income over 185% and equal to or below 200% of the nonfarm income official poverty line who meet the eligibility requirements of the Cub Care program established under section 3174-T are eligible to participate in the Cub Care program instead of Medicaid. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A; [2007, c. 695, Pt. C, §9 (RPR).]

C. A qualified elderly or disabled person when the person's family income is equal to or below 100% of the nonfarm income official poverty line; [2005, c. 3, Pt. M, §2 (AFF); 2005, c. 3, Pt. M, §1 (RPR).]

D. A child one year of age or older and under 19 years of age when the child's family income is equal to or below 200% of the nonfarm income official poverty line, except that the department may adopt a rule that provides that children described in this paragraph in families with income over 150% and equal to or below 200% of the nonfarm income official poverty line who meet the eligibility requirements of the Cub Care program established under section 3174-T are eligible to participate in the Cub Care program instead of Medicaid. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A; [2007, c. 695, Pt. C, §10 (RPR).]

E. (TEXT EFFECTIVE UNTIL CONTINGENCY: See PL 2011, c. 657, Pt. Z, §2) On or before September 30, 2012, the parent or caretaker relative of a child described in paragraph B or D when the child's family income is equal to or below 200% of the nonfarm income official poverty line, subject to adjustment by the commissioner under this paragraph and, beginning October 1, 2012, the parent or caretaker relative of a child described in paragraph B or D when the child's family income is equal to or below 133% of the nonfarm income official poverty line, subject to adjustment by the commissioner under this paragraph. Medicaid services provided under this paragraph must be provided within the limits of the program budget. Funds appropriated for services under this paragraph must include an annual inflationary adjustment equivalent to the rate of inflation in the Medicaid program. On a quarterly basis, the commissioner shall determine the fiscal status of program expenditures under this paragraph. If the commissioner determines that expenditures will exceed the funds available to provide Medicaid coverage pursuant to this paragraph, the commissioner must adjust the income eligibility limit for new applicants to the extent necessary to operate the program within the program budget. If, after an adjustment has occurred pursuant to this paragraph, expenditures fall below the program budget, the commissioner must raise the income eligibility limit to the extent necessary to provide services to as many eligible persons as possible within the fiscal constraints of the program budget, as long as on or before September 30, 2012 the income limit does not exceed 200% of the nonfarm income official poverty line and, beginning October 1, 2012, the income limit does not exceed 133% of the nonfarm income official poverty line; [2011, c. 477, Pt. Z, §1 (AMD).]

E. (TEXT EFFECTIVE ON CONTINGENCY: See PL 2011, c. 657, Pt. Z, §2) On or before September 30, 2012, the parent or caretaker relative of a child described in paragraph B or D when the child's family income is equal to or below 200% of the nonfarm income official poverty line, subject to adjustment by the commissioner under this paragraph and, beginning October 1, 2012, the parent or caretaker relative of a child described in paragraph B or D when the child's family income is equal to or below 100% of the nonfarm income official poverty line. Medicaid services provided under this paragraph must be provided within the limits of the program budget. Funds appropriated for services under this paragraph must include an annual inflationary adjustment equivalent to the rate of inflation in the Medicaid program. On a quarterly basis, the commissioner shall determine the fiscal status of program expenditures under this paragraph. If the commissioner determines that expenditures will exceed the funds available to provide Medicaid coverage pursuant to this paragraph, the commissioner must adjust the income eligibility limit for new applicants to the extent necessary to operate the program within the program budget. If, after an adjustment has occurred pursuant to this paragraph, expenditures fall below the program budget, the commissioner must raise the income eligibility limit to the extent necessary to provide services to as many eligible persons as possible within the fiscal constraints of the program budget, as long as on or before September 30, 2012 the income limit does not exceed 200% of the nonfarm income official poverty line; [2011, c. 657, Pt. Z, §1 (AMD); 2011, c. 657, Pt. Z, §2 (AFF).]

F. A person 20 to 64 years of age who is not otherwise covered under paragraphs A to E when the person's family income is below or equal to 125% of the nonfarm income official poverty line, provided that the commissioner shall adjust the maximum eligibility level in accordance with the requirements of the paragraph.

(2) If the commissioner reasonably anticipates the cost of the program to exceed the budget of the population described in this paragraph, the commissioner shall lower the maximum eligibility level to the extent necessary to provide coverage to as many persons as possible within the program budget.

(3) The commissioner shall give at least 30 days' notice of the proposed change in maximum eligibility level to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over health and human services matters; and [2011, c. 380, Pt. KK, §2 (AMD).]

G. A person who is a noncitizen legally admitted to the United States to the extent that coverage is allowable by federal law if the person is:

(1) A woman during her pregnancy and up to 60 days following delivery; or

(2) A child under 21 years of age. [2011, c. 380, Pt. KK, §3 (NEW).]

For the purposes of this subsection, the "nonfarm income official poverty line" is that applicable to a family of the size involved, as defined by the federal Department of Health and Human Services and updated annually in the Federal Register under authority of 42 United States Code, Section 9902(2). For purposes of this subsection, "program budget" means the amounts available from both federal and state sources to provide federally approved Medicaid services.

[2011, c. 477, Pt. Z, §1 (AMD); 2011, c. 657, Pt. Z, §1 (AMD); 2011, c. 657, Pt. Z, §2 (AFF) .]

1-A. Elderly prescription drug program.

[2001, c. 650, §1 (RP) .]

1-B. **Funding.** State funds necessary to implement subsection 1-C must include General Fund appropriations and Other Special Revenue allocations from the Fund for a Healthy Maine to the elderly low-cost drug program operated pursuant to section 254-D, including rebates received in that program from pharmaceutical manufacturers, that are no longer needed in that program as a result of the Medicaid waiver obtained pursuant to subsection 1-C.

[2005, c. 401, Pt. C, §5 (AMD) .]

1-C. **Prescription drug waiver program.** Except as provided in paragraph G, the department shall apply to the federal Centers for Medicare and Medicaid Services for a waiver or amend a pending or current waiver under the Medicaid program authorizing the department to use federal matching dollars to enhance the prescription drug benefits available to persons who qualify for the elderly low-cost drug program established under section 254-D. The program created pursuant to the waiver is the prescription drug waiver program, referred to in this subsection as the "program."

A. As funds permit, the department has the authority to establish income eligibility levels for the program up to and including 200% of the federal nonfarm income official poverty level, except that for individuals in households that spend at least 40% of income on unreimbursed direct medical expenses for prescription medications, the income eligibility level is increased by 25%. [2001, c. 650, §3 (NEW).]

B. To the extent reasonably achievable under the federal waiver process, the program must include the full range of prescription drugs provided under the Medicaid program on the effective date of this subsection and must limit copayments and cost sharing for participants. If cost sharing above the nominal cost sharing for the Medicaid program is determined to be necessary, the department may use a sliding scale to minimize the financial burden on lower-income participants. [2001, c. 650, §3 (NEW).]

C. Coverage under the program may not be less beneficial to persons who meet the qualifications of former section 254 than the coverage available under that section on September 30, 2001. [2005, c. 401, Pt. C, §6 (AMD).]

D. In determining enrollee benefits under the program, to the extent possible, the department shall give equitable treatment to coverage of prescription medications for cancer, Alzheimer's disease and behavioral health. [2001, c. 650, §3 (NEW).]

E. The department is authorized to provide funding for the program by using funds appropriated or allocated to provide prescription drugs under sections 254-D and 258. [2005, c. 401, Pt. C, §6 (AMD).]

F. The department is authorized to amend the waiver or adjust program requirements as necessary to take advantage of enhanced federal matching funds that may become available. [2001, c. 650, §3 (NEW).]

G. If, upon thorough analysis, the department determines that a waiver under this subsection is not feasible or would not significantly benefit participants in the elderly low-cost drug program, the department may decide not to pursue the waiver. Within 30 days of a decision not to proceed with a waiver and before taking action on that decision, the department shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters and shall provide a detailed analysis of the reasons for reaching that decision. [2001, c. 650, §3 (NEW).]

[2005, c. 401, Pt. C, §6 (AMD) .]

1-D. **Enrollment fee.** The department may assess an annual enrollment fee of $25 for participation in the MaineCare program for a family including a parent or caretaker relative of a child described in subsection 1, paragraph B or D when the family's income exceeds 150% of the nonfarm income official poverty line.

[2007, c. 539, Pt. NNN, §1 (NEW) .]

2. **Resource test.** The department may not apply a resource test to those children and pregnant women who are made eligible under this section, unless these persons also receive Temporary Assistance for Needy Families or United States Supplemental Security Income benefits.

[1989, c. 502, Pt. A, §72 (NEW); 1997, c. 530, Pt. A, §34 (AMD) .]

3. **Benefits authorized.** The scope of medical assistance to be provided within this section shall be that authorized by the Federal Sixth Omnibus Budget Reconciliation Act, Public Law 99-509.

[1989, c. 502, Pt. A, §72 (NEW) .]

SECTION HISTORY
1989, c. 502, §A72 (NEW). 1997, c. 530, §A34 (AMD). 1997, c. 643, §RR4 (AMD). 1997, c. 777, §A1 (AMD). 1999, c. 401, §§KKK2,3 (AMD). 1999, c. 401, §KKK10 (AFF). 1999, c. 531, §F2 (AFF). 1999, c. 731, §§KK1,OO1 (AMD). 1999, c. 790, §A25 (AMD). 2001, c. 450, §§A1,2 (AMD). 2001, c. 650, §§1-3 (AMD). 2003, c. 469, §A5 (AMD). 2003, c. 469, §A11 (AFF). 2003, c. 673, §§Y1,2 (AMD). 2003, c. 673, §Y3 (AFF). 2005, c. 3, §M1 (AMD). 2005, c. 3, §M2 (AFF). 2005, c. 401, §§C5,6 (AMD). 2007, c. 539, Pt. NNN, §1 (AMD). 2007, c. 695, Pt. C, §§9, 10 (AMD). 2011, c. 380, Pt. KK, §§2, 3 (AMD). 2011, c. 477, Pt. Z, §1 (AMD). 2011, c. 657, Pt. Z, §1 (AMD). 2011, c. 657, Pt. Z, §2 (AFF).

§3174-H. AVAILABILITY OF INCOME BETWEEN MARRIED COUPLES IN DETERMINATION OF ELIGIBILITY

Notwithstanding this chapter, for the purpose of determining medical indigency and eligibility for assistance for an individual residing or about to reside in an institution eligible for Medicaid participation under this section, there shall be a presumption, rebuttable by either spouse, that each spouse has a marital property interest in 1/2 of the total monthly income of both spouses at the time of application for medical assistance. Only the 1/2 interest of the applicant spouse shall be considered available to the spouse in determining eligibility for medical indigency and eligibility for assistance. [1989, c. 502, Pt. A, §72 (NEW).]

The marital property interest of the applicant spouse in the income of both spouses may be rebutted upon a showing of one of the following: [1989, c. 502, Pt. A, §72 (NEW).]

1. **Court order.** A court order allocating marital income pursuant to alimony, spousal support, equitable division of marital property or disposition of marital property;

[1989, c. 502, Pt. A, §72 (NEW) .]

2. **Individual ownership.** The establishing of sole individual ownership of income from current active employment; or

[1989, c. 502, Pt. A, §72 (NEW) .]

3. **Supplementary allocation of spousal income.** By applying to the Department of Health and Human Services for a supplementary allocation of spousal income pursuant to this section.

[1989, c. 502, Pt. A, §72 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

The Department of Health and Human Services shall establish standards for the reasonable and adequate support of the community spouse and the community residence of the couple. The standards shall consider the cost of housing payments, property taxes, property insurance, utilities, food, medical expenses, transportation, other personal necessities and the presence of other dependent persons in the home. [1989, c. 502, Pt. A, §72 (NEW); 2003, c. 689, Pt. B, §6 (REV).]

The community spouse may apply to the Department of Health and Human Services for a determination pursuant to the standards that the community spouse requires a larger portion of the marital income. Therefore, a smaller portion of the marital income will be available to the applicant spouse in determining medical indigency and eligibility for assistance. [1989, c. 502, Pt. A, §72 (NEW); 2003, c. 689, Pt. B, §6 (REV).]

As soon as authorized by federal law, the department shall implement this section. [1989, c. 502, Pt. A, §72 (NEW).]

SECTION HISTORY
1989, c. 502, §A72 (NEW). 2003, c. 689, §B6 (REV).

§3174-I. MEDICAID ELIGIBILITY DETERMINATIONS FOR APPLICANTS TO NURSING HOMES

1. **Needs assessment.** In order to determine the most cost-effective and clinically appropriate level of long-term care services, the department or its designee shall assess the medical and social needs of each applicant to a nursing facility. If the department chooses a designee to carry out assessments under this section, it shall ensure that the assessments are comprehensive and objective.

A. The assessment must be completed prior to admission or, if necessary for reasons of the person's health or safety, as soon after admission as possible. [1993, c. 410, Pt. FF, §10 (AMD); 1993, c. 410, Pt. FF, §19 (AFF).]

B. The department shall determine whether the services provided by the facility are medically and socially necessary and appropriate for the applicant and, if not, what other services, such as home and community-based services, would be more clinically appropriate and cost effective. [1993, c. 410, Pt. FF, §10 (AMD); 1993, c. 410, Pt. FF, §19 (AFF).]

B-1. For persons with severe cognitive impairments who have been assessed and found ineligible for nursing facility level care, the department, through its community options unit, shall review the assessment and provide case management to assist consumers and caregivers to receive appropriate services. [2011, c. 657, Pt. BB, §2 (AMD).]

B-2. The department shall establish additional assessment practices and related policies for persons with Alzheimer's disease and other dementias as follows.

(1) For persons who have been assessed using the department's primary assessment instrument and found to have cognitive or behavioral difficulties but who do not require nursing intervention with the frequency necessary to qualify for nursing facility level of care, the department shall administer a supplemental dementia assessment for those persons with cognitive and behavioral impairments. By May 1, 1996, the criteria reflected in this supplemental dementia assessment and the scoring mechanism must be incorporated into rules adopted by the department in consultation with consumers, providers and other interested parties. The assessment criteria proposed in the rulemaking must consider, but are not limited to, the following: orientation, memory, receptive communication, expressive communication, wandering, behavioral demands on others, danger to self or others and awareness of needs.

(2) The department shall reimburse a nursing facility for individuals who are eligible for care based on the supplemental dementia assessment only if the nursing facility demonstrates a program of training in the care of persons with Alzheimer's disease and other dementias for all staff responsible for the care of persons with these conditions. The department, in consultation with consumers, providers and interested parties, shall develop the requirements for training and adopt rules containing those requirements. By July 1, 1997, the department, in consultation with consumers, providers and interested parties, shall adopt rules establishing the standards for treatments, services and settings to meet the needs of individuals who have Alzheimer's disease and other dementias. These standards must apply to all levels of care available to such individuals.

(3) No later than January 15, 1997, the department shall report to the joint standing committee of the Legislature having jurisdiction over health and human service matters on the extent to which the use of the supplemental dementia assessment has expanded medical eligibility for nursing facility care to include persons with Alzheimer's disease or other dementias.

(4) Rules adopted pursuant to this subsection are major substantive rules as defined by Title 5, chapter 375, subchapter II-A. [1995, c. 687, §1 (NEW).]

C. The department shall inform both the applicant and the administrator of the nursing facility of the department's determination of the services needed by the applicant and shall provide information and assistance to the applicant in accordance with subsection 1-A. [1993, c. 410, Pt. FF, §10 (AMD); 1993, c. 410, Pt. FF, §19 (AFF).]

D. [1995, c. 170, §2 (RP).]

E. The department shall perform a reassessment of the individual's medical needs when the individual becomes financially eligible for Medicaid benefits.

(1) If the individual, at both the admission assessment and any reassessment, is determined not to be medically eligible for the services provided by the nursing facility, and is determined not to be medically eligible at the time of the determination of financial eligibility, the nursing facility is responsible for providing services at no cost to the individual until such time as a placement at the appropriate level of care becomes available. After a placement becomes available at an appropriate level of care, the nursing facility may resume billing the individual for the cost of services.

(2) If the individual is initially assessed as needing the nursing facility's services under the assessment criteria and process in effect at the time of admission or is admitted as covered by Medicare for nursing facility services, but is reassessed as not needing those services at the time the individual is found financially eligible, then the department shall reimburse the nursing facility for services it provides to the individual in accordance with the principles of reimbursement for residential care facilities adopted by the department pursuant to section 3173. In calculating the fixed-cost component of per diem rates for nursing facility services, the department shall exclude days of service for which reimbursement is provided under this subparagraph. [1995, c. 696, Pt. B, §1 (AMD).]

F. Prior to performing assessments under this section, the department shall develop and disseminate to all nursing facilities and the public the specific standards the department will use to determine the medical eligibility of an applicant for admission to the nursing facility. A copy of the standards must be provided to each person for whom an assessment is conducted. In designing and phasing in the preadmission assessment under this section, the department shall collaborate with interested parties, including but not limited to consumers, nursing facility operators, hospital operators and home and community-based care providers. [1995, c. 170, §2 (AMD).]

G. A determination of medical eligibility under this section is final agency action for purposes of the Maine Administrative Procedure Act, Title 5, chapter 375. [1989, c. 498, (NEW).]

[2011, c. 657, Pt. BB, §2 (AMD) .]

1-A. **Information and assistance.** If the assessment performed pursuant to subsection 1 finds the level of nursing facility care clinically appropriate, the department shall determine whether the applicant also could live appropriately and cost-effectively at home or in some other community-based setting if home-based or community-based services were available to the applicant. If the department determines that a home or other community-based setting is clinically appropriate and cost-effective, the department shall:

A. Advise the applicant that a home or other community-based setting is appropriate; [1993, c. 410, Pt. FF, §11 (NEW); 1993, c. 410, Pt. FF, §19 (AFF).]

B. Provide a proposed care plan and inform the applicant regarding the degree to which the services in the care plan are available at home or in some other community-based setting and explain the relative cost to the applicant of choosing community-based care rather than nursing facility care; and [1993, c. 410, Pt. FF, §11 (NEW); 1993, c. 410, Pt. FF, §19 (AFF).]

C. Offer a care plan and case management services to the applicant on a sliding scale basis if the applicant chooses a home-based or community-based alternative to nursing facility care. [1993, c. 410, Pt. FF, §11 (NEW); 1993, c. 410, Pt. FF, §19 (AFF).]

The department may provide the services described in this subsection directly or through private agencies.

[1995, c. 170, §3 (AMD) .]

1-B. **Notification by hospitals.** Whenever a hospital determines that a patient will require long-term care services upon discharge from the hospital, the hospital shall notify the department prior to discharge that long-term care services are indicated and that a preadmission assessment must be performed under this section.

[1995, c. 170, §3 (AMD) .]

2. **Assessment for mental illness, intellectual disability, autism or related conditions.** The department shall assess every applicant to a nursing facility to screen for mental illness, intellectual disability, autism or other related conditions in accordance with the federal Nursing Home Reform Act, Public Law 100-203, Section 4211, 42 United States Code, Section 1396r. Such assessments are intended to increase the probability that any individual who has an intellectual disability, autism or other related condition or a mental illness will receive active treatment for that individual's condition.

[2011, c. 542, Pt. A, §33 (AMD) .]

3. **Rules.** The Department of Health and Human Services shall adopt rules in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, to implement this section.

[1989, c. 498, (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

SECTION HISTORY
1989, c. 498, (NEW). 1993, c. 410, §§FF10-12 (AMD). 1993, c. 410, §FF19 (AFF). 1995, c. 170, §§2,3 (AMD). 1995, c. 687, §1 (AMD). 1995, c. 696, §B1 (AMD). 2003, c. 689, §B6 (REV). 2011, c. 542, Pt. A, §33 (AMD). 2011, c. 657, Pt. BB, §2 (AMD).

§3174-J. MEDICAID DRUG FORMULARY

(REPEALED)

SECTION HISTORY
1989, c. 875, §E35 (NEW). MRSA T. 22, §3174-J, sub-§4 (RP).

§3174-K. COUNSELING FOR CERTAIN CHILDREN

By October 1, 1992, the department shall adopt rules to provide Medicaid coverage for crisis counseling for children up to 21 years of age who are in crisis as a result of their removal or imminent removal from their parents' homes. The rules must allow the counseling to be provided by licensed clinical social workers. [1991, c. 882, §1 (NEW).]

SECTION HISTORY
1991, c. 882, §1 (NEW).

§3174-L. PARITY AMONG COUNSELORS

1. **Licensed clinical social workers and licensed clinical professional counselors.** Licensed clinical social workers must be eligible to receive Medicaid reimbursement for counseling services whenever licensed clinical professional counselors are eligible to be reimbursed for those services. Licensed clinical professional counselors must be eligible to receive Medicaid reimbursement for counseling services whenever licensed clinical social workers are eligible to be reimbursed for those services.

[1993, c. 393, §1 (NEW) .]

2. **Licensed master social workers and licensed professional counselors.** Licensed master social workers must be eligible to receive Medicaid reimbursement for counseling services whenever licensed professional counselors are eligible to be reimbursed for those services. Licensed professional counselors must be eligible to receive Medicaid reimbursement for counseling services whenever licensed master social workers are eligible to be reimbursed for those services.

[1993, c. 393, §1 (NEW) .]

SECTION HISTORY
RR 1993, c. 1, §53 (COR). 1993, c. 393, §1 (NEW). 1993, c. 410, §I10 (NEW).

§3174-M. MEDICAID DRUG FORMULARY

1. **Authority.** The department has the authority to determine which prescription and over-the-counter drugs are subject to reimbursement and coverage under the Medicaid program.

[1993, c. 410, Pt. I, §10 (NEW) .]

1-A. **Formulary standards.** Any formulary established by the department must:

A. Conform to nationally accepted standards for a sound and adequate drug formulary system that promotes rational, clinically appropriate and safe access to medically necessary prescription drugs, ensures that members have timely and appropriate access to these drugs and does not discriminate based on disease or condition; [2005, c. 386, Pt. X, §1 (NEW).]

B. Be structured to maintain at least the same therapeutic categories and pharmacological classes of drugs provided on the MaineCare preferred drug list in effect on July 1, 2005; and [2005, c. 386, Pt. X, §1 (NEW).]

C. With respect to atypical antipsychotic drugs:

(1) Ensure that atypical antipsychotic drugs remain available in the same manner as on July 1, 2005;

(2) Adopt any clinical edits approved by the department's psychiatric work group; and

(3) Conform to national standards for the prescribing of atypical antipsychotic drugs. [2005, c. 386, Pt. X, §1 (NEW).]

[2005, c. 386, Pt. X, §1 (NEW) .]

2. **Drug formulary committee.**

[2005, c. 386, Pt. X, §2 (RP) .]

2-A. **Drug formulary committee.** As authorized by Section 1927 (d) (4) (A) of the federal Social Security Act, 42 United States Code, Section 1396r-8, the department may develop a formulary using the department's MaineCare drug utilization review committee, except that the membership of the formulary committee must include pharmacists who are expert in pharmacotherapy for pediatric, geriatric and psychiatric populations.

A. A vote of 2/3 of the members of the department's MaineCare drug utilization review committee present is required to add or delete a drug from the list of drugs that are subject to reimbursement and coverage under the MaineCare program. [2005, c. 386, Pt. X, §3 (NEW).]

B. A determination under rules adopted pursuant to subsection 3 that a drug or category of drug is not covered by the MaineCare program is a final agency action subject to review under the Maine Administrative Procedure Act. [2005, c. 386, Pt. X, §3 (NEW).]

[2005, c. 519, Pt. DDDD, §1 (AMD); 2005, c. 519, Pt. DDDD, §3 (AFF) .]

3. **Emergency supply.** The department shall adopt routine technical rules as necessary that provide for a pharmacy to dispense, in accordance with applicable licensing standards and professional judgment, a one-time supply for 10 days of the prescribed drug. The rules must allow the department to authorize refills of the drug on a case-by-case basis at the end of the 10-day period if the prescribing provider has not submitted the required information at that time or the department determines that an additional refill is necessary.

The rules must provide that receipt of a 10-day supply under this subsection does not relieve the prescribing provider of the duty to submit all required information. The provision of the 10-day supply does not entitle the MaineCare member to receive benefits pending appeal in the event that a request for prior authorization is ultimately denied, except when the member was receiving the drug for which the 10-day supply was provided immediately prior to the provision of that supply.

Any drug provided under this emergency procedure is considered a Medicaid-covered service pending departmental actions.

[2005, c. 386, Pt. X, §4 (RPR) .]

4. **Rulemaking.** Rules adopted pursuant to section 3174-J prior to its repeal are effective as of the effective date of this chapter without the taking of any action pursuant to the Maine Administrative Procedure Act.

[1993, c. 410, Pt. I, §10 (NEW) .]

5. **Expedited review process.** The department shall provide an independent review process whenever a MaineCare member has written certification from the member's physician that:

A. Delay in the provision of the requested drug may severely jeopardize the life or health of the MaineCare member or cause a severe functional decline in the member; or [2005, c. 386, Pt. X, §5 (NEW).]

B. A preferred drug, if provided, would impose a serious risk to the life or health of the MaineCare member. [2005, c. 386, Pt. X, §5 (NEW).]

The independent review process must ensure a decision within 72 hours of the time that the request is filed, unless the parties otherwise agree that the 72-hour period may be extended. The independent review process must ensure that coverage decisions based upon lack of medical necessity are conducted by a physician or pharmacist. The physician need not in all cases be of the same specialty or subspecialty as the prescribing physician.

[2005, c. 386, Pt. X, §5 (NEW) .]

SECTION HISTORY
RR 1993, c. 1, §53 (RNU). 1993, c. 410, §I10 (NEW). 2005, c. 386, §§X1-5 (AMD). 2005, c. 519, §DDDD1 (AMD). 2005, c. 519, §DDDD3 (AFF).

§3174-N. AUTHORIZATION TO PURSUE FEDERAL WAIVERS TO DEVELOP MEDICAID MANAGED-CARE PROGRAM

The department is authorized to seek all necessary approvals to establish a Medicaid managed-care demonstration project pursuant to 42 United States Code, Social Security Act, Section 1115. [1993, c. 707, Pt. I, §2 (NEW).]

SECTION HISTORY
1993, c. 707, §I2 (NEW).

§3174-O. ESTABLISH RULES

The department shall establish rules recognizing the Medicaid hospital assessment as a reimbursable cost to providers participating in the State's medical assistance program. [1995, c. 368, Pt. W, §5 (NEW).]

SECTION HISTORY
1995, c. 368, §W5 (NEW).

§3174-P. PRESCRIPTION PROCESSING SERVICE FEE

(REPEALED)
(REPEALED)

SECTION HISTORY
1995, c. 665, §EE1 (NEW). 1995, c. 665, §EE3 (AFF). 1997, c. 795, §6 (RP).

§3174-Q. MEDICAID STABILITY

Beginning August 1, 1996, the department shall obtain authorization from the Legislature before implementing changes in benefit structures and eligibility levels in the Medicaid program that could cause the following changes: [1995, c. 696, Pt. B, §2 (NEW).]

1. **Percentages of enrollment.** Changes in excess of 10% in the percentages of enrollment among different groups that are categorically eligible for Medicaid; and

[1995, c. 696, Pt. B, §2 (NEW) .]

2. **Services covered.** Elimination of services covered under the program on August 1, 1996, except when immediately necessary to comply with federal law. The department may not eliminate a service if modification of that service can achieve compliance with federal law. Any modification may be made only to

the extent necessary to achieve compliance with federal law. Any elimination or modification made under this subsection must be done through rulemaking under the Maine Administrative Procedure Act. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

If the department takes action to eliminate or modify a service under this subsection, it shall provide notice of the rule-making proceedings to members of the Legislature.

[2009, c. 571, Pt. PPP, §1 (AMD) .]

SECTION HISTORY
1995, c. 696, §B2 (NEW). 2009, c. 571, Pt. PPP, §1 (AMD).

§3174-R. MEDICAID DRUG REBATE PROGRAM

The department shall enter into a drug rebate agreement with each manufacturer of prescription drugs under the Medicaid program, in accordance with the federal Social Security Act, Section 1927, as long as the agreements are consistent with state and federal law and result in a net increase in rebate revenue available to the Maine Medicaid Program. Individual rebate agreements may vary. [2005, c. 397, Pt. A, §20 (RPR).]

§3174-R. Access to dental services for children under Medicaid

(As enacted by PL 1997, c. 667, §1 is REALLOCATED TO TITLE 22, SECTION 3174-S)

§3174-R. Cub Care program

(As enacted by PL 1997, c. 777, Pt. A, §2 is REALLOCATED TO TITLE 22, SECTION 3174-T)

SECTION HISTORY
RR 1997, c. 2, §§45,46 (RAL). 1997, c. 643, §RR5 (NEW). 1997, c. 667, §1 (NEW). 1997, c. 777, §A2 (NEW). 2003, c. 510, §A17 (AMD). 2003, c. 611, §2 (AMD). 2005, c. 397, §A20 (RPR).

§3174-S. ACCESS TO DENTAL SERVICES FOR CHILDREN UNDER MEDICAID

(REALLOCATED FROM TITLE 22, SECTION 3174-R)

The department shall increase access to comprehensive dental care for children under the Medicaid program so that services are received on a timely basis in the regions of the State in which they live, in accordance with this section. [1997, c. 2, §45 (RAL).]

1. **Telephone referral service.** By April 1, 1998, the department shall establish a toll-free telephone referral service to provide individuals with information on dental services and assistance in accessing dental services. The telephone service must provide persons calling about dental services with oral notice of the availability of assistance in arranging for appointments for dental screening and necessary corrective treatment, transportation to dental appointments and other services necessary to ensure access.

[1997, c. 2, §45 (RAL) .]

2. **Increasing providers.** The department shall work with a statewide dental association and dentists in the State to increase the number of providers of dental care and the number participating in the Medicaid program.

[1997, c. 2, §45 (RAL) .]

3. **Goal.** It is the goal of the Legislature that children enrolled in the Medicaid program in all regions of the State have the same access to dental care as children enrolled in private dental insurance programs.

[1997, c. 2, §45 (RAL) .]

4. **Annual report.** By February 15, 1999 and annually thereafter, the department shall submit to the joint standing committee of the Legislature having jurisdiction over health and human services matters an annual report containing information related to the progress of the department in meeting the goal stated in subsection 3 and an action plan to increase access to dental care. The report must include an analysis of the progress being made in increasing access, the problems incurred within the prior year and corrective action to be taken. The action plan must consider the following strategies to increase access: nonprofit clinics; purchase of practice clinics; enhanced reimbursement for dentists serving a large number of children under the Medicaid program; and contracts with dental clinics and health centers to provide dental care.

[1997, c. 2, §45 (RAL) .]

SECTION HISTORY
RR 1997, c. 2, §45 (RAL).

§3174-T. CUB CARE PROGRAM

(REALLOCATED FROM TITLE 22, SECTION 3174-R)

1. **Program established.** The Cub Care program is established to provide health coverage for low-income children who are ineligible for benefits under the Medicaid program and who meet the requirements of subsection 2. The purpose of the Cub Care program is to provide health coverage to as many children as possible within the fiscal constraints of the program budget and without forfeiting any federal funding that is available to the State for the State Children's Health Insurance Program through the federal Balanced Budget Act of 1997, Public Law 105-33, 111 Stat. 251, referred to in this section as the Balanced Budget Act of 1997.

[1997, c. 2, §46 (RAL) .]

2. **Eligibility; enrollment.** Health coverage under the Cub Care program is available to children under 19 years of age whose family income is above the eligibility level for Medicaid under section 3174-G and below the maximum eligibility level established under paragraphs A and B, who meet the requirements set forth in paragraph C and for whom premiums are paid under subsection 5.

A. The maximum eligibility level, subject to adjustment by the commissioner under paragraph B, is 200% of the nonfarm income official poverty line. [1999, c. 401, Pt. QQ, §1 (AMD); 1999, c. 401, Pt. QQ, §5 (AFF).]

B. If the commissioner has determined the fiscal status of the Cub Care program under subsection 8 and has determined that an adjustment in the maximum eligibility level is required under this paragraph, the commissioner shall adjust the maximum eligibility level in accordance with the requirements of this paragraph.

(1) The adjustment must accomplish the purposes of the Cub Care program set forth in subsection 1.

(2) If Cub Care program expenditures are reasonably anticipated to exceed the program budget, the commissioner shall lower the maximum eligibility level set in paragraph A to the extent necessary to bring the program within the program budget.

(3) If Cub Care program expenditures are reasonably anticipated to fall below the program budget, the commissioner shall raise the maximum eligibility level set in paragraph A to the extent necessary to provide coverage to as many children as possible within the fiscal constraints of the program budget.

(4) The commissioner shall give at least 30 days' notice of the proposed change in maximum eligibility level to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over health and human services matters. [1997, c. 2, §46 (RAL).]

C. All children resident in the State are eligible except a child who:

(1) Is eligible for coverage under the Medicaid program;

(2) Is covered under a group health insurance plan or under health insurance, as defined in Section 2791 of the federal Public Health Service Act, 42 United States Code, Section 300gg(c) (Supp. 1997);

(3) Is a member of a family that is eligible under Title 5, section 285 for health coverage under the state employee health insurance program;

(4) Is an inmate in a public institution or a patient in an institution for mental diseases; or

(5) Within the 3 months prior to application for coverage under the Cub Care program, was insured or otherwise provided coverage under an employer-based health plan for which the employer paid 50% or more of the cost for the child's coverage, except that this subparagraph does not apply if:

(a) The cost to the employee of coverage for the family exceeds 10% of the family's income;

(b) The parent lost coverage for the child because of a change in employment, termination of coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, COBRA, of the Employee Retirement Income Security Act of 1974, as amended, 29 United States Code, Sections 1161 to 1168 (Supp. 1997) or termination for a reason not in the control of the employee; or

(c) The department has determined that grounds exist for a good-cause exception. [1997, c. 2, §46 (RAL).]

D. Notwithstanding changes in the maximum eligibility level determined under paragraph B, the following requirements apply to enrollment and eligibility:

(1) Children must be enrolled for 12-month enrollment periods. Prior to the end of each 12-month enrollment period the department shall redetermine eligibility for continuing coverage; and

(2) Children of higher family income may not be covered unless children of lower family income are also covered. This subparagraph may not be applied to disqualify a child during the 12-month enrollment period. Children of higher income may be disqualified at the end of the 12-month enrollment period if the commissioner has lowered the maximum eligibility level under paragraph B. [2001, c. 450, Pt. A, §3 (AMD).]

E. Coverage under the Cub Care program may be purchased for children described in subparagraphs (1) and (2) for a period of up to 18 months as provided in this paragraph at a premium level that is revenue neutral and that covers the cost of the benefit and a contribution toward administrative costs no greater than the maximum level allowable under COBRA. The department shall adopt rules to implement this paragraph. The following children are eligible to enroll under this paragraph:

(1) A child who is enrolled under paragraph A or B and whose family income at the end of the child's 12-month enrollment term exceeds the maximum allowable income set in that paragraph; and

(2) A child who is enrolled in the Medicaid program and whose family income exceeds the limits of that program. The department shall terminate Medicaid coverage for a child who enrolls in the Cub Care program under this subparagraph. [2001, c. 450, Pt. A, §3 (AMD).]

[2001, c. 450, Pt. A, §3 (AMD) .]

3. **Program administration; benefit design.** With the exception of premium payments under subsection 5 and any other requirements imposed under this section, the Cub Care program must be integrated with the Medicaid program and administered with it in one administrative structure within the department, with the same enrollment and eligibility processes, benefit package and outreach and in compliance with

the same laws and policies as the Medicaid program, except when those laws and policies are inconsistent with this section and the Balanced Budget Act of 1997. The department shall adopt and promote a simplified eligibility form and eligibility process.

[1997, c. 2, §46 (RAL) .]

4. **Benefit delivery.** The Cub Care program must use, but is not limited to, the same benefit delivery system as the Medicaid program, providing benefits through the same health plans, contracting process and providers. Copayments and deductibles may not be charged for benefits provided under the program.

[1997, c. 2, §46 (RAL) .]

5. **Premium payments.** Premiums must be paid in accordance with this subsection.

A. Premiums must be paid at the beginning of each month for coverage for that month according to the following scale:

(1) Families with incomes between 150% and 160% of the federal nonfarm income official poverty line pay premiums of 5% of the benefit cost per child, but not more than 5% of the cost for 2 children;

(2) Families with incomes between 160% and 170% of the federal nonfarm income official poverty line pay premiums of 10% of the benefit cost per child, but not more than 10% of the cost for 2 children;

(3) Families with incomes between 170% and 185% of the federal nonfarm income official poverty line must pay premiums of 15% of the benefit cost per child, but not more than 15% of the cost for 2 children; and

(4) Families with incomes between 185% and 200% of the federal nonfarm income official poverty line must pay premiums of 20% of the benefit cost per child, but not more than 20% of the cost for 2 children. [2003, c. 673, Pt. TTT, §§3, 5 (AFF); 2003, c. 673, Pt. TTT, §1 (RPR).]

B. When a premium is not paid at the beginning of a month, the department shall give notice of nonpayment at that time and again at the beginning of the 6th month of the 6-month enrollment period if the premium is still unpaid, and the department shall provide an opportunity for a hearing and a grace period in which the premium may be paid and no penalty will apply for the late payment. If a premium is not paid by the end of the grace period, coverage must be terminated unless the department has determined that waiver of premium is appropriate under paragraph D. The grace period is determined according to this paragraph.

(1) If nonpayment is for the first, 2nd, 3rd, 4th or 5th month of the 6-month enrollment period, the grace period is equal to the remainder of the 6-month enrollment period.

(2) If nonpayment is for the 6th month of the 6-month enrollment period, the grace period is equal to 6 weeks. [1997, c. 2, §46 (RAL).]

C. A child whose coverage under the Cub Care program has been terminated for nonpayment of premium and who has received coverage for a month or longer without premium payment may not reenroll until after a waiting period that equals the number of months of coverage under the Cub Care program without premium payment, not to exceed 3 months. [1997, c. 2, §46 (RAL).]

D. The department shall adopt rules allowing waiver of premiums for good cause. [1997, c. 2, §46 (RAL).]

[2003, c. 673, Pt. TTT, §§3, 5 (AFF); 2003, c. 673, Pt. TTT, §1 (RPR) .]

6. **Incentives.** In the contracting process for the Cub Care program and the Medicaid program, the department shall create incentives to reward health plans that contract with school-based clinics, community health centers and other community-based programs.

[1997, c. 2, §46 (RAL) .]

7. **Administrative costs.** The department shall budget 2% of the costs of the Cub Care program for outreach activities. After the first 6 months of the program and to the extent that the program budget allows, the department may expend up to 3% of the program budget on activities to increase access to health care. Administrative costs must include the cost of staff with experience in health policy administration equal to one full-time equivalent position.

[1997, c. 2, §46 (RAL) .]

8. **Quarterly determination of fiscal status; reports.** On a quarterly basis, the commissioner shall determine the fiscal status of the Cub Care program, determine whether an adjustment in maximum eligibility level is required under subsection 2, paragraph B and report to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over health and human services matters on the following matters:

A. Enrollment approvals, denials, terminations, reenrollments, levels and projections. With regard to denials, the department shall gather data from a statistically significant sample and provide information on the income levels of children who are denied eligibility due to family income level; [1997, c. 2, §46 (RAL).]

B. Cub Care program expenditures, expenditure projections and fiscal status; [1997, c. 2, §46 (RAL).]

C. Proposals for increasing or decreasing enrollment consistent with subsection 2, paragraph B; [1997, c. 2, §46 (RAL).]

D. Proposals for enhancing the Cub Care program; [1997, c. 2, §46 (RAL).]

E. Any information the department has from the Cub Care program or from the Bureau of Insurance or the Department of Labor on employer health coverage and insurance coverage for low-income children; [1997, c. 2, §46 (RAL).]

F. The use of and experience with the purchase option under subsection 2, paragraph D; and [1997, c. 2, §46 (RAL).]

G. Cub Care program administrative costs. [1997, c. 2, §46 (RAL).]

[1997, c. 2, §46 (RAL) .]

9. **Provisions applicable to federally recognized Indian tribes.** After consultation with federally recognized Indian nations, tribes or bands of Indians in the State, the commissioner shall adopt rules regarding eligibility and participation of children who are members of a nation, tribe or band, consistent with Title 30, section 6211, in order to best achieve the goal of providing access to health care for all qualifying children within program requirements, while using all available federal funds.

[1997, c. 2, §46 (RAL) .]

10. **Rulemaking.** The department shall adopt rules in accordance with Title 5, chapter 375 as required to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter II-A.

[1997, c. 2, §46 (RAL) .]

11. **Cub Care drug rebate program.** Effective October 1, 1999, the department shall enter into a drug rebate agreement with each manufacturer of prescription drugs that results in a rebate equal to that which would be achieved under the federal Social Security Act, Section 1927.

A. [1999, c. 522, §2 (AFF); 1999, c. 522, §1 (RP).]

[2005, c. 683, Pt. A, §34 (AMD) .]

12. **Premium rate review; adjustment.** Effective July 1, 2004, the department shall periodically evaluate the amount of premiums charged under this section to ensure that the premiums charged reflect the most current benefit cost per child. The commissioner shall adjust the premiums by rule. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2003, c. 673, Pt. TTT, §2 (NEW) .]

SECTION HISTORY
RR 1997, c. 2, §46 (RAL). 1999, c. 401, §§QQ1,2 (AMD). 1999, c. 401, §QQ5 (AFF). 1999, c. 522, §1 (AMD). 1999, c. 731, §§PP1,2 (AMD). 1999, c. 790, §A61 (AFF). 2001, c. 450, §A3 (AMD). 2003, c. 20, §K10 (AFF). 2003, c. 673, §§TTT1,2 (AMD). 2003, c. 673, §§TTT3,5 (AFF). 2005, c. 683, §A34 (AMD).

§3174-U. MEDICAID REIMBURSEMENT FOR DENTAL SERVICES

The department shall conduct an annual review of the adequacy of reimbursement rates for dental services for dentists who provide care for a disproportionate number of patients whose care is reimbursed through the Medicaid program and the Cub Care program established in section 3174-T. By December 31, 1999, the department shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters on the results of the study, including the costs in General Fund and other money. [1999, c. 301, §1 (NEW).]

§3174-U. Procedure for home health care changes

(As enacted by PL 1999, c. 329, §1 is REALLOCATED TO TITLE 22, SECTION 3174-W)

SECTION HISTORY
RR 1999, c. 1, §28 (RAL). 1999, c. 301, §1 (NEW). 1999, c. 329, §1 (NEW).

§3174-V. FEDERALLY QUALIFIED HEALTH CENTER REIMBURSEMENTS

Beginning in fiscal year 2003-04, the reimbursement requirements listed in subsections 1 and 2 apply to payments for certain federally qualified health centers as defined in 42 United States Code, Section 1395x, subsection(aa)(1993). [2003, c. 20, Pt. K, §11 (AMD).]

1. **Services furnished by center.** The department shall reimburse a federally qualified health center no less than 100% of reasonable costs, reduced by the total copayments for which members are responsible, for services furnished by the center within the scope of service approved by the federal Health Resources and Services Administration or the commissioner if that center:

A. Is receiving a grant under Section 330 of the federal Public Health Services Act; or [1999, c. 401, Pt. T, §1 (NEW).]

B. Is receiving funding under contract with the recipient of a grant under Section 330 of the federal Public Health Services Act, is identified as a subrecipient in the Section 330 grantee's approved scope of work and meets the requirements to receive a grant under Section 330 of that Act. [1999, c. 401, Pt. T, §1 (NEW).]

[2003, c. 20, Pt. K, §11 (AMD) .]

2. **Contracted services.** When a federally qualified health center otherwise meeting the requirements of subsection 1 contracts with a managed care plan or the Dirigo Health Program for the provision of MaineCare services, the department shall reimburse that center the difference between the payment received by the center from the managed care plan or the Dirigo Health Program and 100% of the reasonable cost, reduced by the total copayments for which members are responsible, incurred in providing services within the scope of service approved by the federal Health Resources and Services Administration or the commissioner. Any such managed care contract must provide payments for the services of a center that are not less than the level and amount of payment that the managed care plan or the Dirigo Health Program would make for services provided by an entity not defined as a federally qualified health center.

[2005, c. 400, Pt. C, §1 (AMD) .]

SECTION HISTORY
1999, c. 401, §T1 (NEW). 2003, c. 20, §K11 (AMD). 2003, c. 469, §A7 (AMD). 2005, c. 400, §C1 (AMD).

§3174-W. PROCEDURE FOR HOME HEALTH CARE CHANGES

(REALLOCATED FROM TITLE 22, SECTION 3174-U)

Rules adopted by the department regarding access to home health care under the Medicaid program are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [2003, c. 2, §73 (COR).]

SECTION HISTORY
RR 1999, c. 1, §28 (RAL). 2001, c. 354, §3 (AMD). RR 2003, c. 2, §73 (COR).

§3174-X. CONTRACTED OMBUDSMAN SERVICES

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

A. "Children's health insurance program" means the state children's health insurance program under Title XXI of the Social Security Act. "Children's health insurance program" includes the Cub Care program, which is established in section 3174-T, the federal Children's Health Insurance Program, or CHIP, and the federal State Children's Health Insurance Program, or S-CHIP. [2015, c. 511, §1 (NEW).]

B. "Eligible member" means a person who is eligible to participate as a member or beneficiary of the MaineCare program or the children's health insurance program. [2015, c. 511, §1 (NEW).]

C. "Ombudsman" means the director of the program and persons employed or volunteering to perform the work of the program. [2015, c. 511, §1 (NEW).]

D. "Outreach and education" includes, but is not limited to, work site and community-based training and workshops for members, eligible members and health care providers, social service providers and health insurance navigators, brokers and agents; outreach at events such as town fairs, expositions and health fairs; development of mailings about coverage options, open enrollment periods and other important updates; information hotline response, including providing information and referrals to members and

eligible members who call; and screening for eligibility for coverage programs, including programs other than Medicaid programs such as, but not limited to, prescription assistance programs. [2015, c. 511, §1 (NEW).]

E. "Program" means the ombudsman program established under this section. [2015, c. 511, §1 (NEW).]

[2015, c. 511, §1 (NEW) .]

2. **Program established.** The ombudsman program is established as an independent program to provide ombudsman services to the Medicaid population regarding Medicaid services provided by the department and the department's office for family independence and office of MaineCare services. The program shall consider and promote the best interests of the Medicaid and children's health insurance program populations, answer inquiries and investigate, advise and work toward resolution of complaints of infringement of the rights of a member or eligible member. The program shall include outreach and education to eligible members and those who serve eligible members, including health care providers, social service providers and health insurance navigators, brokers, agents and other enrollment professionals. The program shall function through the staff of the program, subcontractors and any volunteers recruited and trained to assist in the duties of the program. If members or eligible members described in this subsection are applying for or receiving long-term care home-based and community-based services or institutional services, ombudsman assistance for those services is provided by the long-term care ombudsman program established pursuant to section 5106, subsection 11-C. The program shall coordinate with the long-term care ombudsman program on activities, including but not limited to marketing, outreach and referral services.

[2015, c. 511, §1 (NEW) .]

3. **Contracted services; political activity prohibited.** The program shall operate by contract with a nonprofit organization that is best able to provide services on a statewide basis. The ombudsman may not be actively involved in state-level political party activities or publicly endorse, solicit funds for or make contributions to political parties on the state level or candidates for statewide elective office. The ombudsman may not be a candidate for or hold any statewide elective or appointive public office.

[2015, c. 511, §1 (NEW) .]

4. **Program services.** The first priority in the work of the program and the contract for ombudsman services under subsection 3 must be case-specific advocacy and enrollment services. In performing services under this section, the program, as it determines to be appropriate, may create and maintain records and case-specific reports. The program may:

A. Provide information to the public about the services of the program through a comprehensive outreach program. The program shall provide information through a toll-free telephone number or numbers; [2015, c. 511, §1 (NEW).]

B. Answer inquiries, investigate and work toward resolution of complaints regarding the performance and services of the department and participate in conferences, meetings and studies that may improve the performance of the department; [2015, c. 511, §1 (NEW).]

C. Provide services to members and eligible members to assist them in protecting their rights; [2015, c. 511, §1 (NEW).]

D. Inform members and eligible members of the means of obtaining services from the department; [2015, c. 511, §1 (NEW).]

E. Provide information and referral services; [2015, c. 511, §1 (NEW).]

F. Analyze and provide opinions and recommendations to agencies, the Governor and the Legislature on state programs, rules, policies and laws; [2015, c. 511, §1 (NEW).]

G. Determine what types of complaints and inquiries will be accepted for action by the program and adopt policies and procedures regarding communication with members and eligible members making inquiries or complaints and the department; [2015, c. 511, §1 (NEW).]

H. Apply for and use grants, gifts and funds for the purpose of performing the duties of the program; and [2015, c. 511, §1 (NEW).]

I. Collect and analyze records and data relevant to the duties and activities of the program and make reports as required by law or as the department considers appropriate. [2015, c. 511, §1 (NEW).]

[2015, c. 511, §1 (NEW) .]

5. **Information for members and eligible members; eligibility.** The program, in consultation with appropriate interested parties, shall provide information about eligibility requirements and procedures for enrolling in MaineCare to members and eligible members, including their dependents. The providing of the information under this subsection does not constitute representation of members and eligible members. Members and eligible members may seek and receive information regardless of whether they are represented by legal counsel. The information must be provided free of charge to members and eligible members.

This subsection does not create new rights or obligations concerning the provision of legal advice or representation of members and eligible members.

[2015, c. 511, §1 (NEW) .]

6. **Confidentiality of records.** Information held by or records or case-specific reports maintained by the program are confidential. Disclosure may be made only if the ombudsman determines such disclosure is lawful and in the best interest of the member or eligible member.

[2015, c. 511, §1 (NEW) .]

7. **Liability.** Any person who in good faith submits a complaint or inquiry to the program pursuant to this section is immune from any civil or criminal liability arising from that complaint or inquiry. For the purpose of any civil or criminal proceedings, there is a rebuttable presumption that any person acting pursuant to this section did so in good faith. The ombudsman and employees and volunteers of the program are employees of the State for the purposes of the Maine Tort Claims Act.

[2015, c. 511, §1 (NEW) .]

8. **Information.** Information about the services of the program must be given to all members and eligible members who receive or are eligible to receive services from the department and from persons and entities contracting with the department for the provision of Medicaid services.

[2015, c. 511, §1 (NEW) .]

9. **Report.** The program shall report to the department according to the requirements of the program contract under subsection 3. The program shall also report annually by January 1st to the joint standing committee of the Legislature having jurisdiction over health and human services matters on the activities and services of the program, priorities that may have been set by the program among types of inquiries and complaints, waiting lists for services and the provision of outreach services and recommendations for changes in statute, rules or policy to improve the provision of services.

[2015, c. 511, §1 (NEW) .]

10. **Funding.** The department shall contract for ombudsman services under this section as long as nonstate funding is available.

[2015, c. 511, §1 (NEW) .]

SECTION HISTORY
1999, c. 681, §1 (NEW). 2015, c. 511, §1 (RPR).

§3174-Y. PRIOR AUTHORIZATION IN MEDICAID PROGRAM

If the commissioner establishes maximum retail prices for prescription drugs pursuant to section 2693, the department shall adopt rules for the Medicaid program requiring additional prior authorization for the dispensing of drugs determined to be priced above the established maximum retail prices. The department shall adopt rules for the Medicaid program requiring additional prior authorization for the dispensing of drugs provided from manufacturers and labelers who do not enter into agreements with the department under section 2681, subsection 3. For the purposes of this section, "labeler" means an entity or person that receives prescription drugs from a manufacturer or wholesaler and repackages those drugs for later retail sale and that has a labeler code from the federal Food and Drug Administration under 21 Code of Federal Regulations, 207.20 (1999). [1999, c. 786, Pt. B, §3 (NEW).]

SECTION HISTORY
1999, c. 786, §B3 (NEW).

§3174-Z. PRIVATE, NONMEDICAL AND BOARD AND CARE INSTITUTIONS

Rules concerning the principles for reimbursement for private, nonmedical and board and care institutions must be major substantive rules as defined in Title 5, chapter 375, subchapter II-A. [2001, c. 404, §1 (NEW).]

SECTION HISTORY
2001, c. 404, §1 (NEW).

§3174-AA. ASSET LIMITS

Beginning January 1, 2002, in determining eligibility for medical assistance under the Medicaid program for all individuals and families subject to an asset test, the department shall exempt from consideration all assets exempt pursuant to program rule on January 1, 2001 and shall adopt rules to exempt from consideration certain assets in amounts and under terms the department determines to be reasonable and consistent with the purposes of the Medicaid program as provided in this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. The rules must provide exemptions for the following assets: [2001, c. 450, Pt. A, §4 (NEW).]

1. **Second vehicle.** A 2nd vehicle that is necessary for employment, to secure medical treatment or to provide transportation for essential daily activities or a vehicle that has been modified for operation by or the transportation of a person with a disability; and

[2001, c. 450, Pt. A, §4 (NEW) .]

2. **Savings.** An amount up to $8,000 for an individual and up to $12,000 for a household of more than one person.

§3174-AA. Mail order drugs

(As amended by PL 2003, c. 451, Pt. XX, §1 is REALLOCATED TO TITLE 22, SECTION 3174-EE)

[2001, c. 450, Pt. A, §4 (NEW) .]

SECTION HISTORY
2001, c. 450, §A4 (NEW). RR 2003, c. 1, §19 (RAL). 2003, c. 20, §K12 (NEW). 2003, c. 451, §XX1 (AMD).

§3174-BB. ENROLLMENT PERIODS

The department shall establish enrollment periods for medical assistance as provided in this section. Prior to the end of the enrollment period, the department shall determine continuing eligibility for the next enrollment period and notify the enrollee of the determination. [2001, Pt. A, §4 (NEW).]

1. **Children.** In the Medicaid program and the Cub Care program under section 3174-T, the enrollment period for children under 19 years of age must be 12 months.

[2001, c. 450, Pt. A, §4 (NEW) .]

2. **Adults.** In the Medicaid program, the enrollment period must be the longest period allowed by federal law or regulation but may not exceed 12 months.

[2001, c. 450, Pt. A, §4 (NEW) .]

SECTION HISTORY
2001, c. 450, §A4 (NEW).

§3174-CC. MEDICAID ELIGIBILITY DURING INCARCERATION

The department shall establish procedures to ensure that a person receiving federally approved Medicaid services prior to incarceration does not lose Medicaid eligibility as a result of that incarceration, even if Medicaid coverage is limited during the period of incarceration. Nothing in this section requires or permits the department to maintain an incarcerated person's Medicaid eligibility if the person no longer meets eligibility requirements. [2001, c. 659, Pt. B, §1 (NEW).]

SECTION HISTORY
2001, c. 659, §B1 (NEW).

§3174-DD. DIRIGO HEALTH COVERAGE

The department may contract with one or more health insurance carriers or the Dirigo Health Self-administered Plan established pursuant to Title 24-A, section 6981 to purchase Dirigo Health Program coverage for MaineCare members who seek to enroll through their employers pursuant to Title 24-A, section 6910, subsection 4, paragraph B. A MaineCare member who enrolls in the Dirigo Health Program as a member of an employer group receives full MaineCare benefits through the Dirigo Health Program. The benefits are delivered through the employer-based health plan, subject to nominal cost sharing as permitted by 42 United States Code, Section 1396o(2003) and additional coverage provided under contract by the department. [2007, c. 447, §2 (AMD).]

SECTION HISTORY
2003, c. 469, §A6 (NEW). 2005, c. 400, §C2 (AMD). 2007, c. 447, §2 (AMD).

§3174-EE. MAIL ORDER DRUGS

(REALLOCATED FROM TITLE 22, SECTION 3174-AA)

The department shall require MaineCare members to purchase maintenance drugs by mail order when substantial cost efficiencies can be obtained by doing so. Any savings measures implemented by the department in fiscal year 2003-04 that are of a temporary nature may remain in effect only until a permanent savings measure or measures are implemented. [2003, c. 1, §19 (RAL).]

SECTION HISTORY
RR 2003, c. 1, §19 (RAL).

§3174-FF. MAINECARE BASIC

1. **Established.** The MaineCare Basic program is established to deliver medically necessary health care services to adult members of the MaineCare program.

[2003, c. 673, Pt. MMM, §1 (NEW) .]

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

[2003, c. 673, Pt. MMM, §1 (NEW) .]

3. **Services.** The rules adopted pursuant to subsection 2 must provide for access to medically necessary services as provided in the federally approved Medicaid state plan. Benefits for certain services are limited as follows.

A. A member is eligible for speech therapy benefits if the member has been assessed to have rehabilitation potential or a demonstrated medical necessity for speech therapy to avoid a significant deterioration in the member's ability to communicate orally, safely swallow or masticate. In order for the member to be eligible for speech therapy benefits, a physician must document that the member has experienced a significant decline in ability to communicate orally, safely swallow or masticate or may reasonably suffer a significant deterioration in these functions if therapy is not provided. Speech therapy benefits must cover one initial evaluation of the member per provider per year and one reevaluation every 6 months per provider. Speech therapy benefits must cover outpatient therapy provided in the home, independent practitioners' offices and speech and hearing clinic sites. [2007, c. 71, §1 (RPR).]

B. A member is eligible for rehabilitation services benefits for brain injury subject to levels of care determined by rule. [2003, c. 673, Pt. MMM, §1 (NEW).]

C. A member is eligible for psychological services benefits for individual and group counseling. Benefits for one or both types of counseling combined are limited to a total of 16 one-hour visits per year, except that the department may increase the maximum number of visits for psychological services to 24 visits in a 12-month period as long as any cost associated with this increase is offset by savings from managing the use of these services by methods that may include prior authorization. [2005, c. 680, §1 (AMD).]

D. A member is eligible for benefits for durable medical equipment, prosthetics and orthotics for one pair of shoes and one pair of inserts per year, medical supplies required to meet standard daily needs and power wheelchairs for a member who is nonambulatory and has a significant neuromuscular disease or disorder. [2003, c. 673, Pt. MMM, §1 (NEW).]

E. A member is eligible for occupational and physical therapy benefits provided by occupational and physical therapists licensed under Title 32 and who are acting within their scope of practice. Services of occupational and physical therapists may be provided in all outpatient settings, including the home. For services subject to this paragraph, the department may require a member to have that member's rehabilitation potential documented by a physician and may limit treatment to:

(1) Treatment following an acute hospital stay for a condition affecting range of motion, muscle strength and physical functional abilities;

(2) Treatment after a surgical procedure performed for the purpose of improving physical function; or

(3) Treatment in those situations in which a physician has documented that the patient has in the preceding 30 days required extensive assistance in the performance of one or more of the following activities of daily living: eating, toileting, locomotion, transfer or bed mobility.

The department may limit occupational and physical therapy services benefits under this paragraph for palliative care and maintenance of function to one visit per year to design a plan of care and train the member or caretaker of the member to implement the plan or to reassess the plan of care. [2003, c. 673, Pt. MMM, §1 (NEW).]

F. A member is eligible for benefits for chiropractic services provided by a chiropractor licensed under Title 32. Benefits under this paragraph may be limited by the department by requiring a member to have that member's rehabilitation potential documented by a physician. Benefits may be limited to treatment as follows:

(1) Treatment for acute neuromuscular skeletal conditions affecting range of motion, muscle strength and physical functional abilities; or

(2) Treatment after a surgical procedure performed for the purpose of improving physical function. [2003, c. 673, Pt. MMM, §1 (NEW).]

G. A member is eligible for benefits under the private duty nursing and personal care program and waiver programs for the physically disabled or elderly as long as those benefits may be limited by reductions in units of service or by rate reductions. [2003, c. 673, Pt. MMM, §1 (NEW).]

H. A member who is eligible for benefits under section 3174-G, subsection 1, paragraph F is eligible for benefits under this section subject to the provisions of paragraphs A to G and to additional rules limiting benefits as specified in this paragraph.

(1) Benefits for inpatient hospital admissions are limited to 2 per year, except that more admissions may be approved through prior authorization by the department. This subparagraph does not limit inpatient hospital benefits for laboratory services, x-ray services, prenatal care and mental health diagnoses.

(2) Benefits for outpatient visits to a hospital are limited to 5 per year, except that more visits may be approved through prior authorization by the department. This subparagraph does not limit benefits for visits for laboratory services, x-ray services, prenatal care and mental health diagnoses.

(3) Benefits for brand-name prescription medications are limited to 5 medications dispensed during the same time period, except that benefits for additional brand-name medications may be approved through prior authorization by the department. In addition to the brand-name limitation, as compared to members who are eligible under other paragraphs of section 3174-G, subsection 1, prescription medication benefits for members who are eligible under paragraph F are limited by stricter prior authorization requirements, increased review of pharmacy use and a request for federal permission to waive freedom of choice.

(4) A member who is eligible for benefits under section 3174-G, subsection 1, paragraph F begins coverage on the date that the department determines that the member is eligible. [2003, c. 673, Pt. MMM, §1 (NEW).]

[2007, c. 71, §1 (AMD) .]

SECTION HISTORY
2003, c. 673, §MMM1 (NEW). 2005, c. 680, §1 (AMD). 2007, c. 71, §1 (AMD).

§3174-GG. LONG-TERM CARE PARTNERSHIP PROGRAM

There is established within the department the Long-term Care Partnership Program pursuant to Section 6021 of the federal Deficit Reduction Act of 2005, Public Law 109-171, 120 Stat. 4 (2006), referred to in this section as "the program," to provide incentives for persons to insure the costs of their own long-term care and to alleviate some of the costs of long-term care being paid by MaineCare. The department shall administer the program as a part of MaineCare. [2009, c. 101, §1 (AMD).]

1. **Eligibility.** A person is eligible for the program if that person is insured under a policy of long-term care insurance qualified pursuant to the federal Deficit Reduction Act of 2005 and approved for the purpose of the program and has used the policy alone or in combination with private resources to pay for long-term care costs without resort to MaineCare coverage. In order to qualify for benefits under the program, a person must be eligible under this subsection and meet the other criteria required for long-term care benefits under the MaineCare program as provided in this chapter and in rules adopted by the department.

[2009, c. 101, §2 (AMD) .]

2. **Benefits.** The benefits of the program include coverage for long-term care services under MaineCare after the person participating in the program has used the available coverage and benefits purchased under the approved long-term care policy.

[2009, c. 101, §3 (AMD) .]

3. **Disregard.** In addition to assets disregarded or exempt under MaineCare program rules, in determining eligibility for MaineCare and the amount of MaineCare benefits and in estate recovery pursuant to section 14, subsection 2-I, the program must disregard assets of an eligible person that are disclosed to the department in the application or posteligibility process in an amount equal to the benefits paid by the approved long-term care insurance policy.

[2009, c. 101, §4 (AMD) .]

4. **Information.** In cooperation with the Department of Professional and Financial Regulation, Bureau of Insurance, the department shall provide information to the public regarding the program and approved long-term care insurance policies.

[2005, c. 12, Pt. DDD, §10 (NEW) .]

5. **Reciprocal agreements.** The department shall enter into reciprocal agreements with other states to extend the program to persons who purchased long-term care insurance policies equivalent to policies approved in this State and to extend similar programs in other states to persons who purchase approved policies in this State and who later relocate and apply for Medicaid long-term care benefits in other states.

[2005, c. 12, Pt. DDD, §10 (NEW) .]

6. **Other laws.** Eligibility for the program does not preclude enforcement of laws regarding recovery of MaineCare benefits incorrectly paid or 3rd-party liability claims by the department. The provisions of this section do not enlarge or otherwise modify medical assistance benefits under the MaineCare program. The provisions of section 14, subsection 2-I, paragraph A, subparagraph (3) do not apply to assets disregarded under the program.

[2005, c. 12, Pt. DDD, §10 (NEW) .]

7. **Rulemaking.** The department, after consultation with the Superintendent of Insurance within the Department of Professional and Financial Regulation, 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.

[2005, c. 12, Pt. DDD, §10 (NEW) .]

SECTION HISTORY
2005, c. 12, §DDD10 (NEW). 2009, c. 101, §§1-4 (AMD).

§3174-HH. COORDINATION OF SERVICES

For the purposes of maximizing coverage for prescription drugs for members who are enrolled in the MaineCare program, the department may provide prescription drug services for MaineCare members through the elderly low-cost drug program established under section 254-D. [2005, c. 401, Pt. B, §1 (NEW).]

§3174-HH. MaineCare reimbursement for ambulance services

(As enacted by PL 2005, c. 386, Pt. FF, §1 is REALLOCATED TO TITLE 22, SECTION 3174-JJ)

SECTION HISTORY
RR 2005, c. 1, §6 (RAL). 2005, c. 386, §FF1 (NEW). 2005, c. 401, §B1 (NEW).

§3174-II. RELATIONSHIP TO FEDERAL MEDICARE PROGRAM

1. **Authorization.** To the extent permitted by federal law, with regard to the Medicare Part D benefit established in the federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108-173, the department may:

A. Serve as an authorized representative for MaineCare members for the purpose of enrollment into a Medicare Part D plan; [2005, c. 401, Pt. B, §1 (NEW).]

B. Apply for Medicare Part D benefits and subsidies on behalf of MaineCare members; [2005, c. 401, Pt. B, §1 (NEW).]

C. Establish rules by which MaineCare members may opt out of the procedures under paragraphs A and B; [2005, c. 401, Pt. B, §1 (NEW).]

D. At its discretion, file exceptions and appeals on behalf of MaineCare members who are beneficiaries under Medicare Part D. The department may identify a designee for this function; and [2005, c. 401, Pt. B, §1 (NEW).]

E. Identify objective criteria for evaluating Medicare Part D plans for the purposes of assisting or enrolling MaineCare members in Medicare Part D plans. [2005, c. 401, Pt. B, §1 (NEW).]

(As enacted by PL 2005, c. 457, Pt. JJJ, §1 is REALLOCATED TO TITLE 22, SECTION 3174-KK)

[2005, c. 401, Pt. B, §1 (NEW) .]

SECTION HISTORY
RR 2005, c. 1, §7 (RAL). 2005, c. 401, §B1 (NEW). 2005, c. 457, §JJJ1 (NEW).

§3174-JJ. MAINECARE REIMBURSEMENT FOR AMBULANCE SERVICES

(REALLOCATED FROM TITLE 22, SECTION 3174-HH)

The department shall reimburse for ambulance services under MaineCare at a level that is not less than the average allowable reimbursement rate under Medicare for such services or at the highest percent of that level that is possible within resources appropriated for those purposes. Beginning March 1, 2015, the department shall reimburse for ambulance services under MaineCare at a level that is not less than 65% of the average allowable reimbursement rate under Medicare for such services. [2013, c. 441, §1 (AMD).]

SECTION HISTORY
RR 2005, c. 1, §6 (RAL). 2013, c. 441, §1 (AMD).

§3174-KK. MAINECARE STABILIZATION FUND

(REALLOCATED FROM TITLE 22, SECTION 3174-II)

1. **Fund established.** The MaineCare Stabilization Fund, referred to in this section as "the fund," is established as an Other Special Revenue Funds account for the purposes specified in this section.

[2005, c. 1, §7 (RAL) .]

2. **Nonlapsing.** Any unexpended balances in the fund may not lapse but must be carried forward.

[2005, c. 1, §7 (RAL) .]

3. **Fund purposes.** Allocations from the fund must prevent any loss of services or increased cost of services to a MaineCare member or a person receiving benefits under the elderly low-cost drug program under section 254-D that would otherwise result from insufficient General Fund appropriations, insufficient federal matching funds or any other shortage of funds, changes in federal or state law, rule or policy or the implementation of the federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

[2005, c. 683, Pt. A, §35 (AMD) .]

4. **Report by State Controller.** The State Controller shall report at least annually on the fund on or before the 2nd Friday in November to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over health and human services matters. The report must summarize the status of and activity in the fund.

[2005, c. 1, §7 (RAL) .]

SECTION HISTORY
RR 2005, c. 1, §7 (RAL). 2005, c. 683, §A35 (AMD).

§3174-LL. INPATIENT SERVICES REIMBURSEMENT BASED ON DIAGNOSIS-RELATED GROUPS

Beginning April 1, 2010, the Department of Health and Human Services shall begin to phase in a system to reimburse noncritical access hospitals for inpatient services under the MaineCare program an amount per discharge that is based on diagnosis-related groups modeled on the system used by the federal Medicare program. The new diagnosis-related groups payment system must be budget neutral, based on MaineCare hospital payments for the year prior to the year of implementation. The new payment system must be implemented for each noncritical access hospital at the beginning of the hospital's first fiscal year that commences on or after April 1, 2010. The Department of Health and Human Services shall adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A. [2009, c. 213, Pt. CC, §3 (NEW).]

SECTION HISTORY
2009, c. 213, Pt. CC, §3 (NEW).

§3174-MM. OUTPATIENT SERVICES REIMBURSEMENT UNDER THE MAINECARE PROGRAM BASED ON AMBULATORY PAYMENT CLASSIFICATIONS

Beginning April 1, 2010, the Department of Health and Human Services shall begin to phase in a system to reimburse noncritical access hospitals for outpatient services under the MaineCare program an amount per patient service based on ambulatory payment classifications modeled on the system used by the federal Medicare program. The new ambulatory payment classifications must be budget neutral based on MaineCare payments for the same services in the year prior to the year of implementation. The new payment system must be implemented for each hospital at the beginning of the hospital's first fiscal year that commences on or after April 1, 2010. The Department of Health and Human Services shall adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A. [2009, c. 213, Pt. CC, §4 (NEW).]

SECTION HISTORY
2009, c. 213, Pt. CC, §4 (NEW).

§3174-NN. INPATIENT SERVICES REIMBURSEMENT FOR CRITICAL ACCESS HOSPITALS BASED ON DIAGNOSIS-RELATED GROUPS

(REPEALED)

SECTION HISTORY
2009, c. 213, Pt. CC, §5 (NEW). 2011, c. 657, Pt. H, §5 (AFF). 2011, c. 657, Pt. H, §2 (RP).

§3174-OO. OUTPATIENT SERVICES REIMBURSEMENT FOR CRITICAL ACCESS HOSPITALS UNDER THE MAINECARE PROGRAM BASED ON AMBULATORY PAYMENT CLASSIFICATIONS

(REPEALED)

SECTION HISTORY
2009, c. 213, Pt. CC, §6 (NEW). 2011, c. 657, Pt. H, §5 (AFF). 2011, c. 657, Pt. H, §3 (RP).

§3174-PP. MEDICAID REIMBURSEMENT FOR ELIGIBLE SERVICES PROVIDED THROUGH THE CHILD DEVELOPMENT SERVICES SYSTEM AND SCHOOL ADMINISTRATIVE UNITS

1. **Consultation.** Prior to adopting or amending any rule that pertains to the administration of a program of Medicaid coverage established by the department pursuant to this chapter for services that qualify for reimbursement and are provided through the auspices of the Child Development Services System and school administrative units in accordance with the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1400 et seq., the Office of MaineCare Services shall consult with the following interested parties on the proposed adoption or amendment of rules:

A. The Commissioner of Education or the commissioner's designee; [2009, c. 643, §1 (NEW).]

B. The Executive Director of the Maine School Management Association or the executive director's designee; [2009, c. 643, §1 (NEW).]

C. The executive director of a statewide organization of administrators of services for children with disabilities or the executive director's designee; [2009, c. 643, §1 (NEW).]

D. The executive director of a statewide organization for disability rights or the executive director's designee; and [2009, c. 643, §1 (NEW).]

E. The Executive Director of the Maine Developmental Disabilities Council or the executive director's designee. [2009, c. 643, §1 (NEW).]

[2009, c. 643, §1 (NEW) .]

2. **Monthly report.** The Office of MaineCare Services shall prepare and submit at the beginning of each month a report that includes a detailed statement of the status of any proposed adoption or amendment of rules that pertain to the Medicaid programs specified in subsection 1 to the joint standing committee of the Legislature having jurisdiction over education matters and the joint standing committee of the Legislature having jurisdiction over health and human services matters.

[2009, c. 643, §1 (NEW) .]

SECTION HISTORY
2009, c. 643, §1 (NEW).

§3174-QQ. CARE FOR CHILDREN WITH LIFE-THREATENING CONDITIONS

The department shall make decisions approving or disapproving care or services for children with life-threatening conditions who are members in the MaineCare program within one working day of receiving a complete urgent request or order from the health care provider or providers for the child. [2011, c. 35, §1 (NEW).]

§3174-QQ. Dental hygienist reimbursement

(Section 3174-QQ as enacted by PL 2011, c. 457, §1 is REALLOCATED TO TITLE 22, SECTION 3174-RR)

SECTION HISTORY
RR 2011, c. 1, §32 (RAL). 2011, c. 35, §1 (NEW). 2011, c. 457, §1 (NEW).

§3174-RR. DENTAL HYGIENIST REIMBURSEMENT

(REALLOCATED FROM TITLE 22, SECTION 3174-QQ)

1. **Reimbursement.** By October 1, 2012, the department shall provide for the reimbursement under the MaineCare program of independent practice dental hygienists practicing as authorized under Title 32, section 18375 for the following procedures:

A. Prophylaxis performed on a person who is 21 years of age or younger; [2011, c. 1, §32 (RAL).]

B. Topical application of fluoride performed on a person who is 21 years of age or younger; [2011, c. 1, §32 (RAL).]

C. Provision of oral hygiene instructions; [2011, c. 1, §32 (RAL).]

D. The application of sealants; [2011, c. 1, §32 (RAL).]

E. Temporary fillings; and [2011, c. 1, §32 (RAL).]

F. X-rays. [2011, c. 1, §32 (RAL).]

Reimbursement must be provided to independent practice dental hygienists directly or to a federally qualified health center pursuant to section 3174-V when an independent practice dental hygienist is employed as a core provider at the center.

[2015, c. 429, §4 (AMD) .]

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

[2011, c. 1, §32 (RAL) .]

SECTION HISTORY
RR 2011, c. 1, §32 (RAL). 2015, c. 429, §4 (AMD).

§3174-SS. CALCULATION OF 24 MONTHS

1. **Twenty-four month limit.** Beginning January 1, 2013, the MaineCare program may not provide coverage for buprenorphine and naloxone combination drugs for an individual for the treatment of addiction to opioids for more than a total of 24 months unless the department, prior to the expiration of the 24th month of coverage, gives prior authorization for coverage for a longer period. The 24-month limit includes months prior to January 1, 2013 for which the individual received coverage.

[2011, c. 477, Pt. I, §1 (NEW) .]

2. **Documentation of impact of 24-month limit; reports.** The department shall monitor and document the impact of the 24-month limit established under subsection 1 on persons for whom coverage is terminated under this section. This documentation must include an evaluation of the impact of the termination of coverage on the use of MaineCare services by persons whose coverage is terminated and the health of those persons. By February 1st annually, the department shall submit a report to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over health and human services matters that provides information regarding the impact of the limitation of coverage under this section on the use of MaineCare services and the health of persons subject to the limitation.

[2011, c. 477, Pt. I, §1 (NEW) .]

SECTION HISTORY
2011, c. 477, Pt. I, §1 (NEW).

§3174-TT. LIMITATION ON REIMBURSEMENT FOR OPIOIDS

(REPEALED)

SECTION HISTORY
2011, c. 477, Pt. O, §1 (NEW). 2011, c. 657, Pt. O, §1 (RP).

§3174-UU. REIMBURSEMENT FOR OPIOID DRUGS FOR THE TREATMENT OF PAIN

This section applies to reimbursement under the MaineCare program for opioid drugs for the treatment of pain. [2011, c. 657, Pt. O, §2 (NEW).]

1. **Treatment of a new onset of acute pain.** The department shall establish limits for MaineCare reimbursement of opioid drugs that are prescribed as medically necessary in response to a new onset of acute pain. After the initial 15-day prescription, the limits established may not exceed 42 days per year without prior authorization. In order to qualify for reimbursement under this subsection, the prior authorized prescription may not provide for more than 14 days of medication and requires a face-to-face visit between the prescriber and the MaineCare member. Notwithstanding the provisions of this subsection, the department shall limit to a period of 60 days following the surgical procedure MaineCare reimbursement for opioid drugs as treatment of post-operative care prescribed following a surgical procedure for which the medical standard of care includes the use of opioids. A MaineCare member who suffers from intractable pain and for whom opioid drugs are medically necessary beyond the limits set by this subsection may qualify for opioid drugs under subsection 2 as treatment for long-term chronic pain.

[2013, c. 368, Pt. AAAAA, §1 (AMD) .]

2. **Treatment of long-term chronic pain.** Reimbursement for opioid drugs beyond the limit set in subsection 1 is allowed by prior authorization if the MaineCare member participates in one or more therapeutic treatment options established by the department through rulemaking.

In order to qualify for reimbursement for opioid drugs under this subsection, the MaineCare member must:

A. Have failed to have an adequate response to the prescribed therapeutic treatment options; [2013, c. 368, Pt. AAAAA, §1 (AMD).]

B. Have completed the prescribed therapeutic treatment options in accordance with the guidelines and show signs of regression; or [2013, c. 368, Pt. AAAAA, §1 (AMD).]

C. Have completed at least 50% of the prescribed therapeutic treatment options under this subsection, after which the prescriber recommends that adequate control of pain will not be obtained under the therapeutic treatment options. [2013, c. 368, Pt. AAAAA, §1 (AMD).]

The department shall limit reimbursement for opioids for a MaineCare member who fails to have an adequate response to the prescribed therapeutic treatment options, subject to exception based on medical necessity. The department may include in rulemaking the establishment of a daily dosing limit, subject to exception.

The department may waive the requirement of therapeutic treatment options through prior authorization when participation is not feasible and opioid treatment is medically necessary.

The department may allow a MaineCare member who is participating in a course of treatment recommended by a prescriber, including alternatives, in accordance with rules adopted by the department to obtain a prior authorization for physical therapy in excess of 2 visits to a maximum of 6 visits.

[2013, c. 368, Pt. AAAAA, §1 (AMD) .]

3. **Second opinion.** In order for a prescription to qualify for reimbursement under this section, prior to prescribing an opioid drug for a medical diagnosis known typically to have a poor response to opioid drugs, a prescriber shall obtain an evaluation from a prescriber from outside the practice of the prescriber.

[2013, c. 368, Pt. AAAAA, §1 (AMD) .]

4. **Current use.** The department may delay until January 1, 2013 the application of this section to the reimbursement for opioid drugs for MaineCare members who have been receiving such treatment consistently for 6 months or longer on the effective date of this section. The department may require the development of a protocol for proper, safe and effective tapering from opioid use when appropriate and may adopt exceptions to the requirements of this section based on diagnosis or condition or on the basis of daily doses.

[2011, c. 657, Pt. O, §2 (NEW) .]

5. **Collaboration.** The department shall seek input from pain specialists, addiction medicine specialists and members of the department's physician advisory committee in the development of rules governing this section.

[2011, c. 657, Pt. O, §2 (NEW) .]

6. **Morphine equivalent dose.** The department may establish and utilize a total daily morphine equivalent dose calculation when developing rules to implement this section.

[2011, c. 657, Pt. O, §2 (NEW) .]

7. **Exceptions.** This section does not apply to reimbursement for opioid drugs for the following MaineCare members as specified in rules adopted by the department or as established through the MaineCare preferred drug list:

A. A MaineCare member who is receiving opioid drugs for symptoms related to HIV, AIDS, cancer and certain other qualifying diseases and conditions, as established by department rule; [2011, c. 657, Pt. O, §2 (NEW).]

B. A MaineCare member who is receiving opioid drugs during inpatient treatment in a hospital or during hospice care; [2011, c. 657, Pt. O, §2 (NEW).]

C. A MaineCare member who is receiving opioid drugs at certain qualifying low doses, as established by department rule; [2013, c. 368, Pt. AAAAA, §1 (AMD).]

D. A MaineCare member for whom MaineCare reimbursement for opioid drugs for the treatment of addiction is restricted by limits applicable to methadone and buprenorphine and naloxone combination drugs; and [2013, c. 368, Pt. AAAAA, §1 (AMD).]

E. A MaineCare member who is residing in a nursing facility. [2013, c. 368, Pt. AAAAA, §1 (NEW).]

[2013, c. 368, Pt. AAAAA, §1 (AMD) .]

8. **Rules.** 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.

§3174-UU. Methadone reimbursement limitations

(As enacted by PL 2011, c. 657, Pt. S, §1 is REALLOCATED TO TITLE 22, SECTION 3174-VV)

[2011, c. 657, Pt. O, §2 (NEW) .]

SECTION HISTORY

RR 2011, c. 2, §27 (RAL). 2011, c. 657, Pt. O, §2 (NEW). 2011, c. 657, Pt. S, §1 (NEW). 2013, c. 368, Pt. AAAAA, §1 (AMD).

§3174-VV. METHADONE REIMBURSEMENT LIMITATIONS

(REALLOCATED FROM TITLE 22, SECTION 3174-UU)

Effective January 1, 2013, reimbursement under the MaineCare program for methadone for the treatment of addiction to opiates as defined in Title 17-A, section 1101, subsection 7 is limited to a lifetime maximum of 24 months, except that reimbursement may be provided for longer than 24 months if prior authorization is received from the department. [2011, c. 2, §27 (RAL).]

The department shall adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. Prior to adopting rules under this section, the department shall seek input from stakeholders and experts in the field of substance abuse addiction and recovery, including, but not limited to, representatives of the Office of Substance Abuse and individuals with expertise in medication-assisted treatment. [2011, c. 2, §27 (RAL).]

SECTION HISTORY
RR 2011, c. 2, §27 (RAL).

§3174-WW. TOBACCO CESSATION

1. **Coverage.** The department shall provide coverage for comprehensive tobacco cessation treatment to a MaineCare member who is 18 years of age or older or who is pregnant. Coverage must include, at a minimum:

A. Coverage for all pharmacotherapy that is approved by the federal Food and Drug Administration for tobacco dependence treatment or is recommended as effective in the United States Public Health Service clinical practice guideline on treating tobacco use and dependence; and [2013, c. 444, §1 (NEW).]

B. Coverage for tobacco cessation counseling, to be available in individual and group forms. [2013, c. 444, §1 (NEW).]

[2013, c. 444, §1 (NEW) .]

2. **Conditions of coverage.** Coverage under this section must be provided with no copayments or other out-of-pocket cost sharing, including deductibles. The department may not impose annual or lifetime dollar limits or annual or lifetime limits on attempts to quit and may not require a MaineCare member to participate in counseling to receive medications.

[2013, c. 444, §1 (NEW) .]

3. **Federal reimbursement.** The department shall pursue all opportunities to maximize available federal reimbursement, including available administrative Medicaid match rates for telephonic counseling services, federal pharmacology purchasing agreements or other opportunities to maximize state resources for tobacco cessation medications and services.

[2013, c. 444, §1 (NEW) .]

SECTION HISTORY
2013, c. 444, §1 (NEW).

§3174-XX. DENTAL HYGIENE THERAPY REIMBURSEMENT

1. **Reimbursement.** By October 1, 2015, the department shall provide for the reimbursement under the MaineCare program of dental hygiene therapists practicing as authorized under Title 32, section 18377 for the procedures identified in their scope of practice. Reimbursement must be provided to dental hygiene therapists directly or to a federally qualified health center pursuant to section 3174-V when a dental hygiene therapist is employed as a core provider at the center.

[2015, c. 429, §5 (AMD) .]

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

[2013, c. 575, §1 (NEW); 2013, c. 575, §10 (AFF) .]

SECTION HISTORY
2013, c. 575, §1 (NEW). 2013, c. 575, §10 (AFF). 2015, c. 429, §5 (AMD).

§3174-YY. STATE EDUCATIONAL MEDICAID OFFICER

The commissioner shall designate an appropriate employee within the department as the state educational Medicaid officer to work in coordination with the Department of Education and school administrative units to maximize reimbursement for Medicaid services provided by school administrative units. [2015, c. 359, §1 (NEW).]

SECTION HISTORY
2015, c. 359, §1 (NEW).

§3175. ACCEPTANCE OF FEDERAL PROVISIONS

The department is authorized, subject to the approval of the Governor, to: [1975, c. 771, §225 (AMD).]

1. **Apply for assistance.** Apply for federal assistance under the United States Social Security Act, as amended, and to comply with such conditions, not inconsistent with this chapter, as may be required for such assistance; and

[1973, c. 790, §2 (NEW) .]

2. **Reports.** Make such reports in such form and containing such information as the Federal Government may from time to time require and comply with such provisions as the Federal Government may from time to time find necessary as to assure the correctness and verification of such reports.

[1973, c. 790, §2 (NEW) .]

SECTION HISTORY
1973, c. 790, §2 (NEW). 1975, c. 771, §225 (AMD).

§3175-A. DELINQUENT NURSING HOME TAXES TO BE WITHHELD FROM MEDICAID PAYMENTS

Whenever the commissioner receives written notice from the State Tax Assessor that a nursing home is delinquent by more than 30 days in making a health care provider tax payment required by Title 36, section 2873, the commissioner shall, upon 10 days' written notice, withhold the outstanding amount of tax, together

with any applicable interest and penalties, from the nursing home's Medicaid payments. All amounts withheld by the commissioner pursuant to this section are deemed to be health care provider tax payments by the nursing home and must be transferred within 30 days to the State Tax Assessor, who shall apply the amount in question to the nursing home's tax account. [2001, c. 714, Pt. CC, §1 (NEW); 2001, c. 714, Pt. CC, §8 (AFF).]

SECTION HISTORY
2001, c. 714, §CC1 (NEW). 2001, c. 714, §CC8 (AFF).

§3175-B. DELINQUENT RESIDENTIAL TREATMENT FACILITY TAXES TO BE WITHHELD FROM MEDICAID PAYMENTS

Whenever the commissioner receives written notice from the State Tax Assessor that a residential treatment facility is delinquent by more than 30 days in making a health care provider tax payment required by Title 36, section 2873, the commissioner shall, upon 10 days' written notice, withhold the outstanding amount of tax, together with any applicable interest and penalties, from the residential treatment facility's Medicaid payments. All amounts withheld by the commissioner pursuant to this section are deemed to be health care provider tax payments by the residential treatment facility and must be transferred within 30 days to the State Tax Assessor, who shall apply the amount in question to the residential treatment facility's tax account. [2001, c. 714, Pt. CC, §1 (NEW); 2001, c. 714, Pt. CC, §8 (AFF).]

SECTION HISTORY
2001, c. 714, §CC1 (NEW). 2001, c. 714, §CC8 (AFF).

§3175-C. DELINQUENT HOSPITAL TAXES TO BE WITHHELD FROM MEDICAID PAYMENTS

When the commissioner receives written notice from the State Tax Assessor that a hospital is delinquent by more than 30 days in making a health care provider tax payment required by Title 36, section 2883 or chapter 377, the commissioner shall, upon 10 days' written notice, withhold the outstanding amount of tax, together with any applicable interest and penalties, from the hospital's Medicaid payments. All amounts withheld by the commissioner pursuant to this section are deemed to be health care provider tax payments by the hospital and must be transferred within 30 days to the State Tax Assessor, who shall apply the amount in question to the hospital's tax account. [2003, c. 513, Pt. CC, §1 (AMD).]

SECTION HISTORY
2001, c. 714, §NN1 (NEW). 2003, c. 513, §CC1 (AMD).

§3175-D. NURSING FACILITY DEPRECIATION

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

1. **Depreciation.** For sales of nursing facilities, as defined in section 1812-A, that occur on or after October 1, 2009, the department shall either:

A. At the time of the sale, recapture depreciation paid by the department under the MaineCare program, from the proceeds of the sale; or [2009, c. 97, §1 (NEW).]

B. At the election of the buyer and seller, waive the recapture of depreciation at the time of the sale and allow the asset to transfer at the historical cost of the seller less depreciation allowed under the MaineCare program to the buyer for reimbursement purposes. [2009, c. 97, §1 (NEW).]

[2009, c. 97, §1 (NEW) .]

2. (TEXT EFFECTIVE ON CONTINGENCY: See PL 2013, c. 582, §5) **Methodology.** Beginning with the sale of a nursing facility that occurs on or after July 1, 2014, or such other date as approved by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services, the department shall calculate depreciation recapture using a methodology that provides percentage credits for buildings, fixed equipment and moveable equipment based on the number of years of operation by the owner of the nursing facility that is consistent with the following:

A. For the purposes of determining depreciation recapture for buildings and fixed equipment, the methodology must determine the number of years of operation by reference to the date on which the owner began operating with the original license; [2013, c. 582, §1 (NEW); 2013, c. 582, §5 (AFF).]

B. For the purposes of determining depreciation recapture for moveable equipment, the methodology must enable percentage credits to reach 100% after the first 6 years of the assigned useful life; and [2013, c. 582, §1 (NEW); 2013, c. 582, §5 (AFF).]

C. The methodology must treat as equivalent to the owner of the nursing facility any person or entity that owns or controls the entity that owns the nursing facility and any entity that is owned or controlled by the owner of the nursing facility. [2013, c. 582, §1 (NEW); 2013, c. 582, §5 (AFF).]

[2013, c. 582, §1 (NEW); 2013, c. 582, §5 (AFF) .]

SECTION HISTORY
2009, c. 97, §1 (NEW). 2013, c. 582, §1 (AMD). 2013, c. 582, §5 (AFF).

§3176. TREASURER OF STATE AS AGENT

The Treasurer of State shall be the appropriate officer of the State to receive available federal grants for programs for which the department may be eligible to receive federal funding in accordance with the Federal Social Security Act and the State Controller shall authorize expenditures therefrom as approved by the department. [1973, c. 790, §2 (NEW).]

SECTION HISTORY
1973, c. 790, §2 (NEW).

§3177. SUSPENSION OF AID

Appropriations for assistance under this chapter when used in programs entitled to receive federal matching funds shall not lapse but shall be a continuing account so long and as federal grants are available to match the State's contribution. No payments matchable by federal funds shall be made out of said account if federal grants or state appropriations are withdrawn, except that medical or remedial care or services contracted for before the date of such withdrawal shall be paid. Any money left in said fund in the event of withdrawal of federal grants or state appropriations shall be divided between the State and the Federal Government in proportion to the amount contributed by each. [1973, c. 790, §2 (NEW).]

SECTION HISTORY
1973, c. 790, §2 (NEW).

§3178. PAYMENT TO CONSERVATOR OR GUARDIAN

If an applicant for or a recipient of aid is found by the department to be incapable of taking care of himself or his money, payment shall be made only to a legally appointed guardian or conservator for his benefit. [1973, c. 790, §2 (NEW).]

SECTION HISTORY
1973, c. 790, §2 (NEW).

§3179. CHANGE OF CIRCUMSTANCES

If at any time during the continuance of aid the recipient thereof becomes possessed of any property or income in excess of the amount last disclosed to the department, it shall be the duty of the recipient immediately to notify the department of the receipt or possession of such property or income, and the department may, after investigation, either cancel the aid or change the amount thereof in accordance with the circumstances. [1973, c. 790, §2 (NEW).]

Any recipient of aid under this chapter whose categorical assistance benefits are terminated by the department shall be sent a separate, timely and adequate notice of the effect that that termination will have on his medical assistance. The department shall develop procedures to assure the continuation, without interruption, of medical assistance to persons who, despite the termination of their categorical assistance benefits, are eligible for continuing coverage through any program under this chapter. [1977, c. 714, §4 (NEW).]

SECTION HISTORY
1973, c. 790, §2 (NEW). 1977, c. 714, §4 (AMD).

§3180. INALIENABILITY OF AID

All rights to aid shall be absolutely inalienable by any assignment, execution, pledge or otherwise, and shall not pass, in case of insolvency or bankruptcy, to any trustee, assignee or creditor. [1973, c. 790, §2 (NEW).]

SECTION HISTORY
1973, c. 790, §2 (NEW).

§3181. APPEALS

1. Any person who is denied aid, or who is not satisfied with the amount of aid allotted to him, or is aggrieved by a decision of the department made under this chapter, or whose application is not acted upon with reasonable promptness, shall have the right of appeal to the commissioner, who shall provide the appellant with reasonable notice and opportunity for a fair hearing. Said commissioner or a member of the department designated and authorized by him shall hear all evidence pertinent to the matter at issue and render a decision thereon within a reasonable period after the date of the hearing. Such hearing shall conform to the procedures detailed herein. Review of any action or failure to act under this chapter shall be pursuant to Title 5, chapter 375, subchapter VII.

[1977, c. 694, §368 (AMD) .]

2. Any action relative to the grant, denial, reduction, suspension or termination of aid provided under this chapter must be communicated to the applicant or recipient in writing and shall include the specific reason or reasons for such action and shall state that the person affected has a right to a hearing.

[1973, c. 790, §2 (NEW) .]

SECTION HISTORY
1973, c. 790, §2 (NEW). 1977, c. 594, (AMD). 1977, c. 694, §368 (AMD).

§3182. FRAUDULENT REPRESENTATIONS; PENALTY

Any person who by means of a willfully false statement or representation, or by impersonation or other fraudulent devices, obtains or attempts to obtain, or aids or abets any person to obtain: [1973, c. 790, §2 (NEW).]

1. **Assistance not entitled.** Aid to which he is not entitled;

[1973, c. 790, §2 (NEW) .]

2. **Larger assistance.** A larger amount of aid than that to which he is entitled; or

[1973, c. 790, §2 (NEW) .]

3. **Forfeited assistance.** Payment of any forfeited installment of aid; and any person who knowingly buys or aids or abets in buying or in any way disposing of property of a recipient in such a way as to constitute a fraud upon the department shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than $500, or by imprisonment for not more than 11 months, or by both.

[1973, c. 790, §2 (NEW) .]

SECTION HISTORY
1973, c. 790, §2 (NEW).

§3183. GENERAL PENALTY

Any person who violates any of the provisions of this chapter for which no penalty is specifically provided shall be punished by a fine of not more than $500, or by imprisonment for not more than 11 months, or by both. If a recipient of aid is convicted of an offense under this chapter, the department may cancel the aid. [1973, c. 790, §2 (NEW).]

SECTION HISTORY
1973, c. 790, §2 (NEW).

§3184. RECOVERY OF ILLEGAL PAYMENTS

The department may recover the amount expended for aid in a civil action from a recipient or a former recipient who has failed to disclose assets which would have rendered him ineligible had he disclosed the assets. Such actions shall be prosecuted by the Attorney General in the name of the State of Maine, and the amount recovered shall be credited to the account for aid, medical or remedial care and services for the medically indigent. [1973, c. 790, §2 (NEW).]

SECTION HISTORY
1973, c. 790, §2 (NEW).

§3185. MEDICAL EXPENSES FOR CATASTROPHIC ILLNESS

The department shall cease accepting applications for assistance through the Catastrophic Medical Expense Fund on June 30, 1987. The Department of Health and Human Services shall continue to provide financial assistance to, or on behalf of, families or individuals residing in the State meeting eligibility requirements for the catastrophic illness program up to a period of one year after June 30, 1987. [1987, c. 349, Pt. H, §13 (RPR); 2003, c. 689, Pt. B, §6 (REV).]

Any balance of funds in the Catastrophic Medical Expense Fund account on June 30, 1987, shall not lapse and shall be utilized to provide financial assistance to, or on behalf of, families or individuals residing in this State meeting eligibility requirements for the catastrophic illness program on June 30, 1987. [1987, c. 349, Pt. H, §13 (RPR).]

SECTION HISTORY
1977, c. 714, §5 (NEW). 1981, c. 463, §§H1-H4 (AMD). 1981, c. 665, §§1,2 (AMD). 1983, c. 460, §1 (AMD). 1983, c. 824, §X3 (AMD). 1985, c. 501, §B19 (AMD). 1987, c. 349, §H13 (RPR). 2003, c. 689, §B6 (REV).

§3186. MEDICAL AND SOCIAL SERVICES REFERRAL SERVICE

The department shall establish and maintain an information and referral service for medically indigent persons who become pregnant as a result of rape, gross sexual misconduct, incest or sexual abuse. The information and referral service shall include a list of medical and social services available from state and private sources, including, but not limited to, counseling services, shelter, maternal health care, a list of physicians who have voluntarily agreed to provide to Medicaid eligible victims, pro bono, medical services not available from Medicaid and other applicable medical or social services. [1987, c. 402, Pt. A, §140 (RPR).]

This information shall also be made available to rape crisis centers, family planning agencies and other appropriate organizations. [1987, c. 402, Pt. A, §140 (RPR).]

In addition to the medical and social services information provided, the department shall strongly encourage and counsel each person receiving this information to report the rape, gross sexual misconduct, incest or sexual abuse to the appropriate authorities for criminal prosecution and shall assist that person in making the report, if requested. [1987, c. 402, Pt. A, §140 (RPR).]

Principles of reimbursement established for intermediate care facilities for persons with intellectual disabilities must be amended to implement the recommendations of the Advisory Committee on Staff Retention. [2011, c. 542, Pt. A, §34 (AMD).]

SECTION HISTORY
1985, c. 375, (NEW). 1985, c. 486, §1 (NEW). 1985, c. 749, §1 (AMD). 1987, c. 402, §A140 (RPR). 1987, c. 869, §1 (AMD). 2011, c. 542, Pt. A, §34 (AMD).

§3187. PRINCIPLES OF REIMBURSEMENT; RULES

The department shall meet annually with providers of community-based intermediate care facilities for persons with intellectual disabilities to review current principles of reimbursement under the federal Social Security Act, Title XIX, 42 United States Code, Chapter 7 and discuss necessary and appropriate changes. [2011, c. 542, Pt. A, §35 (AMD).]

Principles of reimbursement established for intermediate care facilities for persons with intellectual disabilities must ensure maximum flexibility enabling facilities to shift variable cost funds within accounts established pursuant to the principles. These principles may not set any artificial limits on specific variable cost accounts as long as facility totals are met. [2011, c. 542, Pt. A, §35 (AMD).]

Rules regarding principles of reimbursement for intermediate care facilities for persons with intellectual disabilities adopted pursuant to section 3173 are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A, except that rules adopted to establish an approval process for capital expenditures to renovate or construct intermediate care facilities for persons with intellectual disabilities are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2011, c. 542, Pt. A, §35 (AMD).]

SECTION HISTORY
1987, c. 402, §A141 (NEW). 1995, c. 462, §A43 (AMD). 2003, c. 684, §1 (AMD). 2011, c. 380, Pt. XXX, §1 (AMD). 2011, c. 542, Pt. A, §35 (AMD).

§3188. MAINE MANAGED CARE INSURANCE PLAN DEMONSTRATION FOR UNINSURED INDIVIDUALS

1. **Development of demonstration.** The Department of Health and Human Services shall develop, implement and administer the Maine Managed Care Insurance Plan Demonstration for individuals without health insurance in one urban site, one rural site and one site as determined by the department. Expenditures may not be incurred relative to the development of the 3rd site unless resources other than the General Fund are received by the department for that purpose.

[1989, c. 905, (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

2. **Targeted enrollment.** The department shall target enrollment in this plan to low-income, non-Medicaid eligible individuals employed in groups of less than 15 and the self-employed. Individual or nongroup policies will not be offered through this program. Enrollment in this plan shall not be offered to any group where there has been a health plan offered at any time within the past 12 months or to any self-employed individual who has been covered by health benefits coverage at any time within the past 12 months; except that groups and individuals who were covered through the Medicaid program or who had health benefits and lost that coverage involuntarily and who otherwise would be eligible for the Maine Managed Care Insurance Plan Demonstration are eligible for enrollment.

The intent of this demonstration is to provide access to health benefits to those for whom financial barriers preclude the purchase of the coverage. Eligibility criteria for the Maine Managed Care Insurance Plan Demonstration shall be developed by the department based upon the advice of The Robert Wood Johnson Foundation's grant advisory committee.

[1987, c. 888, (RPR) .]

3. **Report.** The Department of Health and Human Services shall prepare and submit to the joint standing committees of the 114th Legislature having jurisdiction over banking and insurance; human resources; and appropriations and financial affairs, a report on the Maine Managed Care Insurance Plan Demonstration during the 3rd year of the demonstration project. This report shall include, but not be limited to, the following information.

A. An assessment of the demonstration's success in providing cost effective affordable insurance coverage for acute and primary care services for the target population; [1987, c. 349, Pt. H, §14 (NEW).]

B. An assessment of whether the demonstration should be continued, expanded incrementally to additional areas of the State, made a statewide project or discontinued; and [1987, c. 349, Pt. H, §14 (NEW).]

C. An assessment of plan contracting and competitive bidding options and a review of options for program structure as a fully public or semipublic entity. [1987, c. 349, Pt. H, §14 (NEW).]

[1987, c. 349, Pt. H, §14 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

4. **Confidentiality of records.** The following medical or financial information concerning applicants to the Maine Managed Care Insurance Plan Demonstration shall be considered confidential as follows.

A. All department records that contain information regarding the identity, medical status or financial resources of particular individuals applying for health insurance coverage under the Maine Managed Care Insurance Plan Demonstration are confidential and subject to release only with the written authorization of the applicant. [1989, c. 175, §3 (NEW).]

B. All department records that contain information regarding the identity or financial resources of a business or business owner applying for enrollment in the Maine Managed Care Insurance Plan Demonstration are confidential and subject to release only with written authorization of an authorized representative of the applicant's business. [1989, c. 175, §3 (NEW).]

[1989, c. 175, §3 (NEW) .]

SECTION HISTORY
1987, c. 349, §H14 (NEW). 1987, c. 888, (AMD). 1989, c. 175, §3 (AMD). 1989, c. 905, (AMD). 2003, c. 689, §B6 (REV).

§3189. THE MAINE HEALTH PROGRAM

(REPEALED)

SECTION HISTORY
1989, c. 588, §A43 (NEW). 1989, c. 875, §§E36-39 (AMD). RR 1991, c. 2, §79 (COR). 1991, c. 9, §§N8-10 (AMD). 1991, c. 42, §§1-8 (AMD). 1991, c. 42, §11 (AFF). 1991, c. 528, §§GG1-9 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §§GG1-9 (AMD). 1991, c. 622, §L9 (AMD). 1993, c. 410, §§FFF5-13 (AMD). 1993, c. 410, §FFF17 (AFF). 1993, c. 673, §§2-5 (AMD). 1993, c. 673, §10 (AFF). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 1995, c. 696, §A37 (AMD). 1999, c. 668, §100 (RP).

§3189-A. ADVISORY BOARD TO PRIVATIZE THE MAINE HEALTH PROGRAM

(REPEALED)

SECTION HISTORY
1993, c. 410, §FFF14 (NEW). 1993, c. 673, §6 (AMD). 1993, c. 673, §10 (AFF). 1999, c. 668, §101 (RP).

§3190. COMMUNITY HEALTH PROGRAM GRANTS

(REPEALED)

SECTION HISTORY
1989, c. 588, §A43 (NEW). 1989, c. 875, §E40 (AMD). 1993, c. 6, §C9 (RP).

§3191. FUNDING OF THE HOSPITAL UNCOMPENSATED CARE AND GOVERNMENTAL PAYMENT SHORTFALL FUND

(REPEALED)

SECTION HISTORY
1989, c. 588, §A43 (NEW). 1989, c. 875, §E41 (AMD). 1993, c. 410, §FFF15 (RP).

§3192. COMMUNITY HEALTH ACCESS PROGRAM

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

A. "Benefit design" means the health care benefits package provided through the Community Health Access Program. [2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF).]

B. "Community board" means the local governing board of a community health plan corporation. [2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF).]

C. "Community health plan corporation excess insurance" means insurance that protects a plan offered by a community health plan corporation against higher than expected obligations at retention levels that do not have the effect of making the plan an insured plan. The issuance of community health access program excess insurance does not constitute the business of reinsurance. [2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF).]

D. "Complementary health care provider" means a health care professional, including, but not limited to, a massage therapist, naturopath, chiropractor, physical therapist or acupuncturist, who provides care or treatment to a person that complements the care or treatment provided by a primary care physician and is credentialed by a community board. [2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF).]

E. "Health quality measures" means statistical data that provides information on the quality of health care outcomes for individuals and groups with similar health problems. [2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF).]

F. "Medical data collection system" means the computerized, systematic collection of individual medical data, including the cost of medical care, that when analyzed provides information on the quality and costs of health care outcomes. [2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF).]

G. "Micro-employer" means an employer that has an average of 4 or fewer employees eligible for health care benefits in the 12 months preceding its enrollment in a plan offered by a community health plan corporation. [2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF).]

H. "Out-of-area medical services" means medical care services provided outside of the geographic region of a community health plan corporation. [2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF).]

I. "Program" means the Community Health Access Program established in this section. [2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF).]

[2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF) .]

2. **Program established.** The Community Health Access Program is established within the department to provide comprehensive health care services through local nonprofit community health plan corporations governed by community boards. The program's primary goal is to provide access to health care services to persons without health care insurance or who are underinsured for health care services. The purpose of the program is to demonstrate the economic and health care benefits of a locally managed, comprehensive health care delivery model. The program's emphasis is on preventive care, healthy lifestyle choices, primary health care and an integrated delivery of health care services supported by a medical data collection system.

[2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF) .]

3. **Service areas.** The department may establish 2 service areas for local plans developed by community health plan corporations in different geographic regions of the State. A service area established by the department must be an area that serves residents who seek regular primary health care services in conjunction with support from a hospital located in the same geographic region.

[2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF) .]

4. **Eligible population.** This subsection governs eligibility.

A. The following persons may enroll in plans developed by community health plan corporations:

(1) Micro-employers and their employees;

(2) Medicaid recipients;

(3) Self-insured employers and their employees to the extent allowed under the federal Employee Retirement Income Security Act;

(4) Self-employed persons; and

(5) Individuals without health care insurance. [2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF).]

B. Individuals eligible for group health care benefits through an individual's employment or spouse's employment may not enroll. [2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF).]

[2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF) .]

5. **Community boards.** A local community health plan corporation established pursuant to this section is governed by a community board composed of community members. The board membership must include representation of primary and complementary health care providers, mental health care providers, micro-employers and individuals enrolled in a plan offered by the community health plan corporation. The community boards shall establish bylaws and operating procedures.

[2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF) .]

6. **Authorized powers.** A local community health plan corporation may:

A. Develop a comprehensive health care benefit package that may include, but is not limited to, primary and tertiary health care services, mental health services, complementary health care services, preventive health care services, healthy lifestyle services and pharmaceutical services; [2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF).]

B. Develop medical data collection systems that will provide the program with the information necessary to support medical management strategies and will determine the costs and quality outcomes for the services provided; [2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF).]

C. Establish a fee structure sufficient to cover the actuarially determined costs of the comprehensive health care benefit package offered; [2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF).]

D. Develop a sliding fee schedule based on income to ensure that the fees are affordable for individuals covered by a plan offered by the community health plan corporation. The corporations are further authorized to establish mandatory minimum contributions by employers; [2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF).]

E. Collect fees from enrolled individuals and employers; [2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF).]

F. Solicit and accept funds from private and public sources to subsidize the corporation; [2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF).]

G. Develop community preventive care education and wellness programs. A corporation may coordinate its community preventive care education and wellness programs with schools, employers and other community institutions; [2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF).]

H. Enter into agreements with the department to provide care for individuals covered by the department's Medical Assistance Program in its geographic region and to develop methods to share access to medical information necessary for the program's medical data collection system; and [2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF).]

I. Enter into agreements with 3rd parties to provide needed services, including, but not limited to, administration, claims processing, customer services, stop-loss insurance, education, out-of-area medical services and other related services and products. [2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF).]

[2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF) .]

7. **Community health plan corporation excess insurance.** In order to ensure adequate financial resources to pay for medical services allowed in the benefit plans developed by community health plan corporations, a local community health plan corporation is required to enter into agreements with insurers licensed in this State to obtain community health plan corporation excess insurance and to provide coverage for those portions of the health care benefits package that expose the corporations to financial risks beyond the resources of the corporation. The department may develop rules to provide further options for community health plan corporations to maintain financial solvency. Participation in the Medicaid program satisfies the requirement of this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2003, c. 428, Pt. I, §1 (AMD) .]

8. **Cost-sharing agreements.** A local community health plan corporation may enter into agreements with private health insurance carriers or the Medicaid program in accordance with the following.

A. A local community health plan corporation may enter into agreements with private health care insurers to cover individual medical costs associated with all or a portion of the costs resulting from the benefit plan or benefit plans offered by the community health plan corporation. [2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF).]

B. A local community health plan corporation may enter into agreements with the department to access Medicaid coverage for all or a portion of the individual medical costs resulting from the benefit plan or benefit plans offered by the local community health plan corporation. [2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF).]

C. The department may seek a waiver from the Federal Government as necessary to permit funding under the Medicaid program to be used for coverage of Medicaid-eligible individuals enrolled in a plan offered by a community health plan corporation. The department may adopt rules required to implement the waiver in accordance with this paragraph. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2003, c. 428, Pt. I, §2 (AMD).]

[2003, c. 428, Pt. I, §2 (AMD) .]

9. **Medical and cost data.** If Medicaid-eligible individuals are enrolled in the program, the department shall provide medical and cost data to each local community health plan corporation at the community health plan corporation's request in a format usable by the community health plan corporation's medical data collection system for the analysis of health care costs and health care outcomes.

[2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF) .]

10. **Dissolution or sale.** Upon the dissolution, sale or other distribution of assets of a local community health plan corporation, the community board may convey or transfer the assets of the corporation only to one or more domestic corporations engaged in charitable or benevolent activities substantially similar to those of the community health plan corporation.

[2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF) .]

11. **Annual reports.** A local community health plan corporation established pursuant to this section shall submit a written report to the commissioner on or before January 21st annually. The report must address the financial feasibility, fee structure and benefit design of the plan offered by the community health plan corporation; the health quality measures, health care costs and quality of health care outcomes under the plan; and the number of persons enrolled in the plan. The commissioner may require more frequent reports and additional information. Annually, before March 15th of each year, the department must submit a report summarizing the plan's demonstrated effectiveness to the joint standing committees of the Legislature having jurisdiction over banking and insurance matters and health and human services matters.

[2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF) .]

12. **Not subject to Title 24 or Title 24-A.** A local community health plan corporation established pursuant to this section is not subject to any provisions of Title 24 or Title 24-A.

[2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF) .]

13. **Confidentiality.** All information in the medical data collection system maintained by a local community health plan corporation established under this section is confidential and may not be disclosed except as permitted by sections 1711-C and 1828.

[2001, c. 439, Pt. BBB, §1 (NEW); 2001, c. 439, Pt. BBB, §3 (AFF) .]

14. **Rules.** The department shall adopt rules establishing minimum standards for financial solvency, benefit design, enrollee protections, disclosure requirements, conditions for limiting enrollment and procedures for dissolution of a community health plan corporation. The department may also adopt any rules necessary to carry out the purposes of this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The department shall begin preparing the rules required under this subsection no later than January 1, 2007.

§3192. Affordable Health Care Fund

(As enacted by PL 2001, c. 450, Pt. B, §2 is REALLOCATED TO TITLE 22, SECTION 3193)

[2003, c. 688, Pt. K, §1 (AMD) .]

SECTION HISTORY
RR 2001, c. 1, §27 (RAL). 2001, c. 439, §BBB1 (NEW). 2001, c. 439, §BBB3 (AFF). 2001, c. 450, §B2 (NEW). 2003, c. 428, §§I1-3 (AMD). 2003, c. 688, §K1 (AMD).

§3193. AFFORDABLE HEALTH CARE FUND

(REALLOCATED FROM TITLE 22, SECTION 3192)

The Affordable Health Care Fund is established to assist individuals with the costs of participation in community health access programs. The fund is a nonlapsing fund and any excess funds may be used only for the purposes of this section. The fund may be used only to subsidize the costs of community health access programs' fees. The department shall establish subsidies on a sliding scale based on income for eligible

individuals enrolled in community health access programs. Individuals eligible for health coverage under the Medicaid or Medicare program are not eligible to receive a subsidy from this fund. [2001, c. 1, §27 (RAL).]

SECTION HISTORY
RR 2001, c. 1, §27 (RAL).

§3194. REPORT ON COST OF DISPENSING MEDICATION

The Office of MaineCare Services within the department shall biennially review and 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 regarding the cost of dispensing a medication in the State. By July 1st of each even-numbered year, the Office of MaineCare Services shall consider adjusting, through MaineCare rule amendment, the MaineCare pharmacy professional fee to reflect the cost of dispensing a medication in the State. [2007, c. 539, Pt. HH, §1 (NEW); 2007, c. 590, §1 (NEW).]

SECTION HISTORY
2007, c. 539, Pt. HH, §1 (NEW). 2007, c. 590, §1 (NEW).

Part 1-A: STATE SUPPLEMENTAL INCOME FOR BLIND, DISABLED AND ELDERLY PEOPLE

Chapter 855-A: GENERAL PROVISIONS

§3200. SHORT TITLE

This Part may be cited as the 1974 State Supplemental Income Act. [1973, c. 790, §3 (NEW).]

SECTION HISTORY
1973, c. 790, §3 (NEW).

§3201. DECLARATION OF OBJECTIVES AND PURPOSE

1. **Objective.** In keeping with the American heritage that each person in our society has an inherent human dignity, it is declared that blind, disabled and elderly people of our State of Maine are entitled to sufficient income to attain a reasonable standard of living, which will encourage the pursuit of a meaningful life of greatest value to the nation, State of Maine, and fellow human beings. It is the mutual and shared duty of first, the individual and his family, second the community and private agencies of the community, and ultimately the governments of the political subdivisions of this State, the State of Maine, and the United States of America to enable blind, disabled and elderly people to secure income. The objective of this Part is to reduce income barriers to personal and economic independence by encouraging blind, disabled and elderly people to secure and maintain maximum dignity, independence, and self care in a home environment, and if needed, with an appropriate state supplemental income.

[1973, c. 790, §3 (NEW) .]

2. **Purpose.** It is further declared that many blind, disabled and elderly people in the State of Maine do not have income sufficient to meet the minimum cost of living budget relating to Maine as determined by the United States Department of Labor, Bureau of Labor Statistics. It is therefore the purpose of this Act, in support of the above objective, to make available to blind, disabled and elderly people a program of state supplemental income.

[1973, c. 790, §3 (NEW) .]

SECTION HISTORY
1973, c. 790, §3 (NEW).

§3202. DEFINITIONS

For purposes of this Part, unless the context otherwise indicates, the following words shall have the following meanings. [1973, c. 790, §3 (NEW).]

1. **Agreement.** "Agreement" means a legally binding document between the Maine Department of Health and Human Services and the United States Department of Health, Education and Welfare.

[1975, c. 293, §4 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

2. **Blind person.** "Blind person" means a blind individual as defined in section 1614, Title XVI of the United States Social Security Act, as amended.

[1973, c. 790, §3 (NEW) .]

3. **Category.** "Category" means a subclassification of state supplemental income benefits for any one of the following: Blind, disabled or elderly person.

[1973, c. 790, §3 (NEW) .]

4. **Commissioner.** "Commissioner" means the Commissioner of the Maine Department of Health and Human Services or his successors.

[1975, c. 293, §4 (AMD); 2003, c. 689, Pt. B, §7 (REV) .]

5. **Department.** "Department" means the Maine Department of Health and Human Services.

[1975, c. 293, §4 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

6. **Disabled person.** "Disabled person" means a disabled individual as defined in section 1614, Title XVI of the United States Social Security Act, as amended.

[1973, c. 790, §3 (NEW) .]

7. **Elderly person.** "Elderly person" means an aged individual as defined in section 1614, Title XVI of the United States Social Security Act, as amended.

[1973, c. 790, §3 (NEW) .]

8. **Secretary.** "Secretary" means the Secretary, United States Department of Health, Education and Welfare.

[1973, c. 790, §3 (NEW) .]

9. **Social Security Act.** "Social Security Act" means the United States Social Security Act of 1935, as amended.

[1973, c. 790, §3 (NEW) .]

10. **Social Security Administration.** "Social Security Administration" means the Social Security Administration, United States Department of Health, Education and Welfare.

[1973, c. 790, §3 (NEW) .]

11. **Title XVI.** "Title XVI" means Title XVI of the United States Social Security Act of 1935, as amended.

[1973, c. 790, §3 (NEW) .]

SECTION HISTORY
1973, c. 790, §3 (NEW). 2003, c. 689, §§B6,7 (REV).

§3203. REPORT

On or before February 1, 1975, and thereafter annually, on or before September 1st, the department shall submit a detailed report on the federal supplemental income program and the state supplemental income program to the Governor in accordance with Title 5, sections 43, 44, 45 and 46 and to the Legislative Council. The report shall include copies of all pertinent state and federal rules and regulations, recommendations for policy, budgetary and legislative action, and any advisory recommendations as may be recommended by the Maine Committee on Aging and the Maine Human Services Council. [1973, c. 790, §3 (NEW).]

SECTION HISTORY
1973, c. 790, §3 (NEW).

Chapter 855-B: ADMINISTRATION

§3261. AGREEMENT FOR FEDERAL ADMINISTRATION

1. The department shall enter into an agreement with the Secretary of the United States Department of Health, Education and Welfare or its successors, under which the secretary, through the Social Security Administration, on behalf of the State of Maine, shall administer the program of state supplemental income benefits authorized in sections 3271 and 3274. The agreement shall contain all requirements for, and limitations and qualifications on, state supplemental income benefits which Title XVI of the United States Social Security Act, as amended, or regulations adopted thereunder, make necessary in order to qualify the State for administration of state supplemental income benefits by the secretary. The agreement may include, but need not be limited to, provisions to implement the programs of state supplemental benefits pursuant to this Part.

[1973, c. 790, §3 (NEW) .]

2. The department shall take any and all reasonable action necessary to effect an agreement with the secretary of administration of all state supplemental income benefits. Insofar as an agreement pertains to so-called "optional" state supplemental income benefits provided pursuant to section 3271, such administration by the secretary on behalf of the State shall be effective for benefits payable July 1, 1974 and thereafter.

[1973, c. 790, §3 (NEW) .]

The department shall take any and all reasonable action to assure that such agreement shall contain provisions that the secretary shall administer the program, particularly as relates to processing of applications, receipt of benefits by eligible applicants, and hearing and reviews, in a manner which is timely and convenient to the applicant and beneficiary. [1973, c. 790, §3 (NEW).]

SECTION HISTORY
1973, c. 790, §3 (NEW).

§3262. APPLYING FOR BENEFITS

An individual who is a resident of the State of Maine and who applies to the Social Security Administration for supplemental security income benefits pursuant to Title XVI of the Social Security Act shall be deemed to be applying for state supplemental income benefits provided pursuant to this Part and for medical care benefits provided by the State of Maine pursuant to Title XIX of the Social Security Act. Eligibility of a person for any benefit shall be determined in accordance with applicable laws of the United States and State of Maine. [1973, c. 790, §3 (NEW).]

SECTION HISTORY
1973, c. 790, §3 (NEW).

§3263. HEARINGS AND REVIEW

Regarding state supplemental income benefits administered by the secretary, any individual who is or claims to be an eligible individual or eligible spouse pursuant to this Part and is in disagreement with any determination concerning this Part by the United States Department of Health, Education and Welfare shall be provided a hearing before the secretary in accordance with the hearings and review provisions of subsection (C), section 1631 of Title XVI. [1973, c. 790, §3 (NEW).]

SECTION HISTORY
1973, c. 790, §3 (NEW).

§3264. FISCAL PROCEDURES

There shall be advanced with the authorization of the department, from the State Treasury to the secretary, prior to the first day of each month, an amount equal to the secretary's estimate of state supplemental benefits authorized pursuant to this Part for such month corrected for any adjustments resulting from benefits relating to any other month. The department shall conduct, at least once each fiscal year, an audit of such benefits paid by the secretary on behalf of the State. [1973, c. 790, §3 (NEW).]

An agreement shall specify procedures for making payments to the secretary and limitations on such payments, limits on state supplemental payments for patients in health care facilities, provision for recoupment of overpayments, or payments unlawfully procured, of state supplementary payments, adjustments against future state payments on account of such recoupment, and any other fiscal and quality control provision deemed advisable by the department. [1973, c. 790, §3 (NEW).]

SECTION HISTORY
1973, c. 790, §3 (NEW).

§3265. CONFIDENTIALITY

Information concerning an applicant or beneficiary under this Part shall be held in strict confidence. The department and secretary shall disclose or use such information only for purposes directly relating to administration of this Part. [1973, c. 790, §3 (NEW).]

SECTION HISTORY
1973, c. 790, §3 (NEW).

§3266. ACCEPTANCE OF FEDERAL PROVISIONS

All provisions of sections 1611, 1612, 1613, 1614 and 1615 relating to determination of benefits, and sections 1631, 1632 and 1633 relating to procedural and general provisions, of Title XVI of the United States Social Security Act, as amended, are accepted and are deemed to apply to the program of state supplemental security income benefits to the extent that they may be required to conduct a state supplemental income program as pursuant to this Part. [1973, c. 790, §3 (NEW).]

SECTION HISTORY
1973, c. 790, §3 (NEW).

Chapter 855-C: BENEFITS

§3271. PROGRAM

1. A program of regular monthly state supplemental income for blind, disabled and elderly people shall be provided for residents of the State of Maine. Benefits under the state supplemental income program shall be based on need and provided in supplementation of benefits provided by the United States Government to aged, blind and disabled individuals pursuant to Title XVI of the United States Social Security Act, as amended. Benefits shall be provided to any person who, on account of blindness, disability or age, qualifies for supplemental security income provided pursuant to Title XVI of the United States Social Security Act, as amended, and may, based on need, be provided to individuals who would, but for their income, be eligible for such supplemental security income benefits.

[2015, c. 2, §12 (COR) .]

2. The department, to the extent allowed by Title XVI of the United States Social Security Act, as amended, and regulations promulgated thereunder, shall establish, with the advice of the Maine Committee on Aging and the Maine Human Services Council, standard levels of state supplemental income benefits for blind, disabled and elderly people. The benefits shall be provided under a modified flat benefit system, and may vary by marital status, and by living arrangements to the extent allowed by Title XVI of the United States Social Security Act, as amended, and regulations promulgated thereunder. The benefits shall not be based on individual budgeted need and shall not vary by category or geographical area. Benefits for a couple, except as provided under section 3273, subsection 1, paragraph B, shall be equal to the sum of the amount of benefit for an individual and 50% of the benefit for an individual.

[1973, c. 790, §3 (NEW) .]

3. The department may also require, as a condition of eligibility, that any applicant for benefits or beneficiary under this Part must apply for any income supplementation that may be available under any other federal or state programs operated pursuant to the provisions of the Social Security Act, if it reasonably appears that such applicant or beneficiary is likely to be eligible for income supplementation under such other programs.

[1973, c. 790, §3 (NEW) .]

SECTION HISTORY
1973, c. 790, §3 (NEW). RR 2015, c. 2, §12 (COR).

§3272. STANDARD

1. **Standard.** The standard utilized to determine need shall be the current annual budget at the lower level of living for a retired couple as most recently determined by the United States Department of Labor, Bureau of Labor Statistics, for Portland, Maine, or budgets which are consistent with such a budget at the lower level of living, taking into account budget variances by marital status and living arrangements permited pursuant to Title XVI and regulations promulgated thereunder.

[1973, c. 790, §3 (NEW) .]

SECTION HISTORY
1973, c. 790, §3 (NEW).

§3273. TYPES OF BENEFITS

1. **Combined benefits.** The department shall take action, as necessary, to assure that, within the limits of available funds, a state supplemental income benefit, when combined with a federal supplemental security income benefit, shall consist of such amounts that the sum shall:

A. Increase the minimum monthly federal payment standard, in addition to that established pursuant to federal law, by an amount of at least $8 per month for an individual and $12 per month for a couple; [1973, c. 790, §3 (NEW).]

B. For an individual who resides in an adult foster home or boarding home, having a contract with the department for the provision of services to eligible residents, or nursing home, as defined in section 1812-A, in addition to the benefits provided herein under paragraphs A and C, provide sufficient income to allow the individual for personal needs an amount equal to at least $30 a month, plus an amount sufficient to meet the monthly per resident payment rate as established by the department of the adult foster home or boarding home in which the individual resides; and [1985, c. 770, §3 (AMD).]

C. For a beneficiary who resides in a living arrangement which meets a living arrangement classification established by the department, but who does not reside in an adult foster home or boarding home, in addition to the minimum federal payment level as adjusted pursuant to paragraph A, provide, based on such living arrangement classification, an amount not to exceed $42 per month for an individual and $63 per month for a couple. [1973, c. 790, §3 (NEW).]

[1985, c. 770, §3 (AMD) .]

2. **Participation limited.**

A. The limitation on eligibility of certain individuals established in subsections (e)(i)(A) and (e)(i)(B) of section 1611 of Title XVI of the United States Social Security Act, as amended, shall apply to benefits provided pursuant to this section. [1979, c. 563, §2 (AMD).]

B. [1975, c. 90, §S, §1 (RP).]

[1979, c. 563, §2 (AMD) .]

3. **Payments for boarding home care.**

A. If an agreement cannot include payment levels and variations thereof to provide the individual sufficient income to meet the monthly per resident payment rate for boarding home care, the department shall take any and all reasonable action necessary to the goal of achieving, within a reasonable time, a payment structure for each boarding home that will permit execution of an agreement with the secretary for administration of all state supplemental income benefits. [1973, c. 790, §3 (NEW).]

B. In the unfortunate and unlikely event that such an agreement cannot be effected to provide the individual sufficient income as specified in subsection 1, paragraph B, the department may provide a special grant whenever the benefit pursuant to subsection 1, paragraph B, is insufficient to meet the rate set for a boarding home. The department shall make such special grant preferably via a vendor payment system or via payment to a payee designated by the individual, or if necessary, via payment to the individual. Noting the intent of Title XVI of the United States Social Security Act, as amended, the administrative efficiencies, and the substantial cost savings to Maine taxpayers, it is the intent of the Legislature that the department shall take any and all reasonable action to obtain the approval of the secretary for a system of vendor payments for such special grants. [1991, c. 1, §30 (COR).]

[1991, c. 1, §30 (COR) .]

4. Appropriations available for benefits provided in subsection 1 shall be budgeted and authorized for expenditure by the department in a priority sequence. First, the available appropriation shall be budgeted and expended to increase the minimum monthly federal payment, as specified in subsection 1, paragraph A. Second, any balance of the appropriation remaining after such budgeting, shall be budgeted and expended to provide an individual sufficient income for personal needs, in accordance with subsection 1, paragraph B, and to meet the monthly per resident payment rate for adult foster and boarding home care as provided in subsection 1, paragraph B and subsection 3. Finally, any balance of the appropriations remaining after such budgeting shall be budgeted and expended to provide benefits related to variations by living arrangements as provided in subsection 1, paragraph C.

[1979, c. 563, §3 (AMD) .]

5. Retroactive payments relating to benefits provided in subsection 1, paragraph B, and subsection 3 shall not be made for any care provided prior to April 1, 1974. Retroactive payments relating to benefits provided in subsection 1, paragraphs A and C, shall not be provided for any period of time prior to July 1, 1974.

[1973, c. 790, §3 (NEW) .]

6. **Future changes in types of benefits.**

A. It is the declared intent of this Act that, if it is proposed that benefits provided pursuant to subsection 1 are to be increased on any future date, that such proposal shall recommend, and implementation of such increases shall provide, that the benefits pursuant to subsection 1, paragraph A, shall be increased, and the benefits pursuant to subsection 1, paragraph B, shall be increased, rather than increasing benefits pursuant to subsection 1, paragraph C. [1973, c. 790, §3 (NEW).]

B. [1991, c. 528, Pt. E, §24 (AMD); 1991, c. 528, Pt. RRR, (AFF); 1991, c. 591, Pt. E, §24 (AMD); T. 22, §3273, sub-§6, ¶ B (RP).]

B-1. On July 1st of every year, the sum of the monthly amount of any state supplemental income benefit authorized by subsection 1, paragraphs A and C, plus the amount of the minimum monthly federal supplemental security income in effect at that time must be increased by a percentage amount equal to the percentage rise in the United States Consumer Price Index for April 1st of that year over the level of the Index for April 1st of the previous year plus any additional percentage amount as is recommended annually by the department. Such an increase may be made only insofar as appropriations are available. In determining the additional percentage amount, consideration must be given to the goal of reaching, within a reasonable time, a benefit level equal to or consistent with the current budget at the lower level of living for a retired couple established by the United States Department of Labor, Bureau of Labor Statistics, for Portland, Maine.

If, on April 1st of any year, the sum of the monthly amount of any state supplemental payment authorized by subsection 1, paragraphs A and C, plus the amount of the minimum monthly federal supplemental security income in effect at that time, is equal to or exceeds the amount resulting from 12 divided into the current annual budget at the lower level of living for a retired couple as most recently

established by the United States Department of Labor, Bureau of Labor Statistics, for Portland, Maine, or taking into account variances by marital status and living arrangements as established by the department, a budget that is not inconsistent with that annual budget divided by 12, the increase provided on July 1st next following is limited to the percentage rise in the Consumer Price Index.

This paragraph takes effect July 1, 1993. [1991, c. 528, Pt. E, §25 (NEW); 1991, c. 528, Pt. RRR, (AFF); 1991, c. 591, Pt. E, §25 (NEW).]

[1991, c. 528, Pt. E, §§24, 25 (AMD); 1991, c. 528, Pt. RRR, (AFF); 1991, c. 591, Pt. E, §§24, 25 (AMD) .]

7. **Balances of funds not to lapse.**

[2009, c. 462, Pt. I, §1 (RP) .]

7-A. **Transfer of funds prohibited.** Funds appropriated to support benefits authorized under sections 3271 and 3274 may not be transferred by financial order unless the funds are transferred to the Department of Health and Human Services, Departmentwide program. These amounts may be transferred by financial order upon the recommendation of the State Budget Officer and approval of the Governor. These transfers are not considered adjustments to appropriations.

[2015, c. 267, Pt. XX, §1 (AMD) .]

8. **Rulemaking.** In addition to any other rule-making authority granted under this chapter, the department may adopt emergency rules. The need to reduce benefits to eligible recipients and payments to boarding homes via vendor payments in accordance with the appropriations made available for this purpose is considered an emergency for the purpose of emergency rulemaking.

[1991, c. 622, Pt. M, §12 (NEW) .]

9. **Supplemental security income for legal immigrants.** Supplemental security income for legal immigrants is governed by the following.

A. The department shall provide assistance to all aliens lawfully residing in the United States who would be eligible for assistance under the federal supplemental security income program, 42 United States Code, Section 1381, et seq. except for the provisions of Sections 401, 402 and 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. [1997, c. 643, Pt. WW, §1 (NEW).]

B. The total amount of monthly assistance provided under this section must equal the amount that the individual would be eligible to receive under the federal supplemental security income program, 42 United States Code, Section 1382, or its successor, if the individual were eligible for that program, and the state supplemental income payment provided to eligible individuals under section 3274. [1997, c. 643, Pt. WW, §1 (NEW).]

[1997, c. 643, Pt. WW, §1 (NEW) .]

10. **Balances of funds not to lapse.** Any balances of funds appropriated for the program of state supplemental income benefits authorized under sections 3271 and 3274 may not lapse but must be carried forward from year to year to be expended for the same purpose.

[2011, c. 655, Pt. U, §1 (NEW) .]

SECTION HISTORY

1973, c. 790, §3 (NEW). P&SL 1975, c. 90, §§SEC.S,1 (AMD). 1975, c. 623, §28 (AMD). 1977, c. 712, §F3 (AMD). 1979, c. 563, §§1-3 (AMD). 1983, c. 749, §2 (AMD). 1985, c. 506, §§B18-A (AMD). 1985, c. 770, §3 (AMD). RR 1991, c. 1, §30 (COR). 1991, c. 528, §§E24,25 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §§E24,25 (AMD). 1991, c. 622, §M12 (AMD). 1997, c. 643, §WW1 (AMD). 2009, c. 462, Pt. I, §§1, 2 (AMD). 2011, c. 655, Pt. U, §1 (AMD). 2015, c. 267, Pt. XX, §1 (AMD).

§3274. MANDATORY PAYMENTS

1. **Amount of payment.** The department shall provide so-called "mandatory" state supplemental income payments to beneficiaries of the supplemental security income program who receive payments under the state's former aid to the aged, blind and disabled program based on eligibility established for the month of December, 1973.

A so-called "mandatory" state supplemental income benefit, when combined with a federal supplemental security income benefit, shall, to the extent required by federal law to qualify the State of Maine to receive federal matching funds for medical care pursuant to Title XIX of the United States Social Security Act, as amended, and in so far as funds are available, be at least equal to and in no event less than the level of payment to such a recipient effective for December, 1973, under the former state aid to the aged, blind and disabled program, based on eligibility for December, 1973, in accordance with standards of payment applicable to such aid.

[1973, c. 790, §3 (NEW) .]

2. **Administration.** Insofar as an agreement made pursuant to section 3261 pertains to so-called "mandatory" payments, it shall provide that the department enter into an agreement with the secretary under which the secretary, through the Social Security Administration, on behalf of the State of Maine, shall administer, effective with payments issued on January 1, 1974 and thereafter the program of so-called "mandatory" state supplemental income benefits authorized in subsection 1.

[1973, c. 790, §3 (NEW) .]

3. **Applying for benefits.** Persons who receive payments under the state's former aid to aged, blind and disabled Program based on eligibility established for the month of December, 1973, shall, if eligible, receive benefits provided pursuant to this Part and for medical care benefits provided by the State of Maine pursuant to Title XIX of the United States Social Security Act, as amended, without filing an application for supplemental security income with the Social Security Administration.

[1973, c. 790, §3 (NEW) .]

4. **Inconsistent provisions.** The provisions of sections 3271, 3272 and 3273, except for section 3273, subsection 7-A, do not apply to so-called "mandatory" payments. If any provision of these sections is inconsistent with this section, this section, as it relates to mandatory payments, prevails.

[2009, c. 462, Pt. I, §3 (AMD) .]

SECTION HISTORY
1973, c. 790, §3 (NEW). 2009, c. 462, Pt. I, §3 (AMD).

§3274-A. PERSONAL NEEDS OF NURSING HOME RESIDENTS

In administering this chapter, the department shall ensure that eligible individuals residing in nursing homes, as defined in section 1812-A, shall have at least $30 a month for personal needs. [1979, c. 563, §4 (NEW).]

SECTION HISTORY
1979, c. 563, §4 (NEW).

Chapter 855-D: SPECIAL PROVISIONS

§3275. APPLICABILITY OF CHAPTER

The provisions of this chapter apply only to so much of state supplemental income to the blind, disabled and elderly as is administered directly by the department, and not to so much thereof as is administered by the secretary. When the administration of any portion of the state supplemental income program is transferred to the secretary, these provisions shall no longer apply to such portion of the state supplemental income program. [1973, c. 790, §3 (NEW).]

SECTION HISTORY
1973, c. 790, §3 (NEW).

§3276. DISQUALIFICATION

Any beneficiary of state supplemental income not administered by the secretary shall be disqualified from receiving benefits unless he files with the department, whenever the department may require it, information concerning his income, assets and other conditions relating to his financial circumstances. [1973, c. 790, §3 (NEW).]

SECTION HISTORY
1973, c. 790, §3 (NEW).

§3277. REGULATIONS

The department shall promulgate such temporary rules and regulations, consistent with the laws of the State of Maine, which are necessary or desirable for administration of this Part. The effect of such rules shall terminate on July 1, 1975. [1973, c. 790, §3 (NEW).]

SECTION HISTORY
1973, c. 790, §3 (NEW).

§3278. APPLICABILITY OF OTHER SECTIONS

Sections 3178, 3179, 3180, 3181, 3182, 3183 and 3184 apply to this Part. [1973, c. 790, §3 (NEW).]

SECTION HISTORY
1973, c. 790, §3 (NEW).

§3279. UNINDORSED CHECKS; PROCEDURE

When, for any reason whatsoever, a person who has been determined to be eligible for state supplemental income is unable to indorse the check for the last payment approved for him prior to his death, the department may approve payment by the State of obligations incurred by the recipient for board and room

in anticipation of the receipt of such check, such payments to be authorized in accordance with the rules and regulations of the department. Any claim which may be paid under this section must be presented to the department in writing within 60 days of the date of the death of the eligible person. [1973, c. 790, §3 (NEW).]

SECTION HISTORY
1973, c. 790, §3 (NEW).

§3280. LIABILITY OF RELATIVES

The spouse of a beneficiary of state supplemental income shall, if of sufficient ability, be responsible for the partial or total support of such persons. In determining the ability of such spouse, his assets as well as his income shall be considered. [1973, c. 790, §3 (NEW).]

The Attorney General shall bring proceedings in the name of the State of Maine in any court of competent jurisdiction to compel any person liable under this section to contribute to the support of any recipient of such benefit, if, after reasonable efforts on the part of the department, voluntary contributions have not been made. The court shall determine a fair and reasonable amount for support to be paid by the defendant to the department as reimbursement for moneys furnished to a recipient. [1973, c. 790, §3 (NEW).]

The action must be brought as a petition for support upon not less than 7 days' notice. Upon failure to pay the support ordered, execution must issue. The State shall pay the expense of commitment and support when the defendant is committed to jail on execution and the defendant may be discharged in the same manner as provided by Title 19-A, section 952. [1997, c. 2, §47 (COR).]

The department shall encourage and stimulate voluntary contributions from the parents and adult children of the recipients of such aid, if such relatives are of sufficient ability to contribute toward the support of such recipients. [1973, c. 790, §3 (NEW).]

SECTION HISTORY
1973, c. 790, §3 (NEW). RR 1997, c. 2, §47 (COR).

§3281. CIVIL RIGHTS

The state supplemental income program shall be conducted in accordance with Title VI of the Civil Rights Act, as amended. [1973, c. 790, §3 (NEW).]

SECTION HISTORY
1973, c. 790, §3 (NEW).

§3282. PROVISIONS SEVERABLE

The provisions of chapters 855, 855-A, 855-B, 855-C and 855-D are severable and, if any of the provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect nor impair any of the remaining provisions. If any of the provisions of said chapters shall be in violation of the provisions of the Federal Social Security Act as in effect on April 1, 1974, such provision shall be null and void and the department shall, in that event, take such action as is consistent with the intent of this Act and as is necessary to continue participation by the State of Maine in the program authorized by Title XVI of the United States Social Security Act, as amended. If any of the provisions of this Act shall be in violation of any amendment to the Social Security Act which shall take effect subsequent to April 1, 1974, the department shall recommend to the Legislature legislation which is necessary or desirable to conform the laws of the State to such amendments. [1975, c. 623, §29 (AMD).]

SECTION HISTORY
1973, c. 790, §3 (NEW). 1975, c. 623, §29 (AMD).

§3283. MEDICAL EXPENSES FOR CATASTROPHIC ILLNESS

(REPEALED)

SECTION HISTORY
1975, c. 293, §4 (AMD). 1975, c. 623, §30 (NEW). 1975, c. 679, §2 (AMD). 1977, c. 714, §6 (RP).

Part 1-B: DISCLOSURE OF CONFIDENTIAL INFORMATION

Chapter 857: USE OF CONFIDENTIAL INFORMATION FOR PERSONNEL AND LICENSURE ACTIONS

§3291. DEFINITIONS

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [1987, c. 714, §2 (NEW).]

1. **Bureau.** "Bureau" means the Bureau of Medical Services with respect to section 7703 and section 1828.

[2013, c. 368, Pt. CCCC, §1 (AMD) .]

2. **Confidential information.** "Confidential information" means information deemed confidential by chapters 958-A and 1071, and sections 7703 and 1828.

[1989, c. 175, §4 (AMD) .]

3. **Department.** "Department" means the Department of Health and Human Services.

[1987, c. 714, §2 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

4. **Director.** "Director" means the Director of the Office of Child and Family Services with respect to confidential information derived from chapters 958-A and 1071, and the Director of the Bureau of Medical Services or the Director of the Office of Child and Family Services with respect to confidential information derived from section 7703 and the Director of the Bureau of Medical Services with respect to confidential information derived from section 1828.

[2013, c. 368, Pt. CCCC, §1 (AMD) .]

5. **Hearing officer.** "Hearing officer" means presiding officer, judge, board chairman, arbitrator or any other person deemed responsible for conducting a proceeding or hearing subject to this chapter.

[1987, c. 714, §2 (NEW) .]

6. **Licensing board.** "Licensing board" means a professional or occupational licensing board that licenses, certifies or registers a person in a profession or occupation which is included in the list of professional and occupational licensing boards in Title 5, section 12004-A.

[1989, c. 175, §4 (AMD) .]

7. **Office.** "Office" means the Office of Child and Family Services with respect to chapters 958-A and 1071.

[2013, c. 368, Pt. CCCC, §2 (NEW) .]

SECTION HISTORY
1987, c. 714, §2 (NEW). 1989, c. 175, §4 (AMD). 1989, c. 400, §§5,14 (AMD). 2003, c. 689, §B6 (REV). 2013, c. 368, Pt. CCCC, §§1, 2 (AMD).

§3292. DISCLOSURE AND USE OF CONFIDENTIAL INFORMATION; GOVERNING PROVISIONS

Any information derived by the department in the course of carrying out its functions and deemed confidential by chapter 958-A or 1071 or section 7703 or 1828, which relates to a state employee or a person licensed, certified or registered by a licensing board as defined in section 3291 who is alleged to have engaged in any unlawful activity or professional misconduct, or in conduct in violation of laws or rules relating to a licensing board, may be disclosed to and used by the appropriate state agencies and licensing boards only in accordance with this chapter. The department, other state agencies and licensing boards shall comply with the following. [1989, c. 175, §5 (AMD).]

1. **Purpose for which disclosure is made.** Any confidential information provided to a state agency, department or licensing board shall be used only for investigative and other action within the scope of the authority of that agency, department or licensing board and to determine whether the employee or the person licensed, certified or registered by the board has engaged in unlawful activity, professional misconduct or activities in violation of the laws or rules relating to the board.

[1987, c. 714, §2 (NEW) .]

2. **Designation of person to receive confidential information.** State agencies, departments and licensing boards reasonably expected to be recipients of confidential information, as determined by the director of the bureau, shall designate a person to receive the confidential information for investigative purposes.

[1987, c. 714, §2 (NEW) .]

3. **Limitations on disclosure.** Disclosure is limited to information which is directly related to the matter at issue. The identity of reporters and other persons shall not be disclosed except as necessary and relevant. Access to the information shall be limited to parties, parties' representatives, counsel of record and the hearing officers responsible for the determinations. The information shall be used only for the purpose for which the release was intended.

[1987, c. 714, §2 (NEW) .]

SECTION HISTORY
1987, c. 714, §2 (NEW). 1989, c. 175, §5 (AMD).

§3293. CONFIDENTIAL INFORMATION PROVIDED TO STATE EMPLOYEES AND THE BUREAU OF HUMAN RESOURCES

l. **Disclosure to state employees.** Confidential information that is relevant to a grievance or a disciplinary procedure within the department shall be provided to the affected employee and the employee's designated representative.

[2007, c. 240, Pt. HH, §13 (AMD) .]

2. **Disclosure to the Bureau of Human Resources.** Confidential information that is relevant to a grievance or disciplinary procedure within the department must be provided to the Bureau of Human Resources in cases regarding state employment subject to the State Employee Labor Relations Act, Title 26, chapter 9-B, and for state employees not subject to Title 26, chapter 9-B, when the Bureau of Human Resources becomes involved in the grievance or disciplinary process, including appeals to an arbitrator or the Civil Service Appeals Board.

[2007, c. 240, Pt. HH, §13 (AMD) .]

3. **Procedures governed by contract.** If any other procedure relating to the use of confidential information in state employee personnel actions is governed by collective bargaining agreements, the collective bargaining agreements control, except as provided in section 3292.

[2007, c. 240, Pt. HH, §13 (AMD) .]

SECTION HISTORY
1987, c. 714, §2 (NEW). 2007, c. 240, Pt. HH, §13 (AMD).

§3294. CONFIDENTIAL INFORMATION PROVIDED TO PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS

If confidential information regarding a person subject to or seeking licensure, certification or registration by a licensing board indicates that the person may have engaged in unlawful activity, professional misconduct or conduct which may be in violation of the laws or rules relating to the licensing board, the director may release this information to the appropriate licensing board. Confidential information shall be disclosed and used in accordance with section 3292 and may also be disclosed to members, employees and agents of a licensing board who are directly related to the matter at issue. [1987, c. 714, §2 (NEW).]

1. Notice to the licensee or applicant. Notice of the release of confidential information shall be provided by the board to the licensee or applicant in accordance with the law and rules relating to the licensing board. If the law or rules relating to a licensing board do not provide for notice to licensees or applicants subject to or seeking licensure, certification or registration, the licensing board shall provide notice to the licensee or applicant upon determination of the board to take further action following its investigation.

[1987, c. 714, §2 (NEW) .]

2. **Licensing board requests for confidential information.** Any licensing board pursuing action within the scope of the board's authority or conducting an investigation of any person subject to or seeking licensure, certification or registration by the board for engaging in unlawful activity, professional misconduct or conduct which may be in violation of the laws or rules relating to the board may request confidential information from the bureau. Any information provided to the board for an investigation shall be governed by section 3292 and this section.

[1987, c. 714, §2 (NEW) .]

3. **Use of confidential information in proceedings.** The use of confidential information in proceedings, informal conferences and adjudicatory hearings shall be governed by Title 5, section 9057, subsection 6.

[1987, c. 714, §2 (NEW) .]

SECTION HISTORY
1987, c. 714, §2 (NEW).

§3295. INFORMATION PROVIDED FOR UNEMPLOYMENT COMPENSATION PROCEEDINGS RELEVANT TO STATE EMPLOYMENT

If confidential information relevant to an unemployment compensation proceeding with respect to the provision of, denial or termination of unemployment compensation benefits related to a person's state employment, the director may release the confidential information to the Commissioner of Labor or the commissioner's designee. The commissioner may request from the director of the bureau confidential information that may be directly related to an unemployment compensation proceeding with respect to a person's state employment. The director may release the confidential information to the commissioner or the commissioner's designee if the confidential information is related to the proceeding. The commissioner shall provide the claimant with access to the information. [1987, c. 714, §2 (NEW).]

SECTION HISTORY
1987, c. 714, §2 (NEW).

§3296. PENALTY FOR VIOLATIONS

Any person who violates this chapter is subject to the applicable penalty as provided in chapters 958-A and 1071. [1999, c. 363, §1 (AMD).]

SECTION HISTORY
1989, c. 502, §A73 (NEW). 1999, c. 363, §1 (AMD).

§3306. PENALTY FOR VIOLATIONS

(REPEALED)

SECTION HISTORY
1987, c. 714, §2 (NEW). 1989, c. 502, §A74 (RP).

Part 2: AGED, BLIND, DISABLED OR MEDICALLY INDIGENT PERSONS

Chapter 951: GENERAL PROVISIONS

§3301. DEFINITIONS

(REPEALED)

SECTION HISTORY
1965, c. 503, §1 (AMD). 1973, c. 790, §4 (RP).

§3302. STATE TREASURER AS AGENT

(REPEALED)

SECTION HISTORY
1969, c. 160, §1 (AMD). 1973, c. 790, §4 (RP).

§3303. RECIPIENTS OF AID NOT TO BE PAUPERIZED

(REPEALED)

SECTION HISTORY
1973, c. 788, §89 (AMD). 1973, c. 790, §4 (RP).

§3304. FRAUDULENT REPRESENTATIONS; PENALTY

(REPEALED)

SECTION HISTORY
1973, c. 790, §4 (RP).

§3305. GENERAL PENALTY

(REPEALED)

SECTION HISTORY
1973, c. 790, §4 (RP).

Chapter 953: ADMINISTRATION

§3351. POWERS AND DUTIES OF DEPARTMENT

(REPEALED)

SECTION HISTORY
1973, c. 790, §4 (RP).

§3352. MEDICAL CARE ACCUMULATION FUND

(REPEALED)

SECTION HISTORY
1967, c. 234, (RP).

§3353. ACCEPTANCE OF FEDERAL PROVISIONS

(REPEALED)

SECTION HISTORY
1973, c. 790, §4 (RP).

Chapter 955: ELIGIBILITY AND RECEIPT OF AID

§3401. APPLICATION FOR AID

(REPEALED)

SECTION HISTORY
1965, c. 364, §1 (AMD). 1967, c. 230, §1 (AMD). 1973, c. 790, §4 (RP).

§3402. REQUISITES FOR AID

(REPEALED)

SECTION HISTORY
1965, c. 262, §1 (AMD). 1973, c. 790, §4 (RP).

§3403. DISQUALIFICATION OF APPLICANT AND RECIPIENT

(REPEALED)

SECTION HISTORY
1965, c. 364, §2 (AMD). 1967, c. 230, §2 (AMD). 1967, c. 544, §58 (AMD). 1969, c. 160, §2 (AMD). 1973, c. 790, §4 (RP).

§3404. AMOUNT OF AID

(REPEALED)

SECTION HISTORY
1965, c. 298, (AMD). 1967, c. 228, §1 (AMD). 1973, c. 790, §4 (RP).

§3405. AID MAY BE PAID TO A GUARDIAN OR CONSERVATOR

(REPEALED)

SECTION HISTORY
1973, c. 790, §4 (RP).

§3406. CHANGES OF CIRCUMSTANCES

(REPEALED)

SECTION HISTORY
1973, c. 790, §4 (RP).

§3407. WHEN AID MAY BE SUSPENDED

(REPEALED)

SECTION HISTORY
1973, c. 790, §4 (RP). 1973, c. 790, §4 (RP).

§3408. INALIENABILITY OF AID

(REPEALED)

SECTION HISTORY
1973, c. 790, §4 (RP).

§3409. FUNERAL EXPENSES

(REPEALED)

SECTION HISTORY
1971, c. 522, §1 (AMD). 1973, c. 790, §4 (RP).

§3410. UNINDORSED CHECKS; PROCEDURE

(REPEALED)

SECTION HISTORY
1967, c. 223, (AMD). 1973, c. 790, §4 (RP). 1973, c. 790, §4 (RP).

§3411. APPEAL

(REPEALED)

SECTION HISTORY
1973, c. 790, §4 (RP). 1973, c. 790, §4 (RP).

Chapter 957: REIMBURSEMENT OR RECOVERY OF PAYMENTS

§3451. ILLEGAL PAYMENTS RECOVERED

(REPEALED)

SECTION HISTORY
1973, c. 790, §4 (RP).

§3452. LIABILITY OF RELATIVES TO SUPPORT

(REPEALED)

SECTION HISTORY
1965, c. 364, §§3,4 (AMD). 1973, c. 790, §4 (RP).

§3453. CLAIMS AGAINST ESTATE

(REPEALED)

SECTION HISTORY
1965, c. 513, §38 (AMD). 1967, c. 444, (AMD). 1971, c. 179, §G2 (RP).

§3454. MEDICAL EXPENSES FOR CATASTROPHIC ILLNESS

(REPEALED)

SECTION HISTORY
1973, c. 768, §1 (NEW). 1975, c. 623, §31 (RP).

Chapter 958: PROTECTIVE AND SUPPORTIVE SERVICES FOR ADULTS

§3460. LEGISLATIVE PURPOSE

(REPEALED)

SECTION HISTORY
1973, c. 631, §2 (NEW). 1981, c. 527, §1 (RP).

§3461. DEFINITIONS

(REPEALED)

SECTION HISTORY
1973, c. 631, §2 (NEW). 1973, c. 790, §§5,6 (AMD). 1981, c. 470, §§A97,A98 (AMD). 1981, c. 527, §1 (RP). 1981, c. 698, §§93,94 (AMD).

§3462. RESPONSIBILITY OF BUREAU; RULES AND REGULATIONS

(REPEALED)

SECTION HISTORY
1973, c. 631, §2 (NEW). 1981, c. 527, §1 (RP).

§3463. APPOINTMENT OF GUARDIAN

(REPEALED)

SECTION HISTORY
1973, c. 631, §2 (NEW). 1981, c. 470, §A99 (AMD). 1981, c. 527, §1 (RP). 1981, c. 698, §95 (RP).

§3464. ROLE OF BUREAU, SOURCE OF SERVICES

(REPEALED)

SECTION HISTORY
1973, c. 631, §2 (NEW). 1981, c. 527, §1 (RP).

Chapter 958-A: ADULT PROTECTIVE SERVICES ACT

Subchapter 1: GENERAL PROVISIONS

§3470. TITLE

This Act may be cited as the Adult Protective Services Act. [1981, c. 527, §2 (NEW).]

SECTION HISTORY
1981, c. 527, §2 (NEW).

§3471. DECLARATION OF POLICY AND LEGISLATIVE INTENT

The Legislature recognizes that many adult citizens of the State, because of incapacitation or dependency, are unable to manage their own affairs or to protect themselves from abuse, neglect or exploitation. Often these persons can not find others able or willing to render assistance. The Legislature intends, through this Act, to establish a program of protective services designed to fill this need and to ensure its availability to all incapacitated and dependent adults who are faced with abuse, neglect, exploitation or the substantial risk of abuse, neglect or exploitation. It is also the intent of the Legislature to authorize only the least possible restriction on the exercise of personal and civil rights consistent with the person's need for services and to require that due process be followed in imposing those restrictions. Any requirements for disclosure of information contained in this chapter do not supersede federal law if federal law prohibits the disclosure of such information in the manner as set forth in this chapter. [2003, c. 653, §1 (AMD).]

SECTION HISTORY
1981, c. 527, §2 (NEW). 1991, c. 711, §1 (AMD). 2003, c. 653, §1 (AMD).

§3472. DEFINITIONS

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [1981, c. 527, §2 (NEW).]

1. **Abuse.** "Abuse" means the infliction of injury, unreasonable confinement, intimidation or cruel punishment that causes or is likely to cause physical harm or pain or mental anguish; sexual abuse or sexual exploitation; financial exploitation; or the intentional, knowing or reckless deprivation of essential needs. "Abuse" includes acts and omissions.

[2015, c. 306, §4 (AMD) .]

2. **Adult.** "Adult" means any person who has attained 18 years of age or who is a legally emancipated minor.

[2003, c. 653, §2 (AMD) .]

2-A. **Bureau.**

[2011, c. 657, Pt. BB, §3 (RP) .]

3. **Caretaker.** "Caretaker" means any individual or institution who has or assumes the responsibility for the care of an adult.

[1981, c. 527, §2 (NEW) .]

4. **Commissioner.** "Commissioner" means the Commissioner of Health and Human Services or a designated representative in the geographical area in which the person resides or is present.

[2005, c. 397, Pt. A, §21 (AMD) .]

5. **Department.**

[2005, c. 397, Pt. A, §22 (RP) .]

6. **Dependent adult.** "Dependent adult" means an adult who has a physical or mental condition that substantially impairs the adult's ability to adequately provide for that adult's daily needs. "Dependent adult" includes, but is not limited to, any of the following:

A. A resident of a nursing home licensed or required to be licensed under section 1817; [2003, c. 653, §2 (NEW).]

B. A resident of a facility providing assisted living services licensed or required to be licensed pursuant to section 7801; [2011, c. 291, §1 (AMD).]

C. A person considered a dependent person under Title 17-A, section 555; or [2011, c. 291, §1 (AMD).]

D. A person, regardless of where that person resides, who is wholly or partially dependent upon one or more other persons for care or support, either emotional or physical, because the person suffers from a significant limitation in mobility, vision, hearing or emotional or mental functioning. [2011, c. 291, §1 (NEW).]

[2011, c. 291, §1 (AMD) .]

7. **Emergency.** "Emergency" refers to a situation in which:

A. The incapacitated or dependent adult is in immediate risk of serious harm; [1981, c. 527, §2 (NEW).]

B. The incapacitated or dependent adult is unable to consent to services that will diminish or eliminate the risk; and [2003, c. 653, §2 (AMD).]

C. There is no person legally authorized to consent to emergency services. [2003, c. 653, §2 (AMD).]

[2003, c. 653, §2 (AMD) .]

8. **Emergency services.** "Emergency services" refers to those services necessary to avoid serious harm.

[2003, c. 653, §2 (AMD) .]

9. **Exploitation.** "Exploitation" means the illegal or improper use of an incapacitated or dependent adult or that adult's resources for another's profit or advantage.

[2003, c. 653, §2 (AMD) .]

9-A. **Financial exploitation.** "Financial exploitation" means the use of deception, intimidation, undue influence, force or other unlawful means to obtain control over the property of a dependent adult for another's profit or advantage.

[2015, c. 306, §5 (NEW) .]

10. **Incapacitated adult.** "Incapacitated adult" means any adult who is impaired by reason of mental illness, mental deficiency, physical illness or disability to the extent that that individual lacks sufficient understanding or capacity to make or communicate responsible decisions concerning that individual's person, or to the extent the adult can not effectively manage or apply that individual's estate to necessary ends.

[2003, c. 653, §2 (AMD) .]

11. **Neglect.** "Neglect" means a threat to an adult's health or welfare by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these.

[1983, c. 313, §2 (AMD) .]

12. **Protective services.** "Protective services" means services that separate incapacitated or dependent adults from danger. Protective services include, but are not limited to, social, medical and psychiatric services necessary to preserve the incapacitated or dependent adult's rights and resources and to maintain the incapacitated or dependent adult's physical and mental well-being.

Protective services may include seeking guardianship or a protective order under Title 18-A, Article 5.

[2003, c. 653, §2 (AMD) .]

13. **Serious harm.** "Serious harm" means:

A. Serious physical injury or impairment; [1989, c. 259, §3 (AMD).]

B. Serious mental injury or impairment that now or in the future is likely to be evidenced by serious mental, behavioral or personality disorder, including, but not limited to, severe anxiety, depression or withdrawal, untoward aggressive behavior or similar serious dysfunctional behavior; [2003, c. 653, §2 (AMD).]

C. Sexual abuse or sexual exploitation; or [2003, c. 653, §2 (AMD).]

D. Serious waste or dissipation of resources. [2003, c. 653, §2 (NEW).]

[2003, c. 653, §2 (AMD) .]

14. **Serious injury.**

[1989, c. 259, §4 (RP) .]

15. **Sexual abuse or sexual exploitation.** "Sexual abuse or sexual exploitation" means contact or interaction of a sexual nature involving an incapacitated or dependent adult without that adult's informed consent.

[2003, c. 653, §2 (AMD) .]

16. **Undue influence.** "Undue influence" means the misuse of real or apparent authority or the use of manipulation by a person in a trusting, confidential or fiduciary relationship with a person who is a dependent adult or an incapacitated adult.

[2015, c. 306, §6 (NEW) .]

SECTION HISTORY
1981, c. 493, §2 (AMD). 1981, c. 527, §2 (NEW). 1983, c. 313, §§1,2 (AMD). 1989, c. 259, §§1-5 (AMD). 1989, c. 329, §§3-5 (AMD). 1989, c. 858, §4 (AMD). RR 1995, c. 2, §41 (COR). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 1995, c. 696, §A38 (AMD). 2001, c. 354, §3 (AMD). 2003, c. 653, §2 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 397, §§A21,22 (AMD). 2011, c. 291, §1 (AMD). 2011, c. 657, Pt. BB, §3 (AMD). 2015, c. 306, §§4-6 (AMD).

§3473. AUTHORIZATIONS

1. **General.** The department shall act to:

A. Protect incapacitated and dependent adults from abuse, neglect and exploitation and protect incapacitated and dependent adults in circumstances that present a substantial risk of abuse, neglect or exploitation; [2003, c. 653, §3 (AMD).]

B. Prevent abuse, neglect or exploitation of incapacitated and dependent adults; [2003, c. 653, §3 (AMD).]

C. Enhance the welfare of these incapacitated and dependent adults; and [1981, c. 527, §2 (NEW).]

D. Promote self-care wherever possible. [1981, c. 527, §2 (NEW).]

[2003, c. 653, §3 (AMD) .]

2. **Reports.** The department shall:

A. Receive, promptly investigate and determine the validity of reports of alleged abuse, neglect or exploitation or the substantial risk of abuse, neglect or exploitation; [1991, c. 711, §3 (AMD).]

B. Take appropriate action, including providing or arranging for the provision of appropriate services and making referrals to law enforcement; and [2003, c. 653, §4 (AMD).]

C. Petition for guardianship or a protective order under Title 18-A, Article 5, when all less restrictive alternatives have been tried and have failed to protect the incapacitated adult. [1981, c. 527, §2 (NEW).]

[2003, c. 653, §4 (AMD) .]

3. **Appearance of designated employees in Probate Court.** The commissioner may designate employees of the department to represent the department in Probate Court in:

A. Matters relating to the performance of duties in uncontested guardianship or conservatorship or termination of guardianship or conservatorship proceedings; and [2003, c. 653, §5 (AMD).]

B. Requests for emergency guardianships arising from the need for emergency medical treatment or placement in assisted living programs, residential care facilities or nursing facilities or for orders necessary to apply for or preserve an estate in emergency situations. [2003, c. 653, §5 (AMD).]

[2003, c. 653, §5 (AMD) .]

SECTION HISTORY
1981, c. 527, §2 (NEW). 1989, c. 858, §5 (AMD). 1991, c. 711, §§2-4 (AMD). 2003, c. 653, §§3-5 (AMD).

§3474. RECORDS; CONFIDENTIALITY, DISCLOSURE

1. **Confidentiality of adult protective records.** All department records which contain personally identifying information and are created or obtained in connection with the department's adult protective activities and activities related to an adult while under the jurisdiction of the department are confidential and subject to release only under the conditions of subsections 2 and 3. Within the department, the records shall be available only to and used by authorized departmental personnel and legal counsel for the department in carrying out their functions.

[1981, c. 527, §2 (NEW) .]

2. **Optional disclosure of records.** The department may disclose relevant information in the records to the following persons, with protection for the identity of reporters and other persons when appropriate:

A. An agency responsible for investigating a report of adult abuse, neglect or exploitation when the investigation is authorized by statute or by an agreement with the department; [2003, c. 653, §6 (AMD).]

B. An advocacy agency conducting an investigation under chapter 961, United States Public Law 88-164, Title I, Part C or United States Public Law 99-319, except as provided in subsection 3, paragraph D; [1989, c. 7, Pt. N, §1 (AMD).]

C. A physician treating an incapacitated or dependent adult who the physician reasonably suspects may be abused, neglected or exploited; [2003, c. 653, §6 (AMD).]

D. An incapacitated or dependent adult named in a record who is reported to be abused, neglected or exploited or the caretaker of the incapacitated or dependent adult; [2003, c. 653, §6 (AMD).]

E. A person having the legal responsibility or authorization to care for, evaluate, treat or supervise an incapacitated or dependent adult; [1987, c. 714, §3 (AMD).]

F. Any person engaged in bona fide research, provided that no personally identifying information is made available, unless it is essential to the research and the commissioner or the commissioner's designee gives prior approval. If the researcher desires to contact a subject of a record, the subject's consent must be obtained by the department prior to the contact; [1989, c. 858, §6 (AMD).]

G. Persons and organizations pursuant to Title 5, section 9057, subsection 6, and pursuant to chapter 857; [2003, c. 653, §6 (AMD).]

H. A relative by blood, marriage or adoption of an incapacitated or dependent adult named in a record; [2007, c. 140, §1 (AMD).]

I. A member of a panel appointed by the department or the Office of the Attorney General to review the death or serious injury of an incapacitated or dependent adult or a child; and [2007, c. 140, §2 (AMD).]

J. The local animal control officer or the animal welfare program of the Department of Agriculture, Conservation and Forestry established pursuant to Title 7, section 3902 when there is a reasonable suspicion of animal cruelty, abuse or neglect. For purposes of this paragraph, "cruelty, abuse or neglect" has the same meaning as provided in Title 34-B, section 1901, subsection 1, paragraph B. [2007, c. 140, §3 (NEW); 2011, c. 657, Pt. W, §5 (REV).]

[2007, c. 140, §§1-3 (AMD); 2011, c. 657, Pt. W, §5 (REV) .]

3. **Mandatory disclosure of records.** The department shall disclose relevant information in the records to the following persons:

A. The guardian ad litem of an incapacitated or dependent adult named in a record who is reported to be abused, neglected or exploited; [1981, c. 527, §2 (NEW).]

B. A court on its finding that access to those records may be necessary for the determination of any issue before the court. Access must be limited to in camera inspection unless the court determines that disclosure of the information is necessary for the resolution of an issue pending before it; [2003, c. 653, §7 (AMD).]

C. A grand jury on its determination that access to those records is necessary in the conduct of its official business; and [1991, c. 2, §80 (COR).]

D. An advocacy agency conducting an investigation under chapter 961, United States Public Law 88-164, Title I, Part C or United States Public Law 99-319, regarding a developmentally disabled person or mentally ill person who is or who, within the last 90 days, was residing in a facility rendering care or treatment, when a complaint has been received by the agency or there is probable cause to believe that that individual has been subject to abuse or neglect, and that person does not have a legal guardian or the person is under public guardianship. The determination of which information and records are relevant to the investigation is made by agreement between the department and the agency. [1991, c. 2, §81 (COR).]

[2003, c. 653, §7 (AMD) .]

SECTION HISTORY
1981, c. 527, §2 (NEW). 1985, c. 644, §§1-3 (AMD). 1987, c. 714, §§3,4 (AMD). 1989, c. 7, §§N1,N2 (AMD). 1989, c. 858, §§6-10 (AMD). RR 1991, c. 2, §§80,81 (COR). 2003, c. 653, §§6,7 (AMD). 2007, c. 140, §§1-3 (AMD). 2011, c. 657, Pt. W, §5 (REV).

§3475. PENALTY FOR VIOLATIONS

A person who knowingly violates a provision of this chapter commits a civil violation for which a forfeiture of not more than $500 may be adjudged. Any licensed, registered, accredited or certified professional who has been adjudged to have violated a provision of this chapter must, in addition to any financial penalty, be reported by the court or the department to the appropriate professional licensing organization, registration board, accrediting unit or facility. [2003, c. 653, §8 (AMD).]

SECTION HISTORY
1981, c. 527, §2 (NEW). 1981, c. 705, §E1 (AMD). 2003, c. 653, §8 (AMD).

§3476. SPIRITUAL TREATMENT

1. **Treatment not considered abuse, neglect or exploitation.** An incapacitated or dependent adult shall not be considered to be abused, neglected or exploited solely because treatment is by spiritual means by an accredited practitioner of a recognized religious organization.

[1981, c. 527, §2 (NEW) .]

2. **Treatment to be considered if requested.** When medical treatment is authorized, under this chapter, treatment by spiritual means by an accredited practitioner of a recognized religious organization may also be considered if requested by the incapacitated or disabled adult or his caretaker.

[1981, c. 527, §2 (NEW) .]

SECTION HISTORY
1981, c. 527, §2 (NEW).

Subchapter 1-A: REPORTING OF ABUSE, NEGLECT OR EXPLOITATION

§3477. PERSONS MANDATED TO REPORT SUSPECTED ABUSE, NEGLECT OR EXPLOITATION

1. **Report required.** The following persons immediately shall report to the department when the person knows or has reasonable cause to suspect that an incapacitated or dependent adult has been or is likely to be abused, neglected or exploited:

A. While acting in a professional capacity:

(1) An allopathic or osteopathic physician;

(2) A medical resident or intern;

(3) A medical examiner;

(4) A physician's assistant;

(5) A dentist, dental hygienist or dental assistant;

(6) A chiropractor;

(7) A podiatrist;

(8) A registered or licensed practical nurse;

(9) A certified nursing assistant;

(10) A social worker;

(11) A psychologist;

(12) A pharmacist;

(13) A physical therapist;

(14) A speech therapist;

(15) An occupational therapist;

(16) A mental health professional;

(17) A law enforcement official, corrections officer or other person holding a certification from the Maine Criminal Justice Academy;

(18) Emergency room personnel;

(19) An ambulance attendant;

(20) An emergency medical technician or other licensed medical service provider;

(21) Unlicensed assistive personnel;

(22) A humane agent employed by the Department of Agriculture, Conservation and Forestry;

(23) A clergy member acquiring the information as a result of clerical professional work except for information received during confidential communications;

(24) A sexual assault counselor;

(25) A family or domestic violence victim advocate;

(26) A naturopathic doctor;

(27) A respiratory therapist;

(28) A court-appointed guardian or conservator; or

(29) A chair of a professional licensing board that has jurisdiction over mandated reporters; [2011, c. 291, §2 (AMD); 2011, c. 657, Pt. W, §5 (REV).]

B. Any person who has assumed full, intermittent or occasional responsibility for the care or custody of the incapacitated or dependent adult, regardless of whether the person receives compensation; [2011, c. 291, §2 (AMD).]

C. Any person affiliated with a church or religious institution who serves in an administrative capacity or has otherwise assumed a position of trust or responsibility to the members of that church or religious institution, while acting in that capacity, regardless of whether the person receives compensation; or [2011, c. 291, §2 (AMD).]

D. Any person providing transportation services as a volunteer or employee of an agency, business or other entity, whether or not the services are provided for compensation. [2011, c. 291, §2 (NEW).]

The duty to report under this subsection applies to individuals who must report directly to the department. A supervisor or administrator of a person making a report under this section may not impede or inhibit the reporting, and a person making a report may not be subject to any sanction for making a report. Internal procedures to facilitate reporting consistent with this chapter and to ensure confidentiality of and apprise supervisors and administrators of reports may be established as long as those procedures are consistent with this chapter.

[2011, c. 291, §2 (AMD); 2011, c. 657, Pt. W, §5 (REV) .]

1-A. **Permitted reporters.** An animal control officer, as defined in Title 7, section 3907, subsection 4, may report to the department when that person has reasonable cause to suspect that an incapacitated or dependent adult has been or is at substantial risk of abuse, neglect or exploitation.

[2007, c. 139, §1 (NEW) .]

2. **Reports.** Reports regarding abuse, neglect or exploitation must be made immediately by telephone to the department and must be followed by a written report within 48 hours if requested by the department. The reports must contain the name and address of the involved adult; information regarding the nature and extent of the abuse, neglect or exploitation; the source of the report; the person making the report; that person's occupation; and where that person can be contacted. The report may contain any other information that the reporter believes may be helpful.

[2003, c. 653, §10 (AMD) .]

3. **Confidentiality in case of treatment of individual suspected of causing abuse, neglect or exploitation.** This section does not require any person acting in that person's professional capacity to report when all of the following requirements are met:

A. The factual basis for knowing or suspecting abuse, neglect or exploitation of an adult covered under this subchapter derives from the professional's treatment of the individual suspected of causing the abuse, neglect or exploitation; [1981, c. 705, Pt. E, §2 (NEW).]

B. The treatment was sought by the individual for a problem relating to the abuse, neglect or exploitation; and [1981, c. 705, Pt. E, §2 (NEW).]

C. In the opinion of the person required to report, the abused, neglected or exploited adult's life or health is not immediately threatened. [1981, c. 705, Pt. E, §2 (NEW).]

[2003, c. 653, §11 (AMD) .]

4. **Confidentiality in case of treatment of individual suspected of being abused, neglected or exploited.** This section does not require any person acting in that person's professional capacity to report when all of the following requirements are met:

A. The factual basis for knowing or suspecting abuse, neglect or exploitation of an adult covered under this subchapter derives from the professional's treatment of the individual suspected of being abused, neglected or exploited; [2003, c. 653, §12 (NEW).]

B. The treatment was sought by the individual for a problem relating to the abuse, neglect or exploitation; and [2003, c. 653, §12 (NEW).]

C. In the opinion of the person required to report, the individual is not incapacitated and the individual's life or health is not immediately threatened. [2003, c. 653, §12 (NEW).]

[2003, c. 653, §12 (NEW) .]

5. **Permissive reporting of animal cruelty, abuse or neglect.** Notwithstanding any other provision of state law imposing a duty of confidentiality, a person listed in subsection 1 may report a reasonable suspicion of animal cruelty, abuse or neglect to the local animal control officer or to the animal welfare program of the Department of Agriculture, Conservation and Forestry established pursuant to Title 7, section 3902. For purposes of this subsection, the reporter shall disclose only such limited confidential information as is necessary for the local animal control officer or animal welfare program employee to identify the animal's location and status and the owner's name and address. For purposes of this subsection, "cruelty, abuse or neglect" has the same meaning as provided in Title 34-B, section 1901, subsection 1, paragraph B. A reporter under this subsection may assert immunity from civil and criminal liability under Title 34-B, chapter 1, subchapter 6.

[2007, c. 140, §4 (NEW); 2011, c. 657, Pt. W, §5 (REV) .]

6. **Photographs of visible trauma.** Whenever a person required to report as a staff member of a law enforcement agency or a hospital sees areas of trauma on an incapacitated or dependent adult, that person shall make reasonable efforts to take, or cause to be taken, color photographs of those areas of trauma.

A. The taking of photographs must be done with minimal trauma to the incapacitated or dependent adult and in a manner consistent with professional forensic standards. Consent to the taking of photographs is not required from the adult's legal guardian or by a health care power of attorney. [2011, c. 291, §3 (NEW).]

B. Photographs must be made available to the department as soon as possible. The department shall pay the reasonable costs of the photographs from funds appropriated for adult protective services. [2011, c. 291, §3 (NEW).]

C. The person shall notify the department as soon as possible if that person is unable to take, or cause to be taken, these photographs. [2011, c. 291, §3 (NEW).]

D. Designated agents of the department may take photographs of any subject matter when necessary and relevant to an investigation of a report of suspected abuse, neglect or exploitation or to subsequent adult protection proceedings. [2011, c. 291, §3 (NEW).]

[2011, c. 291, §3 (NEW) .]

7. **Information about duty to report.** Whenever possible, the department and state licensing boards of professionals required to report under this section shall collaborate to facilitate the dissemination of information regarding the duty to report and the reporting procedure.

[2011, c. 291, §4 (NEW) .]

SECTION HISTORY
1981, c. 705, §E2 (NEW). 1983, c. 616, §1 (AMD). 1989, c. 259, §6 (AMD). 1989, c. 858, §11 (AMD). 1995, c. 696, §B3 (AMD). 1997, c. 453, §4 (AMD). 2001, c. 345, §3 (AMD). 2003, c. 145, §1 (AMD). 2003, c. 210, §§1,2 (AMD). 2003, c. 510, §E2 (AMD). 2003, c. 510, §E4 (AFF). 2003, c. 599, §7 (AMD). 2003, c. 599, §§9,14 (AFF). 2003, c. 653, §§9-12 (AMD). 2007, c. 139, §1 (AMD). 2007, c. 140, §4 (AMD). 2007, c. 577, §5 (AMD). 2011, c. 291, §§2-4 (AMD). 2011, c. 657, Pt. W, §5 (REV).

§3478. MANDATORY REPORTING TO MEDICAL EXAMINER FOR POST-MORTEM INVESTIGATION

A person required to report cases of known or suspected abuse or neglect, who knows or has reasonable cause to suspect that an adult has died as a result of abuse or neglect, shall report that fact to the appropriate authority as provided in section 3026. An adult shall not be considered to be abused or neglected solely because he was provided with treatment by spiritual means by an accredited practitioner of a recognized religious organization. [1983, c. 343, §1 (AMD).]

SECTION HISTORY
1981, c. 705, §E2 (NEW). 1983, c. 343, §1 (AMD).

§3479. OPTIONAL REPORTING

Any person may make a report to the department when that person has reasonable cause to suspect an incapacitated or dependent adult has been or is at substantial risk of abuse, neglect or exploitation. [2003, c. 653, §13 (AMD).]

1. **Dependent.**

[1989, c. 858, §12 (RP) .]

2. **Incapacitated.**

[1989, c. 858, §12 (RP) .]

3. **Suspected incapacity.**

[1989, c. 858, §12 (RP) .]

SECTION HISTORY
1981, c. 705, §E2 (NEW). 1983, c. 616, §2 (AMD). 1989, c. 858, §12 (RPR). 2003, c. 653, §13 (AMD).

§3479-A. IMMUNITY FROM LIABILITY

1. **Reporting and proceedings.** A person participating in good faith in reporting under this subchapter, or in a related adult protection investigation or proceeding, is immune from any civil liability that might otherwise result from these actions, including, but not limited to, any civil liability that might otherwise arise under state or local laws or rules regarding confidentiality of information.

[2003, c. 653, §14 (AMD) .]

2. **Presumption of good faith.** In a proceeding regarding immunity from liability, there shall be a rebuttable presumption of good faith.

[1981, c. 705, Pt. E, §2 (NEW) .]

SECTION HISTORY
1981, c. 705, §E2 (NEW). 2003, c. 653, §14 (AMD).

Subchapter 2: INVESTIGATIONS AND PROTECTIVE SERVICES

§3480. INVESTIGATIONS

1. **Subpoenas and obtaining criminal history.** The commissioner, his delegate or the legal counsel for the department may:

A. Issue subpoenas requiring persons to disclose or provide to the department information or records in their possession that are necessary and relevant to an investigation of a report of suspected abuse, neglect or exploitation or to a subsequent adult protective proceeding, including, but not limited to, health care information that is confidential under section 1711-C.

(1) The department may apply to the District Court and Probate Court to enforce a subpoena.

(2) A person who complies with a subpoena is immune from civil or criminal liability that might otherwise result from the act of turning over or providing information or records to the department; and [2003, c. 653, §15 (AMD).]

B. Obtain confidential criminal history record information and other criminal history record information under Title 16, section 703, which the commissioner, the commissioner's delegate or the legal counsel for the department considers relevant to a case of alleged abuse, neglect or exploitation. [2013, c. 267, Pt. B, §17 (AMD).]

[2013, c. 267, Pt. B, §17 (AMD) .]

2. **Confidentiality.** Information or records obtained by subpoena shall be treated in accordance with section 3474.

[1981, c. 527, §2 (NEW) .]

3. **Right of entry and access to records of licensed facilities.** The department and any duly designated officer or employee of the department have the right to enter upon and into the premises of any facility licensed under sections 1817 and 7801 in order to obtain information necessary and relevant to an investigation of a report of suspected abuse, neglect or exploitation or to a subsequent adult protective

proceeding. The department has access to all records in the facility's possession that are relevant to the investigation of a report of suspected abuse, neglect or exploitation and any subsequent adult protective proceeding and is not required to issue a subpoena to the facility before obtaining access to the records.

[1995, c. 696, Pt. B, §4 (NEW) .]

SECTION HISTORY
1981, c. 527, §2 (NEW). 1995, c. 696, §B4 (AMD). 2003, c. 653, §15 (AMD). RR 2009, c. 2, §56 (COR). 2013, c. 267, Pt. B, §17 (AMD).

§3480-A. CONFIDENTIAL COMMUNICATIONS

The confidential quality of communications under section 1711-C, Title 24-A, section 4224 and Title 32, sections 7005 and 18393 is abrogated to the extent allowable under federal law in relation to required reporting or cooperating with the department in an investigation or other protective activity under this chapter. Information released to the department pursuant to this section must be kept confidential and may not be disclosed by the department except as provided in section 3474. [2015, c. 429, §6 (AMD).]

SECTION HISTORY
2003, c. 653, §16 (NEW). 2015, c. 429, §6 (AMD).

§3481. PROVIDING FOR PROTECTIVE SERVICES WITH THE CONSENT OF THE PERSON; WITHDRAWAL OF CONSENT; CARE TAKER REFUSAL

When it has been determined that an incapacitated or dependent adult is in need of protective services, the department shall immediately provide or arrange for protective services, provided that the adult consents. [1981, c. 527, §2 (NEW).]

1. **Consent.** If an incapacitated or dependent adult does not consent to the receipt of protective services, or if he withdraws consent, the service shall not be provided.

[1981, c. 527, §2 (NEW) .]

2. **Consent refused.** When a private guardian or conservator of an incapacitated adult who consents to the receipt of protective services refuses to allow those services to be provided to the incapacitated adult, the department may petition the Probate Court for removal of the guardian pursuant to Title 18-A, section 5-307, or for removal of the conservator pursuant to Title 18-A, section 5-415. When a caretaker or guardian of an incapacitated adult who consents to the receipt of protective services refuses to allow those services to be provided to the incapacitated adult, the department may petition the Probate Court for temporary guardianship pursuant to Title 18-A, section 5-310-A or for a protective arrangement pursuant to Title 18-A, section 5-409.

[1993, c. 652, §8 (AMD) .]

SECTION HISTORY
1981, c. 527, §2 (NEW). 1993, c. 652, §8 (AMD).

§3482. PROVIDING FOR PROTECTIVE SERVICES TO INCAPACITATED ADULTS WHO LACK THE CAPACITY TO CONSENT

If the department reasonably determines that an incapacitated adult is being abused, neglected or exploited and lacks capacity to consent to protective services, the department may petition the Probate Court for guardianship or conservatorship, in accordance with Title 18-A, section 5-601. The petition must allege specific facts sufficient to show that the incapacitated adult is in need of protective services and lacks capacity to consent to them. [1981, c. 527, §2 (NEW).]

SECTION HISTORY
1981, c. 527, §2 (NEW).

§3483. EMERGENCY INTERVENTION; AUTHORIZED ENTRY OF PREMISES; IMMUNITY OF PETITIONER

1. **Action.** When the court has exercised the power of a guardian or has appointed the department temporary guardian pursuant to Title 18-A, section 5-310-A, and the ward or a caretaker refuses to relinquish care and custody to the court or to the department, then at the request of the department, a law enforcement officer may take any necessary and reasonable action to obtain physical custody of the ward for the department. Necessary and reasonable action may include entering public or private property with a warrant based on probable cause to believe that the ward is there.

[1993, c. 652, §9 (AMD) .]

2. **Liability.** No petitioner shall be held liable in any action brought by the incapacitated adult if the petitioner acted in good faith.

[1981, c. 527, §2 (NEW) .]

SECTION HISTORY
1981, c. 527, §2 (NEW). 1993, c. 652, §9 (AMD).

§3484. PAYMENT FOR PROTECTIVE SERVICES

At the time the department makes an evaluation of the case reported, it must be determined, according to regulations set by the commissioner, whether the incapacitated or dependent adult is financially capable of paying for the essential services. To the extent that assets are available to the incapacitated or dependent adult, ward or protected person, the cost of services must be borne by the estate of the person receiving those services. [2003, c. 653, §17 (AMD).]

SECTION HISTORY
1981, c. 527, §2 (NEW). 2003, c. 653, §17 (AMD).

§3485. REPORTING ABUSE

1. **Immediate report.** Subject to the confidentiality provisions of section 3474, subsection 2, paragraph A, when the department receives a report under subchapter 1-A that a person is suspected of abusing, neglecting or exploiting an incapacitated or dependent adult, the department shall immediately report the suspected abuse, neglect or exploitation to the appropriate district attorney's office, whether or not the department investigates the report.

[2011, c. 291, §5 (NEW) .]

2. **After investigation.** Upon finding evidence indicating that a person has abused, neglected or exploited an incapacitated or dependent adult, resulting in serious harm, the department shall notify the appropriate district attorney or law enforcement agency of that finding.

[2011, c. 291, §5 (NEW) .]

SECTION HISTORY
1981, c. 527, §2 (NEW). 1989, c. 259, §7 (AMD). 1995, c. 183, §1 (AMD). 2003, c. 653, §18 (AMD). 2011, c. 291, §5 (RPR).

§3486. COOPERATION

All other state and local agencies as well as private agencies receiving public funds shall cooperate with the department in rendering protective services on behalf of incapacitated and dependent adults. [1981, c. 527, §2 (NEW).]

SECTION HISTORY
1981, c. 527, §2 (NEW).

§3487. ADOPTION OF STANDARDS

The department shall adopt standards and other procedures and guidelines with forms to insure the effective implementation of this chapter. [1981, c. 527, §2 (NEW).]

SECTION HISTORY
1981, c. 527, §2 (NEW).

Subchapter 3: PLACEMENT AND THERAPEUTIC SERVICES FOR DEPENDENT AND INCAPACITATED ADULTS WHO ARE NOT MENTALLY RETARDED

§3488. PLACEMENT

(REPEALED)

SECTION HISTORY
1983, c. 575, §1 (NEW). 2003, c. 653, §19 (RP).

§3489. LEVELS

(REPEALED)

SECTION HISTORY
1983, c. 575, §1 (NEW). 2003, c. 653, §19 (RP).

§3490. THERAPEUTIC SERVICES

(REPEALED)

SECTION HISTORY
1983, c. 575, §1 (NEW). 2003, c. 653, §19 (RP).

§3491. TRAINING TEAM

(REPEALED)

SECTION HISTORY
1983, c. 575, §1 (NEW). 2003, c. 653, §19 (RP).

§3492. RULES

(REPEALED)

SECTION HISTORY
1983, c. 575, §1 (NEW). 2003, c. 653, §19 (RP).

Subchapter 4: RULES

§3493. RULES

The department may adopt rules in accordance with Title 5, chapter 375, subchapter 2-A to carry out this chapter. [2003, c. 653, §20 (NEW).]

SECTION HISTORY
2003, c. 653, §20 (NEW).

Chapter 959: SERVICES FOR THE BLIND

§3500. DIVISION FOR THE BLIND AND VISUALLY IMPAIRED

(REPEALED)

SECTION HISTORY
1973, c. 307, §1 (NEW). 1975, c. 293, §4 (AMD). 1985, c. 785, §B92 (AMD). 1989, c. 14, §2 (AMD). 1993, c. 708, §G2 (RP).

§3500-A. JURISDICTION OF DIRECTOR OF DIVISION FOR THE BLIND AND VISUALLY IMPAIRED, DEFINED

(REPEALED)

SECTION HISTORY
1973, c. 307, §1 (NEW). 1981, c. 703, §A26 (AMD). 1989, c. 14, §3 (AMD). 1993, c. 410, §I11 (AMD). 1993, c. 707, §Z1 (AMD). 1993, c. 708, §G2 (RP). 1999, c. 790, §A26 (RP).

§3501. PROGRAM ESTABLISHED

(REPEALED)

SECTION HISTORY
1973, c. 307, §2 (AMD). 1981, c. 703, §A27 (AMD). 1993, c. 708, §G2 (RP).

§3501-A. MEDICAL EYE CARE PROGRAM

(REPEALED)

SECTION HISTORY
1981, c. 703, §A28 (NEW). 1983, c. 831, §1 (AMD). 1993, c. 410, §I12 (RP).

§3501-B. MEDICAL EYE CARE PROGRAM

(REPEALED)

SECTION HISTORY
1993, c. 707, §Z2 (NEW). 1993, c. 708, §G2 (RP). 1999, c. 790, §B2 (RP).

§3502. EDUCATION OF BLIND CHILDREN

(REPEALED)

SECTION HISTORY
1969, c. 232, (AMD). P&SL 1971, c. 91, §E (AMD). 1973, c. 307, §3 (AMD). 1983, c. 353, §1 (RPR). 1989, c. 14, §4 (AMD). 1993, c. 708, §G2 (RP).

§3503. MANDATORY REPORT OF BLINDNESS

(REPEALED)

SECTION HISTORY
1967, c. 232, (NEW). 1973, c. 307, §4 (AMD). 1993, c. 708, §G2 (RP).

§3504. AUTHORITY

(REPEALED)

SECTION HISTORY
1971, c. 88, (NEW). 1975, c. 293, §4 (AMD). 1989, c. 14, §5 (AMD). 1989, c. 44, §1 (RPR). 1993, c. 708, §G2 (RP).

§3505. DEFINITIONS

(REPEALED)

SECTION HISTORY
1971, c. 88, (NEW). 1975, c. 293, §4 (AMD). 1979, c. 541, §A149 (AMD). 1981, c. 470, §A100 (AMD). 1989, c. 14, §§6-8 (AMD). 1989, c. 44, §§2,3 (AMD). 1993, c. 708, §G2 (RP).

§3506. PREFERENCE

(REPEALED)

SECTION HISTORY
1971, c. 88, (NEW). 1989, c. 44, §§4,5 (AMD). 1993, c. 708, §G2 (RP).

§3507. POWERS AND DUTIES OF THE DIVISION

(REPEALED)

SECTION HISTORY
1971, c. 88, (NEW). 1993, c. 708, §G2 (RP).

§3508. CONSTRUCTION, REMODELING; PLANNING FOR VENDING FACILITY

(REPEALED)

SECTION HISTORY
1971, c. 88, (NEW). 1993, c. 708, §G2 (RP).

§3509. CONSTRUCTION OF BUILDINGS

(REPEALED)

SECTION HISTORY
1971, c. 88, (NEW). 1993, c. 708, §G2 (RP).

§3510. EXEMPTIONS

(REPEALED)

SECTION HISTORY
1971, c. 88, (NEW). 1993, c. 708, §G2 (RP).

§3511. CORRECTIONAL, MENTAL AND CERTAIN EDUCATIONAL INSTITUTIONS

(REPEALED)

SECTION HISTORY
1971, c. 88, (NEW). 1989, c. 443, §55 (AMD). 1993, c. 708, §G2 (RP).

§3512. APPLICATION

(REPEALED)

SECTION HISTORY
1971, c. 88, (NEW). 1989, c. 44, §6 (RPR). 1993, c. 708, §G2 (RP).

Chapter 960: EYE CARE

§3521. MEDICAL EYE CARE PROGRAM

The department shall provide medical eye services, within the amounts appropriated by the Legislature, including corrective glasses, to individuals who have an annual income not exceeding 80% of the State's median income adjusted for family size and who have: [1999, c. 790, Pt. B, §3 (NEW).]

1. **Eye disorder.** A significant eye disorder that, if untreated, may progress to blindness; or

[1999, c. 790, Pt. B, §3 (NEW) .]

2. **Visual acuity of 20/70 or worse.** A visual acuity after correction of 20/70 or worse in the better eye.

[1999, c. 790, Pt. B, §3 (NEW) .]

The department shall, after hearing, in a manner consistent with the Maine Administrative Procedure Act, adopt rules governing eligibility, application procedures, services covered and reimbursement procedures, including member responsibility for a $10 copayment for prescriptions; a $10 copayment for an office visit to a physician, optometrist or optician; and a $50 copayment for a hospital procedure or an ambulatory surgical center procedure. The authority to adopt rules granted by this paragraph is deemed to be the same authority granted by former section 3501-B. [2003, c. 20, Pt. K, §13 (AMD).]

SECTION HISTORY
1999, c. 790, §B3 (NEW). 2003, c. 20, §K13 (AMD).

Chapter 961: PROTECTION AND ADVOCACY FOR THE DEVELOPMENTALLY DISABLED

§3551. POLICY

(REPEALED)

SECTION HISTORY
1979, c. 553, §2 (NEW). 1985, c. 159, §1 (AMD). 1989, c. 837, §2 (RP).

§3552. DEFINITIONS

(REPEALED)

SECTION HISTORY
1979, c. 553, §2 (NEW). 1979, c. 645, §1 (AMD). 1983, c. 539, §2 (AMD). 1985, c. 159, §§2,3 (AMD). 1989, c. 837, §2 (RP).

§3553. POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1979, c. 553, §2 (NEW). 1979, c. 645, §2 (AMD). 1983, c. 539, §3 (AMD). 1989, c. 700, §A80 (AMD). 1989, c. 837, §2 (RP). 1997, c. 393, §A22 (AMD).

§3554. INVESTIGATIONS

(REPEALED)

SECTION HISTORY
1979, c. 553, §2 (NEW). 1979, c. 645, §§3-7 (AMD). 1985, c. 159, §4 (AMD). 1985, c. 644, §§4,5 (AMD). 1989, c. 837, §2 (RP).

§3555. CONFIDENTIALITY OF INFORMATION; USE AND DISCLOSURE BY ADVOCACY AGENCY

(REPEALED)

SECTION HISTORY
1979, c. 553, §2 (NEW). 1979, c. 645, §8 (AMD). 1985, c. 159, §5 (AMD). 1989, c. 837, §2 (RP).

§3556. REVIEW OF GUARDIANSHIP

(REPEALED)

SECTION HISTORY
1979, c. 553, §2 (NEW). 1985, c. 159, §6 (AMD). 1989, c. 837, §2 (RP).

§3557. RULES

(REPEALED)

SECTION HISTORY

1979, c. 645, §9 (NEW). 1989, c. 837, §2 (RP).

§3558. APPLICATION TO RESIDENTS IN CHILDREN'S HOMES

(REPEALED)

SECTION HISTORY
1983, c. 539, §4 (NEW). 1989, c. 837, §2 (RP).

Chapter 962: PREVENTION OF DEVELOPMENTAL DISABILITIES

§3571. PREVENTION OF DEVELOPMENTAL DISABILITIES

1. **Prevention of developmental disabilities; Department of Health and Human Services.** The Department of Health and Human Services shall serve as the principal agency for the primary prevention of developmental disabilities in the State and shall provide services for pregnant women and new mothers to minimize the likelihood of their having a developmentally disabled child. In particular, the department shall conduct professional education to assure that the best available prevention techniques are utilized by health care professionals in the State and shall assure that access to prenatal services exists for all women of childbearing age in the State.

[1985, c. 484, (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

2. **Counseling and support services; Department of Health and Human Services.** The Department of Health and Human Services shall institute programs of family counseling and support services for families with developmentally disabled children aged 0 to 5 years. The purpose of these counseling and support services shall be to increase the family's understanding of the child's special needs and to enhance family members' abilities to cope with the physical and emotional strains experienced by families with handicapped children.

[1985, c. 484, (NEW); 1995, c. 560, Pt. K, §82 (AMD); 1995, c. 560, Pt. K, §83 (AFF); 2001, c. 354, §3 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

3. **Preschool coordination projects; Department of Education.** The Department of Education through the preschool coordination projects shall assure the provision of comprehensive developmental services, including physical therapy, speech and language therapy and occupational therapy to preschool handicapped or delayed children. To the maximum extent possible, these programs shall make use of existing 3rd party payors and coordinate services with local resources. In instances where needed services are not available, the department shall use authorized funds to enable preschool coordination projects to work with local providers, including public and private agencies and school units to develop new or expand existing service to meet these needs.

In addition, the Department of Education shall ensure that comprehensive health educational programs are available in state schools and that teacher training programs in the State include preparation in conduct of health educational programs.

[1989, c. 700, Pt. A, §81 (AMD) .]

SECTION HISTORY
1985, c. 484, (NEW). 1989, c. 700, §A81 (AMD). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). 2003, c. 689, §B6 (REV).

§3572. USE OF PRIVATE AGENCIES TO DELIVER SERVICES

Private agencies shall be used as appropriate to carry out the implementation of initiatives to prevent developmental disabilities in cooperation with the respective departments so that State Government agencies do not duplicate existing resources in the community and so that all available resources are used effectively to rapidly achieve the goal of preventing developmental disabilities in the State. [1985, c. 484, (NEW).]

SECTION HISTORY
1985, c. 484, (NEW).

§3573. REPORTING

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

A. "Developmental disability" means a disability attributable to a mental or physical impairment or combination of mental and physical impairments that:

(1) Is manifested before the person reaches 22 years of age;

(2) Is likely to continue indefinitely;

(3) Results in substantial functional limitations in 3 or more of the following areas of major life activity:

(a) Self-care;

(b) Receptive and expressive language;

(c) Learning;

(d) Mobility;

(e) Self-direction;

(f) Capacity for independent living; and

(g) Economic self-sufficiency.

A person from birth through 9 years of age who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without meeting 3 of the criteria stated in this subparagraph if there is a high probability that the person will meet those criteria later in life if services and supports are not provided to the person; and

(4) Reflects the person's need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services that are of a lifelong or extended duration and are individually planned and coordinated. [2003, c. 602, §1 (NEW).]

B. "Mental and physical impairments" includes, but is not limited to, the following conditions: intellectual disability, autism, cerebral palsy, Asperger syndrome, mental illness, Prader-Willi syndrome and epilepsy. [2011, c. 542, Pt. A, §36 (AMD).]

[2011, c. 542, Pt. A, §36 (AMD) .]

2. **Reporting requirements.** The Department of Health and Human Services and Department of Education shall by January 15th of each year submit a joint report to the joint standing committee of the Legislature having jurisdiction over health and human services matters regarding activities conducted over

the past fiscal year related to the prevention of developmental disabilities and underlying mental and physical impairments and plans for such activities in the succeeding year. The report must also include data on the incidence rate of births of developmentally disabled children in the State.

[2003, c. 2, §74 (COR) .]

3. **Limitation.** The provisions of this section may not be interpreted to expand or otherwise affect the requirements of the Department of Health and Human Services to provide services to children and families under section 3571, subsection 2 or under Title 34-B.

[2003, c. 602, §1 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

SECTION HISTORY
1985, c. 484, (NEW). 1989, c. 700, §A82 (AMD). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). RR 2003, c. 2, §74 (COR). 2003, c. 602, §1 (RPR). 2003, c. 689, §B6 (REV). 2011, c. 542, Pt. A, §36 (AMD).

Chapter 963: DEAF AND HEARING IMPAIRED PERSONS

Subchapter 1: GENERAL PROVISIONS

§3601. GENERAL PROVISIONS

(REPEALED)

SECTION HISTORY
1979, c. 546, §1 (NEW). 1981, c. 584, §4 (AMD). 1989, c. 851, §§3-5 (AMD). 1993, c. 708, §H2 (RP).

§3602. TELECOMMUNICATION EQUIPMENT FOR THE DEAF, HEARING IMPAIRED AND SPEECH IMPAIRED

(REPEALED)

SECTION HISTORY
1987, c. 141, §A1 (NEW). 1989, c. 851, §6 (AMD). 1993, c. 708, §H2 (RP).

Subchapter 2: RIGHTS OF THE DEAF AND HEARING IMPAIRED

§3611. POLICY

(REPEALED)

SECTION HISTORY
1981, c. 584, §5 (NEW). 1993, c. 708, §H2 (RP).

§3612. RIGHTS

(REPEALED)

SECTION HISTORY
1981, c. 584, §5 (NEW). 1983, c. 41, §1 (AMD). 1987, c. 104, §2 (AMD). 1993, c. 708, §H2 (RP).

§3613. MOTOR VEHICLE DRIVERS

(REPEALED)

SECTION HISTORY
1981, c. 584, §5 (NEW). 1983, c. 41, §2 (AMD). 1993, c. 708, §H2 (RP).

§3614. PENALTY; MISREPRESENTATION OF HEARING EAR DOG

(REPEALED)

SECTION HISTORY
1981, c. 584, §5 (NEW). 1993, c. 708, §H2 (RP).

Part 3: CHILDREN

Chapter 1051: CHILDREN'S SERVICES: GENERAL PROVISIONS

§3700. DEFINITION OF "CHILD" OR "MINOR CHILD"

(REPEALED)

SECTION HISTORY
1969, c. 433, §47 (NEW). 1971, c. 598, §37 (AMD). 1977, c. 577, §1 (RP). 1979, c. 733, §13 (RP).

§3701. DEFINITIONS

(REPEALED)

SECTION HISTORY
1965, c. 57, (AMD). 1977, c. 577, §1 (RPR). 1979, c. 127, §146 (AMD). 1979, c. 733, §13 (RP).

§3702. GOALS, OBJECTIVES, PRIORITIES AND SERVICES

(REPEALED)

SECTION HISTORY
1977, c. 577, §1 (RPR). 1979, c. 733, §13 (RP). 1979, c. 733, §13 (RP).

§3703. AUTHORIZATION; COOPERATION WITH FEDERAL GOVERNMENT

(REPEALED)

SECTION HISTORY
1977, c. 577, §1 (RPR). 1979, c. 733, §13 (RP). 1979, c. 733, §13 (RP).

§3704. PARENTAL RIGHTS

(REPEALED)

SECTION HISTORY
1977, c. 577, §1 (NEW). 1979, c. 127, §147 (AMD). 1979, c. 733, §13 (RP). 1979, c. 733, §13 (RP).

Chapter 1051-A: INTERIM CHILDREN'S SERVICES ACT

§3711. SHORT TITLE

(REPEALED)

SECTION HISTORY
1977, c. 42, §1 (NEW). 1979, c. 733, §14 (RP).

§3712. PURPOSE

(REPEALED)

SECTION HISTORY
1977, c. 42, §1 (NEW). 1979, c. 733, §14 (RP).

§3713. AUTHORIZATION

(REPEALED)

SECTION HISTORY
1977, c. 42, §1 (NEW). 1977, c. 577, §2 (AMD). 1977, c. 696, §190 (AMD). 1979, c. 733, §14 (RP).

§3714. PLAN

(REPEALED)

SECTION HISTORY
1977, c. 42, §1 (NEW). 1979, c. 733, §14 (RP).

§3715. REPORTS

(REPEALED)

SECTION HISTORY
1977, c. 42, §1 (NEW). 1979, c. 733, §14 (RP).

§3716. LIMITATIONS

(REPEALED)

SECTION HISTORY
1977, c. 42, §1 (NEW). 1979, c. 733, §14 (RP).

§3717. BALANCES AND TRANSFERS

(REPEALED)

SECTION HISTORY
1977, c. 42, §1 (NEW). 1979, c. 733, §14 (RP).

Chapter 1052: MAINE CHILDREN'S TRUST FUND

§3721. DEFINITIONS

(REPEALED)

SECTION HISTORY
1987, c. 402, §A142 (NEW). 1991, c. 9, §§BB1,2 (AMD). 1991, c. 780, §§DDD3-5 (AMD). 1993, c. 600, §A15 (RP).

§3722. MAINE CHILDREN'S TRUST FUND

(REPEALED)

SECTION HISTORY
1987, c. 402, §A142 (NEW). 1991, c. 780, §DDD6 (AMD). 1993, c. 600, §A15 (RP).

§3723. BOARD; ESTABLISHMENT

(REPEALED)

SECTION HISTORY
1987, c. 402, §A142 (NEW). 1989, c. 503, §B90 (AMD). 1989, c. 700, §A83 (AMD). 1991, c. 9, §BB2 (AMD). 1991, c. 780, §DDD7 (RP).

§3724. DUTIES

(REPEALED)

SECTION HISTORY
1987, c. 402, §A142 (NEW). 1991, c. 9, §BB3 (AMD). 1991, c. 780, §DDD8 (RP).

§3725. DISBURSEMENT OF FUND MONEY

(REPEALED)

SECTION HISTORY
1987, c. 402, §A142 (NEW). 1987, c. 769, §A76 (AMD). 1991, c. 9, §BB4 (AMD). 1991, c. 780, §DDD9 (RP).

§3725-A. DISBURSEMENT OF FUND INCOME

(REPEALED)

SECTION HISTORY
1991, c. 780, §DDD10 (NEW). 1993, c. 128, §1 (AMD). 1993, c. 600, §A15 (RP).

§3726. REVIEW

(REPEALED)

SECTION HISTORY
1987, c. 402, §A142 (NEW). 1991, c. 780, §DDD11 (RP).

§3726-A. RULES; REPORT

(REPEALED)

SECTION HISTORY
1991, c. 780, §DDD12 (NEW). 1993, c. 600, §A15 (RP).

Chapter 1052-A: CHILD CARE SERVICES

§3731. DEFINITIONS

As used in this chapter, unless the context otherwise indicates or unless they are inconsistent with federal law, the following terms have the following meanings. [1993, c. 158, §2 (NEW).]

1. **Child care.** "Child care" means a regular service of care and education provided for compensation for any part of a day less than 24 hours to a child or children under 16 years of age whose parents work outside the home, attend an educational program or are otherwise unable to care for their children. "Child care" also means administrative functions related to the delivery of child care services, including, but not limited to, contract management, voucher administration, licensing, training, technical assistance and referral.

[2011, c. 388, §4 (AMD) .]

2. **Council.** "Council" means the Child Care Advisory Council established pursuant to Title 5, section 12004-I, subsection 35-B.

[1993, c. 158, §2 (NEW) .]

2-A. **Division.** "Division" means the early childhood division of the Department of Health and Human Services, Office of Child and Family Services.

[2011, c. 388, §5 (NEW) .]

3. **Office.** "Office" means the Office of Child Care and Head Start.

[1995, c. 502, Pt. D, §7 (AMD) .]

4. **Region.** "Region" means a service delivery region established by the commissioner.

[2007, c. 539, Pt. N, §32 (AMD) .]

SECTION HISTORY
1993, c. 158, §2 (NEW). 1995, c. 502, §D7 (AMD). 2007, c. 539, Pt. N, §32 (AMD). 2011, c. 388, §§4, 5 (AMD).

§3732. PRINCIPLES OF CHILD CARE SYSTEM

The department shall allocate resources available under this chapter in a manner that promotes the following principles. [1993, c. 158, §2 (NEW).]

1. **Family self-sufficiency.** A stable source of child care is a critical ingredient to economic self-sufficiency. Child care policies and programs must facilitate a smooth transition into the work force for parents and a rich and stable environment for children.

[1993, c. 158, §2 (NEW) .]

2. **Investment in children.** Child care is a critical investment that affects a child's readiness to learn. High-quality child care programs recognize and implement good, early childhood practices, as articulated by Head Start, the National Association for the Education of Young Children and other early childhood organizations.

[1993, c. 158, §2 (NEW) .]

3. **Consumer orientation and education.** Child care policies and programs must be responsive to the changing needs of families and educate families about available options, identifying quality programs and selecting appropriate care.

[1993, c. 158, §2 (NEW) .]

4. **Accessibility.** High-quality child care must be available to any family seeking care regardless of where the family lives or the special needs of the child. A centralized system in local communities must be available to facilitate parents' access to child care.

[2011, c. 388, §6 (AMD) .]

5. **Affordability.** High-quality child care must be available to families who receive child care subsidies available in the State on a sliding scale fee basis, with families contributing based on ability to pay.

[2011, c. 388, §7 (AMD) .]

6. **Diversity.** It is the goal of the State to strive wherever possible to provide child care in an integrated setting, where children with various needs and of various income levels and cultures are cared for together.

[1993, c. 158, §2 (NEW) .]

7. **Efficient, coordinated administration.** Child care programs must be coordinated to ensure the most effective use of federal and state funds.

[1993, c. 158, §2 (NEW) .]

8. **Support for infrastructure.** State child care agencies and policies must support the orderly development of a high-quality child care system.

[1993, c. 158, §2 (NEW) .]

SECTION HISTORY
1993, c. 158, §2 (NEW). 2011, c. 388, §§6, 7 (AMD).

§3733. DESIGNATED AGENCY

To the extent permitted by federal law, the department shall coordinate and administer all available federal and state child care funds, including, but not limited to, those available under the United States Social Security Act; the federal Omnibus Budget Reconciliation Act of 1990, Section 5081; and the federal Child Care and Development Block Grant Act of 1990, as amended by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 110 Stat. 2105. [1997, c. 530, Pt. A, §11 (AMD).]

SECTION HISTORY
1993, c. 158, §2 (NEW). 1997, c. 530, §A11 (AMD).

§3734. USE OF FEDERAL FUNDS

The department shall seek the advice of the council when applying or reapplying for federal funds under this chapter and when submitting state plans, amendments to state plans or waivers for federal approval. Whenever the department makes these submissions to the Federal Government, it shall notify the joint standing committee of the Legislature having jurisdiction over human resource matters and the Executive Director of the Legislative Council. [1993, c. 158, §2 (NEW).]

The following additional provisions apply to certain federal child care funds, as indicated. [1993, c. 158, §2 (NEW).]

1. **Used to supplement state funds.** Federal child care funds must be used to supplement and may not replace existing state and local child care funds.

[1993, c. 158, §2 (NEW) .]

2. **Block grant funds encumbered.** Within 6 months of receiving any payment under the federal Child Care and Development Fund, the department shall expend or encumber 100% of the payment.

[1997, c. 530, Pt. A, §12 (AMD) .]

SECTION HISTORY
1993, c. 158, §2 (NEW). 1997, c. 530, §A12 (AMD).

§3735. CHILD CARE FOR ASPIRE-TANF PARTICIPANTS

The department shall ensure that all persons referred for participation in the State's ASPIRE-TANF program receive information regarding child care options from caseworkers who are knowledgeable about the range of child care subsidies available in this State and who can explain the relative advantages of each option. This may be done directly by the department or by the department's designee. [1997, c. 530, Pt. A, §13 (AMD).]

SECTION HISTORY
1993, c. 158, §2 (NEW). 1997, c. 530, §A13 (AMD).

§3736. ELIGIBILITY

1. **Single application form.** By October 1, 1993, the department shall develop a universal application for all publicly funded child care programs for applicants who are seeking child care as their primary service. By January 1, 1994, the department shall require all caseworkers and contractors to use the form to determine eligibility for those applicants. Applicants submitting applications to more than one caseworker or contractor may submit photocopies or facsimile copies.

[2011, c. 388, §8 (AMD) .]

2. **Eligibility decision within 30 days.** The department shall determine eligibility for child care programs administered under this chapter within 30 days of receiving an application. If a contractor determines eligibility, the department shall require that the contractor determine eligibility within 30 days of receiving an application.

[1993, c. 158, §2 (NEW) .]

3. **Application; effective date.** If an applicant for child care programs administered under this chapter is determined eligible, child care assistance must be provided retroactively to the date of application.

[2015, c. 267, Pt. RRRR, §1 (NEW) .]

SECTION HISTORY
1993, c. 158, §2 (NEW). 2011, c. 388, §8 (AMD). 2015, c. 267, Pt. RRRR, §1 (AMD).

§3737. PAYMENTS TO PROVIDERS

1. **No payments to recipients.** The department may not make cash payments to recipients for child care services provided under this chapter, except when those payments represent reimbursement for services already provided to the recipient.

[1993, c. 158, §2 (NEW) .]

2. **Maintenance of existing options.** The department shall ensure that child care funds are distributed through a range of mechanisms, including, but not limited to, vouchers to recipients and contracts to providers.

[1993, c. 158, §2 (NEW) .]

3. **Quality differential.** To the extent permitted by federal law, the department shall pay a differential rate for child care services that meet or that make substantial progress toward meeting nationally recognized quality standards, such as those standards required by the Head Start program or required for accreditation by the National Association for the Education of Young Children, and shall do so from the Child Care Development Fund 25% Quality Set-aside funds or by other acceptable federal practices. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A. The rules must establish a 4-step child care quality rating system and must provide for graduated quality differential rates for step 2, step 3 and step 4 child care services.

A. [2013, c. 559, §1 (RP).]

B. [2013, c. 559, §1 (RP).]

Nothing in this subsection requires the department to pay a quality differential rate for child care services provided through the Temporary Assistance for Needy Families block grant.

[2015, c. 1, §21 (COR) .]

SECTION HISTORY
1993, c. 158, §2 (NEW). 2001, c. 394, §1 (AMD). 2013, c. 559, §1 (AMD). RR 2015, c. 1, §21 (COR).

§3738. RESOURCE DEVELOPMENT CENTERS

(REPEALED)

SECTION HISTORY
1993, c. 158, §2 (NEW). 1993, c. 490, §1 (AMD). MRSA T. 22, §3738 (RP).

§3739. CHILD CARE ADVISORY COUNCIL

1. **Purpose.** The Child Care Advisory Council is established, in accordance with Title 5, section 12004-I, subsection 35-B, to advise the Legislature and the department regarding child care services in the State. The council shall encourage the development of child care policies that are coordinated among state agencies to promote quality, uniformity and efficiency of service.

[1993, c. 158, §2 (NEW) .]

2. **Membership.** The council has a minimum of 28 members, appointed as follows:

A. One employee of the department's office of integrated access and support who is responsible for child care services, appointed by the commissioner; [2011, c. 388, §9 (AMD).]

B. The employee of the Department of Health and Human Services, Office of Child Care and Head Start who serves as the state child care administrator, or the state child care administrator's designee; [2011, c. 388, §9 (AMD).]

C. One employee of the division within the department concerned with children's behavioral health services, appointed by the commissioner; [2011, c. 388, §9 (AMD).]

D. Two employees of the Department of Education, one of whom represents special education programs and one of whom oversees public programs for children 4 years of age, appointed by the Commissioner of Education; [2011, c. 388, §9 (AMD).]

E. One employee who serves as the state Head Start collaboration director, or the state Head Start collaboration director's designee; [2011, c. 388, §9 (AMD).]

F. The State Fire Marshal or the State Fire Marshal's designee; [1993, c. 158, §2 (NEW).]

G. One employee of the organizational unit of the department that provides programs and services for substance abuse prevention and treatment, appointed by the commissioner; [2011, c. 657, Pt. AA, §63 (AMD).]

H. One employee of the Department of Economic and Community Development, appointed by the Commissioner of Economic and Community Development; [1993, c. 158, §2 (NEW).]

I. One member of the Senate, appointed by the President of the Senate; [1993, c. 158, §2 (NEW).]

J. Two members of the House of Representatives, at least one of whom may not be from the party with the most members in the House of Representatives, appointed by the Speaker of the House of Representatives; [2011, c. 388, §9 (AMD).]

K. One parent or other consumer who receives a child care subsidy at the time of that parent's or consumer's appointment, appointed by the Governor; [1993, c. 158, §2 (NEW).]

L. One parent or other consumer of child care services who does not receive a child care subsidy, appointed by the Governor; [1993, c. 158, §2 (NEW).]

M. One business representative nominated by the Maine Chamber of Commerce and Industry, appointed by the Governor; [1993, c. 158, §2 (NEW).]

N. One center-based care representative nominated by the Maine Child Care Directors' Association, appointed by the Governor; [1993, c. 158, §2 (NEW).]

O. One Head Start provider nominated by the Maine Head Start Directors' Association, appointed by the Governor; [1993, c. 158, §2 (NEW).]

P. One family child care provider nominated by an association of family child care providers in the State, appointed by the Governor; [2011, c. 388, §9 (AMD).]

Q. One person representing Native Americans, appointed by the Governor; [1993, c. 158, §2 (NEW).]

R. One child care provider who does not receive public funds, appointed by the Governor; [1993, c. 158, §2 (NEW).]

S. One person representing a nonprofit advocacy organization dedicated to improving the lives of children, youth and their families, appointed by the Governor; [2011, c. 388, §9 (AMD).]

T. One person associated with a Child Development Services System site, appointed by the Governor; [2011, c. 388, §9 (AMD).]

U. One person representing a collaborative partnership between the University of Maine and the Department of Health and Human Services, Office of Child Care and Head Start, nominated by the University of Maine Center for Community Inclusion and Disability Studies, appointed by the Governor; [2011, c. 388, §9 (AMD).]

V. One representative of women nominated by the Maine Women's Lobby, appointed by the Governor; [2011, c. 388, §9 (AMD).]

W. One direct service provider of child care for school-age children, nominated by the University of Maine at Farmington, Maine Afterschool Network, or a successor program, appointed by the Governor; [2011, c. 388, §9 (AMD).]

X. One person representing the University of Southern Maine, Edmund S. Muskie School of Public Service, Maine Roads to Quality, or a successor program, appointed by the Governor; [2011, c. 388, §9 (NEW).]

Y. A person representing an association of resource development centers in the State, appointed by the Governor; and [2011, c. 388, §9 (NEW).]

Z. One person representing home-based child care providers, appointed by the Governor. [2011, c. 388, §9 (NEW).]

Senators and members of the House of Representatives serve for the duration of the legislative terms that they are serving when appointed. Members from state departments serve at the pleasure of their appointing authorities. All other members serve 3-year terms and may continue to serve beyond their terms until their successors are appointed. If a vacancy occurs before a term has expired, the vacancy must be filled for the remainder of the unexpired term by the authority who made the original appointment. If a member is absent for 2 consecutive meetings and has not been excused by the chair from either meeting, the council may remove the member by majority vote. If a nominating organization does not submit nominations within a reasonable period of time, the appointing authority may fill that organization's seat with a member of the public at large.

The council shall determine whether more than 28 members would assist it in its work under subsections 1 and 5. If a majority of the council votes to request the appointment of additional members, the council shall specify the number of additional members needed and shall convey a request for the appointment of those additional members to the Governor, who shall make the appointments.

[2011, c. 657, Pt. AA, §63 (AMD) .]

3. **Meetings; chair.** The commissioner shall call the first meeting of the council by October 15, 1993. At the first meeting, the council shall select by majority vote a chair from among its members to serve a term of one year. A chair may be reelected to subsequent terms. The chair shall call subsequent meetings. The council may meet as often as funding permits, but must meet at least 4 times per year at a date, time and place determined by the council. The chair, in collaboration with the department, may call a special meeting to address an issue that, in the judgment of the chair, cannot wait until the next regularly scheduled meeting.

[2011, c. 388, §10 (AMD) .]

3-A. **Notice of meetings; agenda.** At a reasonable time before a meeting of the council, the chair shall send a notice of the meeting to every member under subsection 2. A notice of meeting required under this subsection must contain the date, time, place and agenda of the meeting and the minutes of the previous meeting. Notice of a special meeting under subsection 3 must be sent under this subsection as expeditiously as possible.

[2011, c. 388, §11 (NEW) .]

3-B. **Attendance at meetings.** A member of the council is expected to attend all meetings under subsection 3. If a member is unable to attend a meeting called under subsection 3, the member shall inform the chair. A member may attend a meeting under subsection 3 by participating remotely through the means of telephone, electronic media or other device if the facilities allow for such participation. The council shall endeavor to install means by which a member may participate remotely pursuant to this subsection.

[2011, c. 388, §12 (NEW) .]

4. **Powers.** The council must have access to all departmental records regarding child care programs administered under this chapter, except that the council may not have access to information that identifies individuals who receive assistance under this chapter.

[1993, c. 158, §2 (NEW) .]

5. **Duties.** The council shall:

A. Advise the department and the Legislature regarding the coordination of child care services in the State; [1993, c. 158, §2 (NEW).]

B. Advise the department regarding the preparation of any application, amendment, waiver request, plan or other document submitted by the department to the Federal Government regarding child care funding and recommend changes to the submission when appropriate; [1993, c. 158, §2 (NEW).]

C. Establish a subcommittee that includes licensing officials, public health and safety representatives, early childhood educators and others considered necessary by the council to review the current system of licensing and registration and recommend a uniform regulatory system for family day-care homes. In its first annual report, the council shall submit its recommendations, along with implementing legislation, if needed, to the joint standing committee of the Legislature having jurisdiction over human resource matters; [1993, c. 158, §2 (NEW).]

D. Examine the role and funding of resource development centers and submit recommendations regarding the number and role of the centers in the State. These recommendations must be made in the council's first or 2nd annual report; [1993, c. 158, §2 (NEW).]

E. Advise how the State can better use child care funds available under the federal Social Security Act and develop a proposal to use federal and state funds to supplement the earned income disregard for families receiving temporary assistance for needy families; [1997, c. 530, Pt. A, §14 (AMD).]

F. Explore ways in which child care services may be better integrated into a system of comprehensive services for children and families; and [1993, c. 158, §2 (NEW).]

G. Examine any other relevant child care issues and make recommendations as needed. The council may establish ad hoc subcommittees as needed. [1993, c. 158, §2 (NEW).]

[1997, c. 530, Pt. A, §14 (AMD) .]

6. **Report.** By January 15th, the council shall submit an annual report to the commissioner, the cochairs of the Maine Children's Growth Council established in Title 5, chapter 621 and the joint standing committee of the Legislature having jurisdiction over human services matters. The report must describe the council's activities for the year regarding its duties specified in subsection 5 and must outline policy changes recommended by the council, along with necessary implementing legislation.

[2011, c. 388, §13 (AMD) .]

7. **Staff.** The office shall provide staff and office supplies to the council within the office's existing resources. The council may refuse these services and supplies and may accept and expend private funds to carry out its duties under this chapter.

[1993, c. 158, §2 (NEW) .]

8. **Parliamentary authority.** Except as mandated by state law, a meeting under subsection 3 is governed by the current edition of Robert's Rules of Order Newly Revised.

[2011, c. 388, §14 (NEW) .]

SECTION HISTORY
1993, c. 158, §2 (NEW). RR 1995, c. 2, §42 (COR). 1995, c. 418, §A39 (AMD). 1995, c. 502, §D8 (AMD). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 1997, c. 530, §A14 (AMD). 2001, c. 179, §1 (AMD). 2001, c. 354, §3 (AMD). 2003, c. 689, §§B6,7 (REV). 2011, c. 388, §§9-14 (AMD). 2011, c. 657, Pt. AA, §63 (AMD).

§3740. OFFICE OF CHILD CARE AND HEAD START

1. **Establishment.** The Office of Child Care and Head Start is established within the Division of Purchased and Support Services.

[1995, c. 502, Pt. D, §9 (AMD) .]

2. **Powers and duties.** The office has the following powers and duties:

A. Maintain an inventory of child care information; [1993, c. 158, §2 (NEW).]

B. Provide public education on becoming better consumers of child care; [1993, c. 158, §2 (NEW).]

C. Provide staffing assistance to the council; [1993, c. 158, §2 (NEW).]

D. Coordinate an ongoing review of all child care licensing rules; [1993, c. 158, §2 (NEW).]

E. Provide technical assistance to public and private sector employers, school systems and community groups concerning child care, flexible benefits and work schedules; [1993, c. 158, §2 (NEW).]

F. Coordinate the development of a training system for child care providers; [1993, c. 158, §2 (NEW).]

G. Develop incentives for employer involvement in child care; and [1993, c. 158, §2 (NEW).]

H. Promote cooperative relationships between public health organizations and child care programs. [1993, c. 158, §2 (NEW).]

[1993, c. 158, §2 (NEW) .]

SECTION HISTORY
1993, c. 158, §2 (NEW). 1995, c. 502, §D9 (AMD).

Chapter 1053: AID TO DEPENDENT CHILDREN

§3741. AID TO DEPENDENT CHILDREN; PROMOTION OF ECONOMIC SELF-SUPPORT

(REPEALED)

SECTION HISTORY
1965, c. 291, (AMD). 1967, c. 459, §1 (RPR). 1983, c. 849, §1 (AMD). 1995, c. 418, §A5 (RPR). 1997, c. 530, §A15 (RP).

§3741-A. RECIPIENTS WITH CHILDREN 3 YEARS OF AGE AND OLDER

(REPEALED)

SECTION HISTORY
1987, c. 856, §2 (NEW). 1991, c. 528, §F1 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §F1 (AMD). 1993, c. 385, §3 (AMD). 1995, c. 418, §A6 (RP).

§3741-B. TEENAGE PARENTS

(REPEALED)

SECTION HISTORY
1987, c. 856, §2 (NEW). 1991, c. 9, §M1 (AMD). 1991, c. 528, §F2 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §F2 (AMD). 1993, c. 385, §4 (RP).

§3741-C. PROGRAM REQUIREMENTS

(REPEALED)

SECTION HISTORY
1989, c. 839, §1 (NEW). 1991, c. 528, §F3 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §F3 (AMD). 1993, c. 385, §5 (AMD). 1995, c. 418, §A7 (RPR). 1997, c. 530, §A15 (RP).

§3741-D. ELIGIBILITY FOR FEDERAL AID TO FAMILIES WITH DEPENDENT CHILDREN BASED ON UNEMPLOYMENT

(REPEALED)

SECTION HISTORY
1989, c. 839, §1 (NEW). 1995, c. 418, §A8 (RP).

§3741-E. VOLUNTARY PARTICIPANTS GIVEN PRIORITY

(REPEALED)

SECTION HISTORY
1989, c. 839, §1 (NEW). 1991, c. 528, §F4 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §F4 (AMD). 1993, c. 385, §§6-8 (AMD). 1993, c. 709, §2 (AMD). RR 1995, c. 1, §11 (COR). 1995, c. 418, §A9 (AMD). 1997, c. 530, §A15 (RP).

§3741-F. TRANSITIONAL SUPPORT SERVICES

(REPEALED)

SECTION HISTORY
1989, c. 839, §§1,15 (NEW). 1991, c. 528, §RRR (AFF). 1991, c. 528, §F5 (RP). 1991, c. 591, §F5 (RP).

§3741-G. TRANSITIONAL MEDICAL ASSISTANCE

(REPEALED)

SECTION HISTORY
1989, c. 839, §§1,15 (NEW). 1993, c. 385, §9 (AMD). 1995, c. 418, §A10 (RPR). 1995, c. 692, §1 (AMD). 1997, c. 530, §A15 (RP).

§3741-H. CHILD CARE DURING PARTICIPATION IN EMPLOYMENT, EDUCATION AND TRAINING

(REPEALED)

SECTION HISTORY
1989, c. 839, §1 (NEW). 1991, c. 9, §M2 (AMD). 1991, c. 528, §F6 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §F6 (AMD). 1993, c. 385, §10 (AMD). 1997, c. 530, §A15 (RP).

§3741-I. TRANSITIONAL SUPPORT SERVICES; CHILD CARE; TRANSPORTATION

(REPEALED)

SECTION HISTORY
1991, c. 528, §F7 (NEW). 1991, c. 528, §RRR (AFF). 1991, c. 591, §F7 (NEW). 1993, c. 385, §§11,12 (AMD). 1995, c. 418, §A11 (AMD). 1997, c. 530, §A15 (RP).

§3741-J. FAMILY CONTRACT

(REPEALED)

SECTION HISTORY
1993, c. 385, §13 (NEW). 1995, c. 418, §A12 (RPR). 1997, c. 530, §A15 (RP).

§3741-K. ASPIRE-PLUS

(REPEALED)

SECTION HISTORY
1993, c. 709, §3 (NEW). 1995, c. 418, §A13 (RPR). 1997, c. 530, §A15 (RP).

§3741-L. FAMILY PLANNING SERVICES

(REPEALED)

SECTION HISTORY
1993, c. 709, §3 (NEW). 1995, c. 418, §A14 (AMD). 1997, c. 530, §A15 (RP).

§3741-M. NONTRADITIONAL JOB TRAINING AND PLACEMENT SERVICES

(REPEALED)

SECTION HISTORY
1997, c. 284, §1 (NEW). 2005, c. 397, §C13 (RP).

§3742. ELIGIBILITY FOR AID

(REPEALED)

SECTION HISTORY
1965, c. 262, §2 (AMD). 1967, c. 459, §2 (RP).

§3743. RECIPIENTS AND RELATIVES NOT TO BE PAUPERIZED

(REPEALED)

SECTION HISTORY
1967, c. 459, §2 (RP).

§3744. APPLICATIONS FOR AID

(REPEALED)

SECTION HISTORY
1967, c. 459, §2 (RP).

§3745. DUTIES OF COMMISSIONER

(REPEALED)

SECTION HISTORY
1967, c. 459, §2 (RP).

§3746. AMOUNT OF AID

(REPEALED)

SECTION HISTORY
1967, c. 228, §2 (AMD). 1967, c. 459, §2 (RP). 1967, c. 544, §59 (RP).

§3747. ADMINISTRATION OF FUNDS

(REPEALED)

SECTION HISTORY
1967, c. 459, §2 (RP).

§3748. APPEALS

(REPEALED)

SECTION HISTORY
1967, c. 459, §2 (RP).

§3749. ACCEPTANCE OF PROVISIONS OF FEDERAL LAW

(REPEALED)

SECTION HISTORY
1967, c. 459, §2 (RP).

§3750. ASSESSMENT OF TOWNS

(REPEALED)

SECTION HISTORY
1965, c. 468, (AMD). 1969, c. 585, §1 (RP).

§3751. FEDERAL GRANTS

(REPEALED)

SECTION HISTORY
1967, c. 459, §3 (AMD). 1997, c. 530, §A15 (RP).

§3752. PAYMENTS TO GUARDIAN OR CONSERVATOR

(REPEALED)

SECTION HISTORY
1981, c. 470, §A101 (AMD). 1997, c. 530, §A15 (RP).

§3753. INALIENABILITY OF ASSISTANCE

(REPEALED)

SECTION HISTORY
1997, c. 530, §A15 (RP).

§3754. PARENTAL RESPONSIBILITY

(REPEALED)

SECTION HISTORY
1965, c. 131, (NEW). 1965, c. 213, (NEW). 1965, c. 513, §39 (RP). 1971, c. 622, §76 (AMD). 1977, c. 118, §5 (AMD). 1989, c. 834, §B14 (AMD). 1995, c. 694, §D34 (AMD). 1995, c. 694, §E2 (AFF). 1997, c. 530, §A15 (RP).

§3755. LOCATING THOSE LIABLE FOR SUPPORT OF DEPENDENTS

(REPEALED)

SECTION HISTORY
1965, c. 513, §40 (NEW). 1975, c. 293, §4 (AMD). 1997, c. 530, §A15 (RP).

§3755-A. DISCLOSURE OF INFORMATION IN MEDICAL SUPPORT RECOUPMENT AND CHILD SUPPORT CASES

(REPEALED)

SECTION HISTORY
1989, c. 255, (NEW). 1991, c. 58, §§1-3 (AMD). 1995, c. 694, §D35 (AMD). 1995, c. 694, §E2 (AFF). 1997, c. 530, §A15 (RP).

§3756. FRAUD IN OBTAINING AID, CIVIL RECOVERY

(REPEALED)

SECTION HISTORY
1967, c. 450, §2 (NEW). 1997, c. 530, §A15 (RP).

§3757. SUBSTANTIATION OF ELIGIBILITY

(REPEALED)

SECTION HISTORY
1975, c. 441, §1 (NEW). 1997, c. 530, §A15 (RP).

§3758. DISBURSEMENTS

(REPEALED)

SECTION HISTORY
1975, c. 441, §1 (NEW). 1983, c. 466, (AMD). 1983, c. 847, §1 (AMD). 1991, c. 528, §§F8,9 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §§F8,9 (AMD). 1991, c. 747, §3 (AMD). 1993, c. 349, §51 (AMD). 1995, c. 418, §§A15,16 (AMD). 1997, c. 530, §A15 (RP).

§3758-A. TRANSFER OF FUNDS

(REPEALED)

SECTION HISTORY
1995, c. 418, §A17 (NEW). 1997, c. 530, §A15 (RP).

§3759. REPORT OF COMMISSIONER

(REPEALED)

SECTION HISTORY
1983, c. 477, §E8 (NEW). 1983, c. 525, §1 (NEW). 1983, c. 816, §A17 (RAL). 1995, c. 418, §A18 (RP).

§3760. ASSISTANCE FOR NEEDY FULL-TIME STUDENTS 18 TO 21 YEARS OF AGE

(REPEALED)

SECTION HISTORY
1983, c. 816, §A17 (RAL). 1997, c. 530, §A15 (RP).

§3760-A. ASSISTANCE TO FIRST-TIME PREGNANT WOMEN

(REPEALED)

SECTION HISTORY
1987, c. 856, §3 (NEW). 1997, c. 530, §A15 (RP).

§3760-B. NOTIFICATION TO THE LEGISLATURE

(REPEALED)

SECTION HISTORY
1987, c. 856, §3 (NEW). 1989, c. 502, §A75 (AMD). 1997, c. 530, §A15 (RP).

§3760-C. HOUSEHOLDS HEADED BY MINOR PARENTS

(REPEALED)

SECTION HISTORY
1989, c. 839, §2 (NEW). 1991, c. 528, §SS1 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §SS1 (AMD). 1993, c. 410, §TT1 (AMD). 1993, c. 709, §4 (RPR). 1997, c. 530, §A15 (RP).

§3760-D. SPECIAL NEEDS PAYMENT FOR RECIPIENTS WITH EXCESSIVE SHELTER COSTS

(REPEALED)

SECTION HISTORY
1991, c. 528, §SS2 (NEW). 1991, c. 528, §RRR (AFF). 1991, c. 591, §SS2 (NEW). 1991, c. 622, §§M13-17 (AMD). 1991, c. 628, §1 (AMD). 1991, c. 628, §2 (AFF). 1993, c. 410, §§I13,14 (AMD). 1995, c. 368, §I1 (RP). 1995, c. 395, §S5 (AFF). 1995, c. 625, §C2 (AFF). 1995, c. 625, §C1 (REEN). 1997, c. 530, §A15 (RP).

§3760-E. EQUIVALENT STANDARD OF NEED

(REPEALED)

SECTION HISTORY
1991, c. 528, §SS2 (NEW). 1991, c. 528, §RRR (AFF). 1991, c. 591, §SS2 (NEW). 1991, c. 622, §M18 (AMD). MRSA T. 22, §3760-E, sub-§2 (RP).

§3760-F. CONTINUATION OF MEDICAID AND REPORT

(REPEALED)

SECTION HISTORY

1991, c. 528, §SS2 (NEW). 1991, c. 528, §RRR (AFF). 1991, c. 591, §SS2 (NEW). MRSA T. 22, §3760-F, sub-§2 (RP).

§3760-G. EARNED INCOME TAX CREDIT

(REPEALED)

SECTION HISTORY
1993, c. 385, §14 (NEW). 1997, c. 530, §A15 (RP).

§3760-H. DEFINITIONS

(REPEALED)

SECTION HISTORY
1993, c. 385, §14 (NEW). 1995, c. 418, §A19 (AMD). 1997, c. 530, §A15 (RP).

§3760-I. ALTERNATIVE AID

(REPEALED)

SECTION HISTORY
1995, c. 418, §A20 (NEW). 1997, c. 530, §A15 (RP).

Chapter 1053-A: EMERGENCY ASSISTANCE PROGRAM FOR NEEDY FAMILIES WITH CHILDREN

§3761. EMERGENCY ASSISTANCE

The department, at the discretion of the commissioner, may establish and operate a program of emergency assistance to needy families with children within the United States Social Security Act, Title IV-A, Section 406(e), and any amendments and additions. [1993, c. 707, Pt. I, §3 (RPR).]

This program must provide: [1993, c. 707, Pt. I, §3 (RPR).]

1. **Benefits; emergency situation.** Benefits to needy families with children in emergency situations in which the family is deprived of the basic necessities essential to their support, including, but not limited to, utility terminations, lack of adequate shelter, fire and other natural disasters. In determining what constitutes an emergency with respect to utility terminations, the department shall grant assistance when an otherwise qualified family has received a disconnection notice and has exhausted their ability to negotiate and pay the terms of a reasonable payment arrangement. The program may not be used to supplant local responsibility for operating or funding a general assistance program. The department shall not expend more than $750,000 of state general assistance funds for the purposes of covering the cost of services set out in this subsection; and

[1993, c. 707, Pt. I, §3 (RPR) .]

2. **Additional emergency services.** Additional emergency services to children who are at risk of removal from the home because of their specified relative's inability to provide care and children in emergency situations where continued presence in the home is not in the best interest of the children. Additional emergency services are defined as those that cover emergency situations resulting from child abuse, neglect, abandonment or domestic abuse. The department may expend other general funds for the additional emergency services described in this subsection.

[1993, c. 707, Pt. I, §3 (RPR) .]

The department may establish eligibility guidelines and limits on services covered under this program. [1993, c. 707, Pt. I, §3 (RPR).]

SECTION HISTORY
1983, c. 477, §§E,9,1 (NEW). 1983, c. 824, §§Z-1 (AMD). 1993, c. 267, §1 (AMD). 1993, c. 707, §I3 (RPR).

Chapter 1053-B: TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

§3762. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES; PROMOTION OF ECONOMIC SELF-SUPPORT

The department shall promote family economic self-support in accordance with the provisions of this chapter. [1997, c. 530, Pt. A, §16 (NEW).]

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

A. "ASPIRE-TANF" means the ASPIRE-TANF program established in section 3781-A. [1997, c. 530, Pt. A, §16 (NEW).]

B. "Domestic violence" has the same meaning as provided in Section 408(a)(7)(C)(iii) of PRWORA. [1997, c. 530, Pt. A, §16 (NEW).]

B-1. "DRA" means the federal Deficit Reduction Act of 2005, Public Law 109-171, 120 Stat. 4. [2009, c. 291, §4 (NEW).]

C. "Federal poverty level" means the nonfarm income official poverty line for a family of the size involved, as defined by the federal Office of Management and Budget and revised annually in accordance with the United States Omnibus Budget Reconciliation Act of 1981, Section 673, Subsection 2. [1997, c. 530, Pt. A, §16 (NEW).]

D. "PRWORA" means the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 110 Stat. 2105. [1997, c. 530, Pt. A, §16 (NEW).]

E. "TANF" means the Temporary Assistance for Needy Families program, under the United States Social Security Act, as amended by PRWORA. "TANF" provides temporary assistance to needy, dependent children and their parents or caretaker relatives. [1997, c. 530, Pt. A, §16 (NEW).]

[2009, c. 291, §4 (AMD) .]

2. **Collaboration.** The department shall work collaboratively with the following agencies and entities to provide efficient and effective services that lead to self-support for Maine's families receiving TANF assistance:

A. The state agency responsible for child care services; [1997, c. 530, Pt. A, §16 (NEW).]

B. The Department of Labor for services including employment and job training partnership services and vocational services; [1997, c. 530, Pt. A, §16 (NEW).]

C. [2005, c. 397, Pt. A, §23 (RP).]

D. The Department of Transportation; [1997, c. 530, Pt. A, §16 (NEW).]

E. The Department of Education and local providers of programs under the federal Adult Education Act, 20 United States Code, Section 1201 et seq. and the federal Carl D. Perkins Vocational and Applied Technology Education Act, 20 United States Code, Section 2301 et seq.; [1997, c. 530, Pt. A, §16 (NEW).]

F. The Department of Economic and Community Development; [1997, c. 530, Pt. A, §16 (NEW).]

G. Statewide organizations that work with women on self-sufficiency and employment opportunities, including a statewide nonprofit corporation that provides training and placement in trade and technical occupations that are not traditional for the persons served; [2005, c. 397, Pt. C, §14 (AMD).]

H. The municipalities of the State both individually and collectively; [1997, c. 530, Pt. A, §16 (NEW).]

I. The Maine Community College System; [1997, c. 530, Pt. A, §16 (NEW); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF).]

J. The University of Maine System; and [1997, c. 530, Pt. A, §16 (NEW).]

K. Local service providers appropriate for TANF participants. [1997, c. 530, Pt. A, §16 (NEW).]

[2005, c. 397, Pt. A, §23 (AMD); 2005, c. 397, Pt. C, §14 (AMD) .]

3. **Administration.** The department may administer and operate a program of aid to needy dependent children, called "Temporary Assistance for Needy Families" or "TANF," who are deprived of support or care due to the death, continued absence, physical or mental incapacity of a parent or the unemployment or underemployment of the principal wage earner in accordance with the United States Social Security Act, as amended by PRWORA and DRA, and this Title.

A. The department shall adopt rules as necessary to implement and administer the program. The rules must include eligibility criteria, budgeting process, benefit calculation and confidentiality. The confidentiality rules must ensure that confidentiality is maintained for TANF recipients at least to the same extent that confidentiality was maintained for families in the Aid to Families with Dependent Children program unless otherwise required by federal law or regulation. [1997, c. 530, Pt. A, §16 (NEW).]

B. The department may use funds, insofar as resources permit, provided under and in accordance with the United States Social Security Act or state funds appropriated for this purpose or a combination of state and federal funds to provide assistance to families under this chapter. In addition to assistance for families described in this subsection, funds must be expended for the following purposes:

(1) To continue the pass-through of the first $50 per month of current child support collections and the exclusion of the $50 pass-through from the budget tests and benefit calculations;

(2) To provide financial assistance to noncitizens legally admitted to the United States who are receiving assistance under this subsection as of July 1, 2011. Recipients of assistance under this subparagraph are limited to the categories of noncitizens who would be eligible for the TANF programs but for their status as aliens under PRWORA. Eligibility for the TANF program for these categories of noncitizens must be determined using the criteria applicable to other recipients of assistance from the TANF program. Any household receiving assistance as of July 1, 2011 may continue to receive assistance, as long as that household remains eligible, without regard to interruptions in coverage or gaps in eligibility for service. A noncitizen legally admitted to the United States who is neither receiving assistance on July 1, 2011 nor has an application pending for assistance on July 1, 2011 that is later approved is not eligible for financial assistance through a state-funded program unless that noncitizen is:

(a) Elderly or disabled, as described under the laws governing supplemental security income in 42 United States Code, Sections 1381 to 1383f (2010);

(b) A victim of domestic violence;

(c) Experiencing other hardship, such as time necessary to obtain proper work documentation, as defined by the department by rule. Rules adopted by the department under this division are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A; or

(d) Unemployed but has obtained proper work documentation, as defined by the department by rule. Rules adopted by the department under this division are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A;

(3) To provide benefits to certain 2-parent families whose deprivation is based on physical or mental incapacity;

(4) To provide an assistance program for needy children, 19 to 21 years of age, who are in full-time attendance in secondary school. The program is operated for those individuals who qualify for TANF under the United States Social Security Act, except that they fail to meet the age requirement, and is also operated for the parent or caretaker relative of those individuals. Except for the age requirement, all provisions of TANF, including the standard of need and the amount of assistance, apply to the program established pursuant to this subparagraph;

(5) To provide assistance for a pregnant woman who is otherwise eligible for assistance under this chapter, except that she has no dependents under 19 years of age. An individual is eligible for the monthly benefit for one eligible person if the medically substantiated expected date of the birth of her child is not more than 90 days following the date the benefit is received;

(6) To provide a special housing allowance for TANF families whose shelter expenses for rent, mortgage or similar payments, homeowners insurance and property taxes equal or exceed 75% of their monthly income. The special housing allowance is limited to $200 per month for each family. For purposes of this subparagraph, "monthly income" means the total of the TANF monthly benefit and all income countable under the TANF program, plus child support received by the family, excluding the $50 pass-through payment;

(7) In determining benefit levels for TANF recipients who have earnings from employment, the department shall disregard from monthly earnings the following:

(a) One hundred and eight dollars;

(b) Fifty percent of the remaining earnings that are less than the federal poverty level; and

(c) All actual child care costs necessary for work, except that the department may limit the child care disregard to $175 per month per child or $200 per month per child under 2 years of age or with special needs;

(7-A) In determining eligibility and benefit levels, the department may apply a gross income test only to applicants and not to recipients;

(8) In cases when the TANF recipient has no child care cost, the monthly TANF benefit is the maximum payment level or the difference between the countable earnings and the standard of need established by rule adopted by the department, whichever is lower;

(9) In cases when the TANF recipient has child care costs, the department shall determine a total benefit package, including TANF cash assistance, determined in accordance with subparagraph (7) and additional child care assistance, as provided by rule, necessary to cover the TANF recipient's actual child care costs up to the maximum amount specified in section 3782-A, subsection 5. The benefit amount must be paid as provided in this subparagraph.

(a) Before the first month in which child care assistance is available to an ASPIRE-TANF recipient under this paragraph and periodically thereafter, the department shall notify the recipient of the total benefit package and the following options of the recipient: to receive

the total benefit package directly; or to have the department pay the recipient's child care assistance directly to the designated child care provider for the recipient and pay the balance of the total benefit package to the recipient.

(b) If an ASPIRE-TANF recipient notifies the department that the recipient chooses to receive the child care assistance directly, the department shall pay the total benefit package to the recipient.

(c) If an ASPIRE-TANF recipient does not respond or notifies the department of the choice to have the child care assistance paid directly to the child care provider from the total benefit package, the department shall pay the child care assistance directly to the designated child care provider for the recipient. The department shall pay the balance of the total benefit package to the recipient;

(10) Child care assistance under this paragraph must be paid by the department in a prompt manner that permits an ASPIRE-TANF recipient to access child care necessary for work; and

(11) The department shall adopt rules pursuant to Title 5, chapter 375 to implement this subsection. Rules adopted pursuant to this subparagraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2015, c. 267, Pt. RRRR, §2 (AMD).]

[2015, c. 267, Pt. RRRR, §2 (AMD) .]

4. **Promoting support by both parents.** The department shall enforce laws and establish policies to ensure that both parents contribute to the economic support of their child or children and to promote every child's right to economic support from both parents. Applicants for and recipients of assistance may refuse to cooperate in the establishment of paternity or child support enforcement for good cause related to domestic violence, including situations when cooperation may result in harm to the parent or child, or when the child was conceived as a result of incest or rape. Evidence supporting a good cause determination includes, but is not limited to, the evidence specified in section 3785, subsection 13. The department shall notify all applicants and recipients orally and in writing of the availability of this determination. When a determination of good cause is made by the department, the department may not impose sanctions or penalties against the applicant or recipient or engage in any other activity that could subject any member of the family to harm.

[1997, c. 530, Pt. A, §16 (NEW) .]

5. **Move to sustainable employment.** The department shall assist parents who receive TANF assistance to move as quickly as possible into employment that will sustain the family.

[1997, c. 530, Pt. A, §16 (NEW) .]

6. **Training; partnerships.** The department shall increase the employability of parents who receive TANF assistance through on-the-job training and strengthening the public and private workforce partnership by developing training sites and jobs for those parents.

[1997, c. 530, Pt. A, §16 (NEW) .]

7. **Teenage pregnancies; minimization.** The department shall provide education and services to minimize teenage pregnancies with special attention paid to the role of the male.

[1997, c. 530, Pt. A, §16 (NEW) .]

8. **Transitional support services.** The department shall administer a program of transitional support services in accordance with PRWORA, DRA and this subsection.

A. The department shall administer a program of transitional Medicaid to families receiving benefits under Section 1931 of the federal Social Security Act in accordance with this paragraph.

(1) The department shall provide transitional Medicaid to families whose average gross monthly earnings, less costs to the family for child care necessary for employment, do not exceed 185% of the federal poverty guidelines in accordance with PRWORA and this subsection. In order to receive transitional Medicaid as the result of increased earnings or number of hours worked, a family must have received Medicaid assistance for at least 3 of the last 6 months, except as provided in subparagraph (2).

(2) The department shall provide transitional Medicaid for families whose eligibility for Medicaid assistance terminated due to employment obtained through work search activities pursuant to this chapter, in which case the family must have received Medicaid assistance for at least one of the last 3 months.

(3) To continue to receive transitional Medicaid assistance following the first 6 months of coverage, a family entering the transitional Medicaid program with income above 133% of the federal poverty guidelines must pay premiums in accordance with rules adopted by the department.

(5) The department shall provide transitional Medicaid for 4 months to families whose eligibility for Medicaid assistance terminated due to an increase in the amount of child support received by the family.

(6) The department shall require reporting of income or circumstances for the purpose of determining eligibility and premium payments, copayments or other methods of cost sharing for benefits under this paragraph in accordance with rules adopted by the department.

(7) The scope of services provided under this paragraph must be the same as the scope of services provided when a family received Medicaid assistance. [1999, c. 731, Pt. OO, §2 (AMD).]

B. The department shall provide limited transitional transportation benefits to meet employment-related costs to ASPIRE-TANF program participants who lose eligibility for TANF assistance due to employment. The department may also make transitional transportation benefits available to families in which one or both adults are working and who, although they remain financially eligible for TANF benefits, request that their benefits be terminated. Benefits may be provided for up to 18 months following loss of TANF eligibility. The department may adopt rules that impose a weekly limit on available transitional transportation benefits and that require a contribution from each participant toward the cost of transportation. [2015, c. 267, Pt. RRRR, §3 (AMD).]

C. The department shall make available transitional child care services to families who lose eligibility for TANF as a result of increased earnings or an increase in the number of hours worked. The department shall make available transitional child care services to families who lose eligibility for TANF as a result of increased earnings or an increase in the number of hours worked and whose gross income is equal to or less than 250% of the federal poverty guidelines. The department may also make transitional child care services available to families in which one or both adults are working and who, although they remain financially eligible for TANF benefits, request that their benefits be terminated. The family shall pay a premium of 2% to 10% of gross income, based on the family's gross income compared to the federal poverty level in accordance with rules adopted by the department. Parents must have a choice of child care within the rate established by the department. [2009, c. 291, §6 (AMD).]

D. [2011, c. 655, Pt. S, §1 (RP).]

E. Beginning October 1, 2011, the department shall establish maximum rates for child care that are at least equal to the 75th percentile of local market rates for various categories of child care and higher rates for children with special needs. [2009, c. 291, §6 (NEW).]

F. The department may provide limited transitional food benefits to meet the needs of food supplement benefit recipients living with one or more dependent children under 18 years of age who are working at least 30 hours per week or who are working at least 20 hours per week if one or more dependent child is under 6 years of age. The benefit may not exceed $50 per month per family. [2011, c. 655, Pt. S, §2 (NEW).]

[2015, c. 267, Pt. RRRR, §3 (AMD) .]

9. **Procedures.** The following procedural requirements apply to the program:

A. The department shall make information on the program available to the public in written form understandable at the 6th-grade reading level and orally, as needed. [1997, c. 530, Pt. A, §16 (NEW).]

B. The department shall take written applications for assistance, which must be available on request. The department shall provide the applicant written notice of the granting or denial of assistance within 30 days of application. If the family is granted assistance, the notice must state the amount of the benefit. Assistance must be provided promptly to an eligible family without any delay attributable to the administrative process and must be continued regularly to all eligible individuals until they are found to be ineligible. Applicants and recipients must be provided with timely and adequate notice of any intended action to discontinue, terminate, suspend or reduce assistance or to change the manner of paying cash assistance to a protective payee, vendor or through a 2-party payment. Notices under this paragraph must inform the applicant of the right to a fair hearing before an impartial hearing officer and also inform the applicant how to request a hearing. Hearing requests may be made orally or in writing. Hearings must be conducted pursuant to the Maine Administrative Procedure Act. [1997, c. 530, Pt. A, §16 (NEW).]

C. The department shall establish uniform statewide eligibility criteria and benefit levels under the TANF program except as provided in this chapter or chapter 1054-A. Eligibility criteria and benefit levels may not result in cash assistance levels below those in effect on June 1, 1997. [1997, c. 530, Pt. A, §16 (NEW).]

[1997, c. 530, Pt. A, §16 (NEW) .]

10. **Domestic violence.** The following provisions apply with regard to victims of domestic violence.

A. The department shall provide all applicants for assistance under this chapter with information both orally and in writing of the availability of services for victims of domestic violence and of the good cause determination for victims of domestic violence under section 3785, subsection 13. If an applicant requests a good cause determination under section 3785, subsection 13, the department shall promptly determine whether the applicant qualifies for good cause. An individual may not be required to participate in any TANF activity including orientation until the good cause determination is made. [1997, c. 530, Pt. A, §16 (NEW).]

B. When a determination of good cause is made under section 3785, subsection 13, the ASPIRE-TANF program may contact the individual and offer domestic violence victim services or other appropriate services on a voluntary basis. [1997, c. 530, Pt. A, §16 (NEW).]

[1997, c. 530, Pt. A, §16 (NEW) .]

11. **Treatment of lump sum income.** For the purpose of determining eligibility for and the amount of assistance under TANF, the department shall treat any nonrecurring lump sum income received by a family in accordance with this subsection.

A. Nonrecurring lump sum income includes, but is not limited to, personal injury awards, lottery winnings, inheritances and similar nonrecurring forms of income. It does not include income earmarked by the payor for particular expenses such as awards or insurance proceeds earmarked for medical

expenses, attorney's fees or the replacement of lost property. Proceeds from the conversion of a nonliquid asset to a liquid asset must be treated as an asset and not as nonrecurring lump sum income. [1997, c. 530, Pt. A, §16 (NEW).]

B. Up to $10,000 of nonrecurring lump sum income must be disregarded as income and excluded as an asset if used for the following purposes within 30 days of its receipt:

(1) Deposit in a separate identifiable account, approved by the department. Withdrawals from such an account may only be for the purposes identified in subparagraphs (2) to (6) and paragraph C;

(2) Expenses for education or job training to attend an accredited or approved postsecondary education or training institution;

(3) The purchase or repair of a home that is the family's principal residence;

(4) The purchase or repair of a vehicle used for transportation to work or to attend an education or training program;

(5) Capital to start a small business for any family member 18 years of age or older; or

(6) Placement in a family development account authorized by state law, to the extent that the total balance of such an account remains below $10,000. [1997, c. 530, Pt. A, §16 (NEW).]

C. The department shall disregard from income and exclude as an asset nonrecurring lump sum income used within 30 days of receipt or money withdrawn from an account established pursuant to paragraph B, subparagraph (1) or (6), if it is used for the purposes stated in paragraph B, subparagraphs (2) to (6) or to meet the following needs:

(1) Health care costs of a household member that are medically necessary and that are not covered by public or private insurance;

(2) To address an emergency that may cause the loss of shelter, employment or other basic necessities; or

(3) To address other essential family needs approved by the department. [1997, c. 530, Pt. A, §16 (NEW).]

D. Nonrecurring lump sum income in excess of the asset limit established in the TANF program that is used for purposes other than those enumerated in paragraphs B or C and nonrecurring lump sum income in excess of $10,000 plus that asset limit must be counted as income and cause the household to be disqualified from receiving TANF assistance under this chapter. The household is disqualified for a period of months calculated by dividing the income countable under this paragraph by the standard of need established by the department for the household. [1997, c. 530, Pt. A, §16 (NEW).]

[1997, c. 530, Pt. A, §16 (NEW) .]

12. **Information about and application for Parents as Scholars.** When there are fewer than 2000 enrollees in the Parents as Scholars Program under chapter 1054-B, the department shall inform all persons applying for TANF assistance and all recipients reviewing or requesting to amend their participation in the program of the Parents as Scholars Program and shall offer them the opportunity to apply for the program.

[1997, c. 530, Pt. A, §16 (NEW) .]

13. **Reports to Legislature.** The department shall provide information annually to the joint standing committee of the Legislature having jurisdiction over health and human services matters in order to allow the Legislature to evaluate the TANF program. Such information must include but is not limited to the number of TANF households and family members, a comparison of TANF eligibility levels with the federal poverty level, the number of TANF participants in training, education and work activity components and the rates at which individuals who have found employment through ASPIRE-TANF return to the TANF program. The

information must include a summary of any federal laws enacted in the previous fiscal year that may require changes in the ASPIRE-TANF program. The information of the federal law changes must include a summary of any potential positive or negative impact on the TANF program and the ASPIRE-TANF program.

[2007, c. 282, §1 (AMD) .]

14. **Notification to Legislature.** The department shall notify the joint standing committee of the Legislature having jurisdiction over health and human services matters of any request for waivers from the United States Department of Health and Human Services or any other federal agency concerning the implementation of chapters 1053-A, 1054, 1054-A and 1054-B.

[1997, c. 530, Pt. A, §16 (NEW) .]

15. **Conditions of continued assistance.**

[2011, c. 380, Pt. PP, §1 (RP) .]

16. **Authorization of fund transfer.** Notwithstanding any provision of law to the contrary, the department is authorized to transfer to the TANF account any funds available in the ASPIRE-TANF account necessary to meet the purposes of TANF, including the purposes established in subsection 3, paragraph B.

[2001, c. 338, §4 (NEW) .]

17. **Prohibition against denial of assistance based on drug conviction.** A person who is otherwise eligible to receive TANF may not be denied assistance because the person has been convicted of a drug-related felony as described in Section 115 of PRWORA.

[2001, c. 598, §2 (NEW) .]

18. **Lifetime limit on assistance.** Beginning January 1, 2012, a family may not receive TANF assistance for longer than 60 months except in those cases in which the department has determined that the family qualifies for an exemption or extension under rules adopted by the department. When an adult has received TANF assistance for 60 months, unless the adult has been exempted or granted an extension by the department, the family unit in which the adult is a member is ineligible for assistance. The department shall consider conditions or situations beyond the control of the adult recipient, including but not limited to a physical or mental condition that prevents the adult from obtaining or retaining gainful employment, being a victim of domestic violence, participating in good standing in an approved education program or a program that is expected to lead to gainful employment, being the caretaker relative in the household who is not the parent of the child or children in the assistance unit and who is required to remain at home to care for a dependent in the assistance unit and loss of employment by the adult following termination of TANF under this subsection.

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

(Subsection 18 as enacted by PL 2011, c. 380, Pt. LL, §1 is REALLOCATED TO TITLE 22, SECTION 3762, SUBSECTION 20)

[2011, c. 380, Pt. PP, §2 (NEW) .]

19. **Pretermination notice process.** No later than 120 days prior to the end of a family's 60th month of receiving assistance, the department shall offer the adult recipient an opportunity to hold a meeting to review the family's case and:

A. Explain the exemption and extension criteria established in subsection 18 to the family and determine if those criteria apply to the family; and [2011, c. 380, Pt. PP, §2 (NEW).]

B. Explain that any determination made pursuant to this subsection may be appealed in accordance with the hearing process established in subsection 9, paragraph B. [2011, c. 380, Pt. PP, §2 (NEW).]

For a family whose assistance is to be terminated, a supervisory review by the department is required. The review must include but is not limited to an evaluation of the need for additional information to determine if cause for an exemption or extension exists. If the conclusion of the evaluation determines additional vocational, health, mental health or other information is necessary, the department shall work in collaboration with the adult recipient in the development of the information prior to the determination of status or termination.

For a family whose assistance is to be terminated pursuant to this subsection, the department shall provide information to the family regarding any other resources that may be available to help meet that family's basic needs.

[2011, c. 380, Pt. PP, §2 (NEW) .]

20. (REALLOCATED FROM T. 22, §3762, sub-§18) **Denial of assistance based on positive drug test.** A recipient of TANF assistance may be denied TANF assistance as described in this subsection.

A. The department may administer a drug test to a recipient of TANF assistance who has been convicted of a drug-related felony, as described in Section 115 of PRWORA, within 20 years of that person's date of conviction. [2011, c. 1, §33 (RAL).]

B. If a person under paragraph A tests positive for an illegal drug, the department shall notify that person that:

(1) The person's TANF assistance is subject to termination;

(2) The person is entitled to a fair hearing regarding the termination of TANF assistance; and

(3) If the person requests a fair hearing, the person shall submit to a 2nd drug test to verify the results of the first drug test. [2011, c. 1, §33 (RAL).]

C. The results of the 2nd drug test must be available prior to the fair hearing, if practicable. The person shall cooperate in a timely manner in submitting to the 2nd drug test. If the 2nd drug test confirms that the person is using an illegal drug, the person may avoid termination of TANF assistance by enrolling in a substance abuse treatment program appropriate to the type of illegal drug being used by that person. [2011, c. 1, §33 (RAL).]

D. If the department determines that, for good cause, a person is unable to enroll in a substance abuse program as required by paragraph C, the person remains eligible for TANF assistance until such time that the department determines that the person is able to enroll in a substance abuse treatment program. [2011, c. 1, §33 (RAL).]

E. The department shall terminate TANF assistance to a person who fails to request a fair hearing and submit to a 2nd drug test as described in paragraph B or who fails to participate in a substance abuse treatment program as required pursuant to paragraph C or D. [2011, c. 1, §33 (RAL).]

The department shall adopt routine technical rules, as defined in Title 5, chapter 375, subchapter 2-A, to implement the provisions of this subsection, including determining what constitutes "good cause" under paragraph D.

[2011, c. 1, §33 (RAL) .]

SECTION HISTORY
1997, c. 530, §A16 (NEW). 1997, c. 695, §1 (AMD). 1997, c. 795, §7 (AMD). 1999, c. 383, §1 (AMD). 1999, c. 401, §S3 (AMD). 1999, c. 731, §OO2 (AMD). 2001, c. 338, §§1-4 (AMD). 2001, c. 354, §3 (AMD). 2001, c. 598, §2 (AMD). 2003, c. 20, §OO2 (AMD). 2003, c. 20, §OO4 (AFF).

2005, c. 397, §§A23,C14 (AMD). 2007, c. 282, §1 (AMD). 2007, c. 539, Pt. XX, §§1, 2 (AMD). 2009, c. 291, §§4-6 (AMD). RR 2011, c. 1, §33 (COR). 2011, c. 380, Pt. KK, §4 (AMD). 2011, c. 380, Pt. LL, §1 (AMD). 2011, c. 380, Pt. PP, §§1, 2 (AMD). 2011, c. 655, Pt. S, §§1, 2 (AMD). 2013, c. 97, §1 (AMD). 2013, c. 368, Pt. OO, §3 (AMD). 2013, c. 368, Pt. UUU, §1 (AMD). 2013, c. 368, Pt. UUU, §2 (AFF). 2015, c. 267, Pt. RRRR, §§2, 3 (AMD).

§3763. PROGRAM REQUIREMENTS

1. **Family contract.** During the TANF orientation process, a representative of the department and the TANF recipient shall enter into a family contract. The family contract must state the responsibilities of the parties to the agreement including, but not limited to, cooperation in child support enforcement and determination of paternity, the requirements of the ASPIRE-TANF program and referral to parenting activities and health care services. Except as provided in section 3762, subsection 4, refusal to sign the family contract or to abide by the provisions of the contract, except for referral to parenting activities and health care services, will result in termination of benefits under subsection 1-A. Failure to comply with referrals to parenting activities or health care services without good cause will result in a review and evaluation of the reason for noncompliance by the representative of the department and may result in sanctions. Written copies of the family contract and a notice of the right to a fair hearing must be given to the individual. The family contract must be amended in accordance with section 3788 when a participant enters the ASPIRE-TANF program and when participation review occurs.

Benefits that have been terminated under subsection 1-A must be restored once the adult recipient signs a new family contract and complies with its provisions.

[2013, c. 588, Pt. D, §4 (AMD) .]

1-A. **Partial and full termination of benefits.** Benefits under this chapter must be terminated by the department under the provisions of subsection 1 and sections 3785 and 3785-A as follows:

A. For a first failure to meet the conditions of a family contract, termination of benefits applies to the adult recipient; [2011, c. 380, Pt. PP, §4 (NEW).]

B. For a first failure to meet the conditions of a family contract for which termination of benefits under paragraph A lasts for longer than 90 days and for a 2nd and subsequent violation, termination of benefits applies to the adult recipient and the full family unit; and [2011, c. 380, Pt. PP, §4 (NEW).]

C. Prior to the implementation of a full family unit sanction, the department shall offer the adult recipient an opportunity to claim good cause for noncompliance as described in section 3785. [2011, c. 380, Pt. PP, §4 (NEW).]

Benefits that have been terminated under this subsection must be restored once the adult recipient signs a new contract under subsection 1 and complies with the provisions of the family contract.

[2011, c. 380, Pt. PP, §4 (NEW) .]

2. **Participation.** A recipient of TANF shall participate in an education, training or employment program pursuant to this chapter unless exempt under paragraph A, B or C. The following individuals are exempt:

A. A recipient who is the single custodial parent or a caretaker relative of a child under one year of age and is personally providing care for that child. This exemption is limited to no more than 12 months per single custodial parent or caretaker relative; [1997, c. 530, Pt. A, §16 (NEW).]

B. A recipient who is not a parent or a caretaker relative; and [1997, c. 530, Pt. A, §16 (NEW).]

C. A recipient who is a VISTA volunteer under the federal Domestic Volunteer Service Act of 1973. [1997, c. 530, Pt. A, §16 (NEW).]

[1997, c. 530, Pt. A, §16 (NEW) .]

3. **Custodial parents not yet 20 years of age.** A custodial parent under 20 years of age who is a recipient of TANF and has not completed high school or its equivalent shall participate in the ASPIRE-TANF program regardless of the age of the youngest child and attend courses to complete high school, with an emphasis on education in a traditional high school setting.

[1997, c. 530, Pt. A, §16 (NEW) .]

4. **Households headed by minor parents.** The following requirements apply to a custodial parent who is under 18 years of age and is not married:

A. The family must reside in the household of a parent, legal guardian or other adult relative of that minor parent or in an adult-supervised supportive living arrangement unless:

(1) The minor parent does not have a living parent or legal guardian whose whereabouts are known;

(2) A living parent or legal guardian of the minor parent does not allow the minor parent to live in the parent's or guardian's home;

(3) The minor parent lived apart from the minor's own parent or legal guardian for a period of at least one year before the birth of the dependent child or the minor parent's application for TANF;

(4) The physical or emotional health or safety of the minor parent or dependent child would be jeopardized if that minor parent or dependent child resided in the same residence with the minor parent's parent or legal guardian; or

(5) There exists other good cause, as defined by rule adopted by the department; and [1997, c. 530, Pt. A, §16 (NEW).]

B. TANF benefits must be distributed in the form of vouchers. [1997, c. 530, Pt. A, §16 (NEW).]

[1997, c. 530, Pt. A, §16 (NEW) .]

5. **Home visit.** The department may implement a home visit program in which a representative of the department may visit the homes of all applicants for and recipients of TANF for the following purposes:

A. To review the family contract; [1997, c. 530, Pt. A, §16 (NEW).]

B. To reinforce the reporting responsibilities of the family, including child support enforcement; [1997, c. 530, Pt. A, §16 (NEW).]

C. To verify information provided at the time of application, including checking social security numbers; and [1997, c. 530, Pt. A, §16 (NEW).]

D. To request and receive any additional information. [1997, c. 530, Pt. A, §16 (NEW).]

[1997, c. 530, Pt. A, §16 (NEW) .]

6. **Substantiation of eligibility.** The department may appropriately substantiate the facts supporting eligibility stated in any application for TANF assistance. The department shall adopt rules for substantiating relevant facts. The rules must provide for assisting the applicant in obtaining substantiating information when necessary.

[1997, c. 530, Pt. A, §16 (NEW) .]

7. **Earned income tax credit.** The department shall advise applicants and recipients of Temporary Assistance for Needy Families regarding the federal earned income tax credit, including the opportunity to receive it as an advanced payment.

[1997, c. 530, Pt. A, §16 (NEW) .]

8. **Alternative aid.** The department shall provide alternative aid to applicants who seek short-term assistance in order to obtain or retain employment. The applicants must meet the eligibility requirements established by rule adopted pursuant to section 3762, subsection 3, paragraph A. The alternative aid may not exceed 3 times the value of the monthly TANF grant for which the applicant's family is eligible. An eligible applicant may receive alternative aid no more than once during any 12-month period. If the family reapplies for TANF within 3 months of receiving alternative aid, the family shall repay any alternative aid received in excess of the amount that the family would have received on TANF. The method of repayment must be the same as that used for the repayment of unintentional overpayments in the TANF program.

[2005, c. 522, §1 (AMD) .]

9. **Emergency assistance.** The department shall establish and operate a program of emergency assistance to needy families with children. This program must provide benefits to needy families with children in emergency situations in which the family is deprived of the basic necessities essential to its support, including but not limited to, fire and other natural disasters, terminations of utility service or lack of adequate shelter.

A. In determining what constitutes an emergency with respect to utility terminations, the department shall grant assistance when an otherwise qualified family has received a disconnection notice and has exhausted their ability to negotiate and pay the terms of a reasonable payment arrangement. [1997, c. 530, Pt. A, §16 (NEW).]

B. The program may not be used to supplant local responsibility for operating or funding a general assistance program. [1997, c. 530, Pt. A, §16 (NEW).]

C. The department may not expend more than $750,000 annually of state general assistance funds for the purposes of covering the cost of services set out in this subsection. [1997, c. 530, Pt. A, §16 (NEW).]

[1997, c. 530, Pt. A, §16 (NEW) .]

10. **Home survival skills.** The department shall provide and may contract with public and private nonprofit agencies to provide instruction and experiential education for TANF recipients in nutrition, food preparation and home and money management.

[1997, c. 530, Pt. A, §16 (NEW) .]

11. **Restrictions on use of electronic benefits transfer system.** A recipient of benefits under this chapter may not expend those benefits using the electronic benefits transfer system established in section 22 for the purchase of the following:

A. Tobacco products, as defined in section 1551, subsection 3; [2015, c. 484, §1 (NEW).]

B. Imitation liquor or liquor, as defined in Title 28-A, section 2, subsections 13 and 16, respectively; [2015, c. 484, §1 (NEW).]

C. Gambling activity, as defined in Title 8, section 1001, subsection 15; [2015, c. 484, §1 (NEW).]

D. Lotteries conducted by the State pursuant to Title 8, chapter 14-A or the Tri-State Lotto Commission pursuant to Title 8, chapter 16; [2015, c. 484, §1 (NEW).]

E. Bail, as defined by Title 15, section 1003, subsection 1; [2015, c. 484, §1 (NEW).]

F. Firearms or ammunition; [2015, c. 484, §1 (NEW).]

G. Vacation or travel services; [2015, c. 484, §1 (NEW).]

H. Publications, services or entertainment that contain or promote obscene matter. For purposes of this paragraph, "obscene matter" has the same meaning as in Title 17, section 2911, subsection 1, paragraph D; or [2015, c. 484, §1 (NEW).]

I. Tattoos, as defined by Title 32, section 4201, or body art. [2015, c. 484, §1 (NEW).]

A person who violates this subsection is subject to those penalties specified in subsection 12.

[2015, c. 484, §1 (NEW) .]

12. **Penalties.** When the department determines based on clear and convincing documentary evidence that a recipient of benefits under this chapter has knowingly purchased a product or service in violation of subsection 11, that recipient is deemed to have received an overpayment in the amount of the prohibited purchase, which may be recovered by the department pursuant to chapter 1055-A. The recipient is also subject to the following additional penalties:

A. For the 1st offense, the recipient may be disqualified from receiving benefits under this chapter for a period that does not exceed 3 months; [2015, c. 484, §1 (NEW).]

B. For the 2nd offense, the recipient may be disqualified from receiving benefits under this chapter for a period that does not exceed 12 months; and [2015, c. 484, §1 (NEW).]

C. For the 3rd and subsequent offenses, the recipient may be disqualified from receiving benefits under this chapter for a period that does not exceed 24 months. [2015, c. 484, §1 (NEW).]

The department shall initiate an administrative hearing for a recipient of benefits who the department has determined has violated subsection 11. The notice and hearing must be conducted consistent with the department rules governing notice and hearing required for an intentional program violation.

[2015, c. 484, §1 (NEW) .]

SECTION HISTORY
1997, c. 530, §A16 (NEW). 2005, c. 522, §1 (AMD). 2011, c. 380, Pt. PP, §§3, 4 (AMD). 2013, c. 588, Pt. D, §4 (AMD). 2015, c. 484, §1 (AMD).

§3764. FEDERAL GRANTS

The Treasurer of State is the appropriate fiscal officer of the State to receive federal grants on account of the TANF program and administration of those grants, in accordance with the United States Social Security Act, and the State Controller shall authorize expenditures as approved by the department. [1997, c. 530, Pt. A, §16 (NEW).]

SECTION HISTORY
1997, c. 530, §A16 (NEW).

§3765. PAYMENTS TO GUARDIAN OR CONSERVATOR

When a relative with whom a child is living is found by the department to be incapable of taking care of the child's money, payment may be made only to a legally appointed guardian or conservator and, notwithstanding Title 18-A, Article V, Part 4, in the matter of infirmities of age or physical disability to manage the child's estate with prudence and understanding, the Probate Court may appoint any suitable person as a conservator. [1997, c. 530, Pt. A, §16 (NEW).]

SECTION HISTORY
1997, c. 530, §A16 (NEW).

§3766. INALIENABILITY OF ASSISTANCE

All rights to public assistance are absolutely inalienable by any assignment, sale, execution, pledge or otherwise and may not pass, in case of insolvency or bankruptcy, to any trustee, assignee or creditor. [1997, c. 530, Pt. A, §16 (NEW).]

SECTION HISTORY
1997, c. 530, §A16 (NEW).

§3767. PARENTAL RESPONSIBILITY

The parents of a child receiving assistance under this chapter are responsible for partial or total support of that child, if they are of sufficient ability. In determining the ability of the parents, the department must consider the assets and income of the parent. [1997, c. 530, Pt. A, §16 (NEW).]

The department may bring proceedings in the District Court or Superior Court in the county where the child resides or in the county where the parent may be found to compel any person liable under this section to contribute to the support of any child receiving that assistance if, after reasonable efforts on the part of the department, voluntary contributions have not been made. The department shall bring the action as a petition for support upon not less than 7 days' notice. The court may order either one or both parents of the child to contribute to the support of the child by paying money weekly or monthly as determined in accordance with Title 19, chapter 7, subchapter I-A and Title 19-A, chapter 63 and may enforce obedience by appropriate decrees, execution issuing for that money when payable. An order for child support under this section may include an order for the payment of part or all of the medical expenses, hospital expenses and other health care expenses of the child or an order to provide a policy or contract for coverage of those expenses. When a parent is committed to jail as a defendant on execution under this section, the county having jurisdiction of the process shall bear the expense of the defendant's commitment and support. The defendant may petition the court issuing that execution for relief and the judge of the court, after due notice to the department and hearing on the petition, may order the defendant's discharge from imprisonment on the terms and conditions justice requires. [1997, c. 530, Pt. A, §16 (NEW).]

SECTION HISTORY
1997, c. 530, §A16 (NEW).

§3768. FRAUD IN OBTAINING AID, CIVIL RECOVERY

Any sums paid to or in behalf of any person under sections 3762 to 3765, as a result of any false statement, misrepresentation or concealment of assets or income, may be recovered in a civil action brought by the department against the person to whom such money was paid. [1997, c. 530, Pt. A, §16 (NEW).]

SECTION HISTORY
1997, c. 530, §A16 (NEW).

§3769. DISBURSEMENTS

1. **Payment priority.** Payments made on behalf of the department for TANF assistance, the Parents as Scholars Program under chapter 1054-B and for foster care have priority over other payments and must be made without delay whether or not they are pursuant to a state plan or contract. The department shall cooperate with other state agencies to accomplish priority payments.

[1997, c. 530, Pt. A, §16 (NEW) .]

2. **Transfer of funds.**

[2007, c. 282, §2 (RP) .]

3. **Balances of funds not to lapse.** Any balances of funds appropriated for TANF or ASPIRE-TANF may not lapse but must be carried forward from year to year to be expended for the same purposes.

[2009, c. 571, Pt. XX, §1 (NEW) .]

SECTION HISTORY
1997, c. 530, §A16 (NEW). 2007, c. 282, §2 (AMD). 2009, c. 571, Pt. XX, §1 (AMD).

§3769-A. RULEMAKING

The department shall adopt rules to implement this chapter. Except as specifically provided, rules adopted pursuant to this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [1997, c. 530, Pt. A, §16 (NEW).]

SECTION HISTORY
1997, c. 530, §A16 (NEW).

§3769-B. ASSISTANCE IN MEETING BASIC NEEDS

Beginning July 1, 1998 and ending June 30, 1999, the department shall increase the maximum amount of TANF assistance by an amount equal to 5% of the maximum payments that were in effect on January 1, 1998 and shall increase the standard of need to maintain the same differential between the maximum payment and the standard of need that was in effect on January 1, 1998. [1999, c. 401, Pt. S, §4 (AMD).]

Beginning July 1, 1999, the department shall increase the maximum amount of TANF assistance by an amount equal to 5% of the maximum payments that were in effect on July 1, 1998 for assistance units with no earned income disregard and shall increase the standard of need to maintain the same differential between the maximum payment and the standard of need that was in effect on January 1, 1998. [1999, c. 401, Pt. S, §4 (NEW).]

1. **Limitation.**

[1999, c. 401, Pt. S, §4 (RP) .]

2. **Determination of eligibility.** In determining eligibility for TANF benefits for applicants after July 1, 1998, the department shall use the gross income pretest in effect on January 1, 1998.

[1997, c. 643, Pt. VV, §1 (NEW) .]

3. **Coordination with special housing allowance.**

[1999, c. 401, Pt. S, §4 (RP) .]

SECTION HISTORY
1997, c. 643, §VV1 (NEW). 1999, c. 401, §S4 (AMD).

§3769-C. ADJUSTMENT TO AMOUNT OF ASSISTANCE; REPORT

1. **Amount of assistance.** It is the goal of this section to provide low-income families with children sufficient income to meet their most basic needs. If the commissioner determines that unexpended funds are available within the Department of Health and Human Services ASPIRE or TANF accounts, the commissioner may, by rule, use those funds to increase the maximum levels of assistance in the TANF Program.

A. Beginning October 1, 2001, the department shall use unexpended funds in the TANF program to increase the maximum amount of TANF assistance by an amount equal to 5% of the maximum payments that were in effect on January 1, 2001, and shall increase the standard of need to maintain the same differential between the maximum payment and the standard of need that was in effect on January 1, 2001. Initial applicants for assistance may not become eligible for assistance as a result of any increase in the standard of need required by this paragraph. [2001, c. 439, Pt. CC, §1 (NEW).]

B. Beginning with the 2004-2005 fiscal biennium, the commissioner must continue the 5% benefit increase provided for in paragraph A in the department's current services budget request for the TANF block grant. [2001, c. 439, Pt. CC, §1 (NEW).]

[2001, c. 439, Pt. CC, §1 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

2. **Report required.**

[2009, c. 291, §7 (RP) .]

SECTION HISTORY
1999, c. 461, §1 (NEW). 2001, c. 439, §CC1 (AMD). 2003, c. 689, §B6 (REV). 2009, c. 291, §7 (AMD).

§3769-D. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT; FAMILY DEVELOPMENT ACCOUNTS

In fiscal year 2016-17 and annually thereafter, the Department of Health and Human Services may use $500,000 in funds provided under the Temporary Assistance for Needy Families block grant to promote financial literacy and healthy savings habits of families with income less than 200% of the federal poverty guidelines through the placement of funds in family development accounts established pursuant to Title 10, chapter 110, subchapter 4-A. [2015, c. 267, Pt. RRRR, §4 (NEW).]

SECTION HISTORY
2015, c. 267, Pt. RRRR, §4 (NEW).

Chapter 1054: THE JOB OPPORTUNITIES ACT OF 1981

§3771. POLICY AND INTENT

It is the policy of the State to use available resources and institutions to provide education, training and job opportunities to qualified and eligible recipients of the Temporary Assistance for Needy Families Program with the goal of enabling them to become self-sufficient and to eliminate their dependency on public assistance. [1981, c. 512, §16 (NEW); 1997, c. 530, Pt. A, §34 (AMD).]

It is the intent of this chapter to commit these resources and institutions to this goal, and to provide for effective coordination that can result in recipients of Temporary Assistance for Needy Families becoming self-sufficient. [1981, c. 512, §16 (NEW); 1997, c. 530, Pt. A, §34 (AMD).]

SECTION HISTORY

1981, c. 512, §16 (NEW). 1997, c. 530, §A34 (AMD).

§3772. DEFINITIONS

(REPEALED)

SECTION HISTORY
1981, c. 512, §16 (NEW). 1981, c. 617, §§1,2 (AMD). 1983, c. 730, §4 (AMD). 1989, c. 501, §Y1 (AMD). 1993, c. 360, §C3 (AMD). 1995, c. 418, §A21 (RP).

§3773. MAINE AID TO FAMILIES WITH DEPENDENT CHILDREN COORDINATING COMMITTEE

(REPEALED)

SECTION HISTORY
1981, c. 168, §§24,25 (AMD). 1981, c. 512, §16 (NEW). 1983, c. 730, §5 (RPR). 1983, c. 812, §§128,129 (AMD). 1985, c. 737, §§A54-56 (AMD). 1987, c. 856, §4 (AMD). 1989, c. 503, §§B91,B92 (AMD). 1989, c. 700, §A84 (AMD). 1993, c. 360, §B2 (RP).

§3774. MAINE AID TO FAMILIES WITH DEPENDENT CHILDREN ADVISORY COUNCIL

(REPEALED)

SECTION HISTORY
1981, c. 168, §25 (AMD). 1981, c. 512, §16 (NEW). 1983, c. 730, §6 (AMD). 1983, c. 812, §130 (AMD). 1985, c. 737, §A57 (AMD). 1989, c. 700, §A85 (AMD). 1993, c. 360, §C4 (RPR). 1997, c. 530, §A17 (RP).

§3775. TRAINING, EDUCATION AND PLACEMENTS

(REPEALED)

SECTION HISTORY
1981, c. 512, §16 (NEW). 1985, c. 779, §63 (AMD). 1989, c. 443, §56 (AMD). 1989, c. 878, §A61 (AMD). 1995, c. 418, §A22 (RP).

§3776. WELFARE EMPLOYMENT, EDUCATION AND TRAINING PROGRAM

(REPEALED)

SECTION HISTORY
1981, c. 168, §24 (AMD). 1981, c. 512, §16 (NEW). 1981, c. 617, §§3-5 (AMD). 1983, c. 730, §7 (AMD). 1987, c. 856, §§5,6 (AMD). 1989, c. 700, §§A86-88 (AMD). 1995, c. 418, §A23 (RP).

§3777. AVAILABILITY OF FUNDS

Nothing in this chapter shall be construed to mean that any department, agency, institution or program shall be required to obligate or expend funds beyond existing funds available to them for these purposes. [1981, c. 512, §16 (NEW).]

SECTION HISTORY

1981, c. 512, §16 (NEW).

§3778. WORK INCENTIVE DEMONSTRATION PROGRAM

(REPEALED)

SECTION HISTORY
1981, c. 617, §6 (NEW). 1983, c. 730, §8 (AMD). 1995, c. 418, §A24 (RP).

Chapter 1054-A: ADDITIONAL SUPPORT FOR PEOPLE IN RETRAINING AND EDUCATION PROGRAM

§3781. ADDITIONAL SUPPORT FOR PEOPLE IN RETRAINING AND EDUCATION PROGRAM ESTABLISHED

(REPEALED)

SECTION HISTORY
1987, c. 856, §7 (NEW). 1989, c. 501, §Y2 (AMD). 1989, c. 839, §3 (AMD). 1991, c. 9, §§M3-5 (AMD). 1991, c. 528, §§F10,11 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §§F10,11 (AMD). 1991, c. 622, §M19 (AMD). 1993, c. 385, §15 (RP).

§3781-A. ADDITIONAL SUPPORT FOR PEOPLE IN RETRAINING AND EMPLOYMENT-TEMPORARY ASSISTANCE FOR NEEDY FAMILIES ESTABLISHED

1. **ASPIRE-TANF program defined.** "ASPIRE-TANF program" means the Additional Support for People in Retraining and Employment - Temporary Assistance for Needy Families program established pursuant to this chapter and the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. "TANF" means the program created in chapter 1053-B.

[1997, c. 530, Pt. A, §18 (AMD) .]

2. **Administration.** The ASPIRE-TANF program is established. The department shall administer the program.

[1997, c. 530, Pt. A, §18 (AMD) .]

3. **Purpose.** The purpose of this program is to provide services and support to recipients of Temporary Assistance for Needy Families and to reduce dependence on public assistance to the extent that adequate funding is available for that purpose. The principal goal is to focus on helping people obtain and retain employment that sustains their families.

[1997, c. 530, Pt. A, §18 (AMD) .]

4. **Limitation or reduction of services when resources inadequate.** The department shall adopt rules in accordance with the Maine Administrative Procedure Act that include methods for limiting or reducing services when adequate resources are not available.

[1993, c. 385, §16 (NEW) .]

SECTION HISTORY
1993, c. 385, §16 (NEW). 1995, c. 418, §A25 (AMD). 1997, c. 530, §A18 (AMD).

§3782. PROGRAM

(REPEALED)

SECTION HISTORY
1987, c. 856, §7 (NEW). 1989, c. 443, §57 (AMD). 1989, c. 501, §Y3 (AMD). 1991, c. 9, §M6 (RP).

§3782-A. ASPIRE-TANF PROGRAM

1. **Case management services.** The department shall provide case management services to individuals participating in the ASPIRE-TANF program, referred to in this section as the "program." The department shall adopt rules in accordance with the Maine Administrative Procedure Act defining or describing those services.

[1997, c. 530, Pt. A, §19 (AMD) .]

2. **Purchase of services.** The department may contract with public and private agencies and individuals to deliver employment, training and other services for program participants consistent with the purposes of the program.

Program funds may not be used to purchase services from an agency under this subsection that are available on a nonreimbursable basis, if those nonreimbursable services meet the needs of a program participant.

[1993, c. 385, §17 (RPR) .]

3. **Monitoring of contract agencies.** If the department contracts for the provision of program services under this section, it shall monitor each contract agency at least annually to ensure compliance with sections 3786 and 3788 to ensure compliance with the contracts entered into by the parties and to ensure that quality services are provided for program participants. The department shall adopt rules in accordance with the Maine Administrative Procedure Act by which satisfactory performance is measured. The rules must identify the circumstances under which sanctions, including contract suspension, reduction or termination, are applied.

[1993, c. 385, §17 (RPR) .]

4. **Rural access.** The department shall adopt rules in accordance with the Maine Administrative Procedure Act to provide access to Additional Support for People in Retraining and Employment - Temporary Assistance for Needy Families program services for recipients of Temporary Assistance for Needy Families living in rural areas. Services must be provided on an equitable basis throughout the State. Access to these services may be reasonably limited by the department due to factors such as availability of staff and funding. The rules adopted by the department must include, in addition to other methods necessary to achieve this goal, adequate provisions for itinerant service stationing.

[1997, c. 530, Pt. A, §19 (AMD) .]

5. **Child care during participation in employment, education and training.** The department shall provide child care in accordance with federal law and this Title when the child care is necessary to permit a TANF-eligible family member to participate in the ASPIRE-TANF program.

The department shall provide an ASPIRE-TANF program participant's actual cost for child care up to the maximum rate authorized by federal law. In determining the maximum rate, the State shall use a method that results in an amount that equals, or most closely approaches, the actual market rate in different regions of the State for various types of child care services received by families in the State participating in the ASPIRE-TANF program.

[1997, c. 530, Pt. A, §19 (NEW) .]

6. **Rulemaking.** The department shall adopt rules to implement this subsection. Except as specifically provided, rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[1997, c. 530, Pt. A, §19 (NEW) .]

SECTION HISTORY
1991, c. 9, §M7 (NEW). 1993, c. 385, §17 (RPR). 1995, c. 418, §A26 (AMD). 1997, c. 530, §A19 (AMD).

§3783. TRANSITIONAL SUPPORT SERVICES

(REPEALED)

SECTION HISTORY
1987, c. 856, §7 (NEW). 1989, c. 839, §§4,15 (RP).

§3784. MEDICAL ASSISTANCE PROGRAM

(REPEALED)

SECTION HISTORY
1987, c. 856, §7 (NEW). 1989, c. 501, §§P27,Y4 (AMD). 1989, c. 839, §§5,15 (AMD).

§3785. SANCTIONS

An individual may not be sanctioned under this program or Temporary Assistance for Needy Families for failure to participate in the ASPIRE-TANF program if that failure to participate is based on good cause. Each individual participating in an ASPIRE-TANF orientation must receive written and oral notice of what constitutes good cause for nonparticipation in ASPIRE-TANF including the domestic violence exception. Good cause for failure to participate in this program must be found when there is reasonable and verifiable evidence of: [1997, c. 530, Pt. A, §20 (AMD).]

1. **Illness or incapacitation.** The individual's illness, incapacity or advanced age, or the illness or incapacity of a household member, that requires the individual to provide care in the home;

[1993, c. 385, §18 (AMD) .]

2. **Sexual harassment.** Sexual harassment at a program-approved component;

[1993, c. 385, §18 (AMD) .]

3. **Court-required appearance; incarceration.** Court-required appearance or incarceration;

[1987, c. 856, §7 (NEW) .]

4. **Lack of supportive services.** Lack or breakdown of necessary supportive services such as child care or transportation with no appropriate alternatives available;

[1993, c. 385, §18 (AMD) .]

5. **Inclement weather.** Inclement weather that prevents the individual from traveling to an activity when the weather is severe enough to prevent other individuals from traveling to the same activity;

[1993, c. 385, §18 (AMD) .]

6. **Assignment to another activity.** Assignment by the department to an activity or component that has not been made part of the family contract;

[1997, c. 530, Pt. A, §21 (AMD) .]

7. **Remoteness.** Participation that requires the individual to travel outside the individual's immediate geographic area, defined as an area within a 2-hour round trip commute;

[1993, c. 385, §18 (AMD) .]

8. **Crisis or special circumstance.** A crisis or special circumstance that causes an individual to be absent from or discontinue a department activity about which the department has been advised and has determined to constitute good cause;

[1997, c. 530, Pt. A, §22 (AMD) .]

9. **Good cause.**

[1989, c. 839, §8 (RP) .]

10. **Caretakers of children under 6 years of age.**

[1995, c. 418, Pt. A, §28 (RP) .]

11. **Net loss of cash income.**

[1995, c. 418, Pt. A, §28 (RP) .]

12. **Other good cause.** Any other reason resulting in failure to participate that is beyond the control of the individual or that a reasonable person would determine to be good cause; or

[1997, c. 530, Pt. A, §23 (AMD) .]

13. **Domestic violence.** Inability to participate due to domestic violence when the individual is unable to participate because of physical injuries or the psychological effects of abuse; because of legal proceedings, counseling or other activities related to abuse; because the abuser actively interferes with the individual's participation; because the location puts the individual at risk; or for other good cause related to domestic violence. For the purposes of this subsection, reasonable and verifiable evidence may include but is not limited to the following:

A. Court, medical, law enforcement, child protective, social services, psychological or other records that establish that the individual has been a victim of domestic violence; or [1997, c. 530, Pt. A, §24 (NEW).]

B. Sworn statements from persons other than the individual with knowledge of the circumstances affecting the individual. [1997, c. 530, Pt. A, §24 (NEW).]

[1997, c. 530, Pt. A, §24 (NEW) .]

SECTION HISTORY
1987, c. 856, §7 (NEW). 1989, c. 839, §§6-9 (AMD). 1991, c. 528, §F12 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §F12 (AMD). 1993, c. 385, §18 (AMD). 1995, c. 418, §§A27,28 (AMD). 1997, c. 530, §§A20-24 (AMD).

§3785-A. SANCTION PROCESS

Prior to imposing a sanction against an individual, the department must complete the sanction process, which includes the following. [2001, c. 335, §1 (NEW).]

1. **Procedures.** Prior to imposing a sanction against an individual for failure to comply with Temporary Assistance for Needy Families or ASPIRE-TANF rules, the department shall:

A. Thoroughly review the circumstances of the individual; [2001, c. 335, §1 (NEW).]

B. Provide the individual with a notice that states the basis for the sanction and a complete list of good cause reasons as set forth in section 3785; [2001, c. 335, §1 (NEW).]

C. Provide the individual with an opportunity to inform the department of good cause circumstances under section 3785; and [2001, c. 335, §1 (NEW).]

D. Obtain supervisory approval of the recommendation of the case manager to impose a sanction. [2001, c. 335, §1 (NEW).]

[2001, c. 335, §1 (NEW) .]

2. **Information and report.** The department shall maintain the following data, compiled and maintained by county and by calendar month, regarding the imposition of sanctions:

A. The number of sanctions recommended by case managers to supervisors; and [2001, c. 335, §1 (NEW).]

B. The number of sanctions denied or approved and imposed by the department. [2001, c. 335, §1 (NEW).]

[2001, c. 335, §1 (NEW) .]

3. **Rulemaking.** The department shall adopt rules to implement the sanction procedures required by this section. Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter II-A.

[2001, c. 335, §1 (NEW) .]

SECTION HISTORY
2001, c. 335, §1 (NEW).

§3786. RULES

The department shall adopt rules in accordance with the Maine Administrative Procedure Act for the implementation of this chapter. [1993, c. 385, §19 (AMD).]

Rules governing services provided under this chapter apply equally to all participating Temporary Assistance for Needy Families recipients, whether those services are provided by the department or any other agency, organization or individual providing TANF program services to participants. [1997, c. 530, Pt. A, §25 (AMD).]

SECTION HISTORY
1987, c. 856, §7 (NEW). 1991, c. 9, §M8 (AMD). 1993, c. 385, §19 (AMD). 1997, c. 530, §A25 (AMD).

§3787. AVAILABILITY OF FUNDS

Nothing in this chapter may be construed to mean that a department, agency, institution or program is required to obligate or expend funds beyond existing funds available to them for these purposes. [1993, c. 385, §20 (AMD).]

SECTION HISTORY
1987, c. 856, §7 (NEW). 1993, c. 385, §20 (AMD).

§3788. PROGRAM REQUIREMENTS

1. **Notice of program assistance.** The department shall provide written notice to all applicants for and recipients of the Temporary Assistance for Needy Families program of the range of education, employment and training opportunities, and the types of support services, including transitional support services and medical assistance, available under the ASPIRE-TANF program, together with a statement that all participants may apply for those opportunities and services.

[1997, c. 530, Pt. A, §26 (AMD) .]

1-A. **Information about and application for Parents as Scholars.** When there are fewer than 2,000 enrollees in the Parents as Scholars Program under chapter 1054-B, the department shall inform all persons applying for ASPIRE-TANF and all ASPIRE-TANF participants reviewing or requesting to amend their education, training or employment program under ASPIRE-TANF of the program and shall offer them the opportunity to apply for the program.

[1997, c. 530, Pt. A, §26 (NEW) .]

2. **Application; decision.** As part of the orientation process for ASPIRE-TANF, all participants must be given the opportunity to apply for any education, training and employment and support services at the office of the program serving the area in which the individual lives. At orientation, each participant shall receive a complete list of all support services and education, training and employment services available under the ASPIRE-TANF program so that the individual may identify the services that the individual considers necessary to participate in the program. A written copy of each amendment to the family contract must be given to the participant, together with a complete list of all support services and education, training and employment services available under the program and notice of the participant's right to request a conciliation meeting and a fair hearing. A participant may request an amendment to the participant's family contract at any time. If the participant's request is denied, the participant must be notified in writing of the reason for the denial and must be given notice of right to a fair hearing.

[1997, c. 530, Pt. A, §26 (AMD) .]

3. **Assessment.** Each participant's case manager shall conduct an initial assessment to determine that individual's education, training and employment needs based on available program resources, the participant's skills and aptitudes, the participant's need for supportive services, local employment opportunities, the existence of any good cause circumstances under section 3785 and, to the maximum extent possible, the preferences of the participant. The department shall document findings in the participant's case record indicating any barriers to participation, including, but not limited to, any physical or mental health problems, including learning disabilities or cognitive impairments, or other good cause circumstances specified in section 3785.

[2013, c. 376, §1 (AMD) .]

3-A. **Comprehensive screening and assessment.** If upon an initial screening or at a later date it is determined that a participant has physical or mental health impairments, learning disabilities, cognitive impairments or limitations related to providing care for a household member with a disability or serious illness or a child with a serious behavioral condition, the participant must be offered the opportunity for a comprehensive assessment that may result in referral for alternative services, supports and income benefits. If the participant chooses to have a comprehensive assessment, the participant must be referred to a qualified professional to identify the strengths and needs of and barriers faced by that participant. The participant's case manager shall ensure that any accommodation or support services necessary for the participant to participate in the assessment are made available to the participant. The participant may supplement this assessment with medical records or any other credible information related to the participant's ability to participate in program activities. An assessment under this subsection may also be initiated at the choice of the participant at any time. The individual performing this assessment shall recommend to the case manager any services, supports and programs needed to improve the economic self-sufficiency and well-being of the participant and the participant's family based on the assessment.

In coordination with the participant, the case manager shall establish a plan for the participant and the participant's family based on the assessment that includes appropriate services, supports and programs consistent with the findings and recommendations of the assessment that may include:

A. Referral to a community agency qualified to assist the participant with services, supports, education, training and accommodations needed to reduce or overcome any barriers to achieving self-sufficiency and to fulfill the participant's personal and family responsibilities; and [2013, c. 376, §2 (NEW).]

B. Assistance needed by the participant to obtain federal social security disability insurance benefits or federal supplemental security income benefits. [2013, c. 376, §2 (NEW).]

This subsection does not preclude a determination that the participant is temporarily unable to participate, including participation in any assessment pursuant to this subsection, due to good cause as described in section 3785. Any determination made under this subsection may be appealed in accordance with section 3762, subsection 9.

A participant who chooses to participate in a comprehensive assessment under this subsection and fails to participate without good cause may be sanctioned in accordance with section 3763, subsection 1-A, paragraph A regardless of any previous sanctions that the participant may have incurred.

The department shall provide training for case managers regarding their job responsibilities and their obligation to comply with the requirements of the federal Americans with Disabilities Act of 1990; the federal Rehabilitation Act of 1973; and the Maine Human Rights Act when interviewing and providing information to participants, when referring participants for alternative services or when considering whether the participant requires reasonable accommodations in order to participate in the ASPIRE-TANF program.

[2013, c. 376, §2 (NEW) .]

4. **Employability plan.**

[1997, c. 530, Pt. A, §26 (RP) .]

4-A. **Family contract amendment.** To the extent that sufficient funds, training sites and employment opportunities are reasonably available, the department and a participant in the program shall enter into an amended family contract that must include both the department's and the participant's activities and the support services necessary for the individual to participate in accordance with the assessment, the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 110 Stat. 2105 and the federal Deficit Reduction Act of 2005, Public Law 109-171, 120 Stat. 4.

[2009, c. 291, §8 (AMD) .]

5. **Provision of support services.** Payment for support services must be furnished promptly in accordance with rules adopted by the department to, or on behalf of, eligible individuals as agreed to in the family contract. The rules must provide for an expedited procedure for payment for support services when those services are immediately necessary to enable the participant to participate in an approved education, training or employment plan.

The support services required to participate in ASPIRE-TANF must be specified in the family contract and each participant must receive the support services prescribed in that contract, which may include respite care.

[1997, c. 530, Pt. A, §26 (AMD) .]

6. **Education, training and employment services.** The ASPIRE-TANF program must make available a broad range of education, training and employment services in accordance with section 3781-A, subsection 3 and the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 110 Stat. 2105 and the federal Deficit Reduction Act of 2005, Public Law 109-171, 120 Stat. 4. These services and activities must include all of those services and activities offered by the Additional Support for People in Retraining and Employment Program on October 1, 1989, except in 2-year and 4-year postsecondary education and except as provided in chapter 1054-B. This section does not prohibit the department from purchasing equivalent services from providers other than those from whom those services were purchased on October 1, 1989. When a particular approved education or training service is available at comparable quality and cost, including the cost of support services, and the implementation of the family contract would not be unreasonably delayed, the program participant may choose to enroll for that service with the provider of that person's preference. If this decision is not mutually agreed to by the participant and the case manager, the decision must be reviewed by the case manager's supervisor. These services do not include reimbursement for the cost of tuition or mandatory fees for postsecondary education unless:

A. The participant is unable to secure other educational funding needed to complete the participant's family contract due to:

(1) Poor credit as determined by the educational funding source; or

(2) The consideration by the educational funding source of resources from past years that are not actually available to the participant; [1997, c. 530, Pt. A, §26 (AMD).]

B. In the determination of the department, failure to pay the tuition or fee would result in higher ASPIRE-TANF program costs to achieve the participant's approved goal; or [1997, c. 530, Pt. A, §26 (AMD).]

C. The participant meets an exception specified in rules adopted by the department. [1993, c. 385, §21 (NEW).]

When a substantially similar postsecondary education or training program of comparable quality is available at both a public and private institution, within a reasonable commuting distance for the participant, the department may choose to approve the program offered at the public institution if the participant's program can be completed at less cost at the institution.

[2009, c. 291, §9 (AMD) .]

7. **Readability.**

[1995, c. 418, Pt. A, §32 (RP) .]

8. **Annual report.**

[1995, c. 418, Pt. A, §32 (RP) .]

9. **Rules.** The department shall adopt rules in accordance with the Maine Administrative Procedure Act to implement this section.

[1997, c. 530, Pt. A, §26 (AMD) .]

10. **Program design.** The department shall operate the ASPIRE-TANF program in accordance with the requirements of the federal Deficit Reduction Act of 2005, Public Law 109-171, 120 Stat. 4.

A. Individuals who are ready for jobs may participate in job search at any time. Up-front job search must focus on new recipients who are ready for jobs who are eligible for TANF based on underemployment of the primary wage earner and new single-parent recipients who are ready for jobs and whose children are 5 years of age or older. [1997, c. 530, Pt. A, §26 (AMD).]

B. Work evaluation consists of all activities related to orientation, assessment and initial family contract formulation. Work evaluation is limited to a maximum of 90 days, unless extended by the commissioner or the designee of the commissioner. If an ASPIRE-TANF participant is determined by the department to be job ready, the participant may access the workforce-MaineServe component directly from work evaluation. [1997, c. 530, Pt. A, §26 (AMD).]

C. Except for participants who are accepted into the Parents as Scholars Program established under section 3790, education, training and treatment is limited to a maximum of 24 months, starting with the first day of participation in any allowable and approved job skills or occupational skills training activity. The 24-month period may be extended by the commissioner or the designee of the commissioner for good cause shown.

The department may approve a job skills or occupational training activity longer than 24 months provided the participant agrees to perform a minimum of 20 hours a week of work site experience by no later than the end of the 24-month period. Qualifying work site experience may include, but is not limited to, paid employment, workforce-MaineServe, ASPIRE-Plus, work study, training-related practicums or any other such work site approved by the department. The 24-month period does not include periods of nonactivity in which good cause has been determined.

For individuals who are satisfactorily participating in an education or training program prior to the work evaluation, the department must determine the acceptability of the activity for purposes of meeting the participation requirements of this chapter using the same criteria as is used for any individual in the ASPIRE-TANF program. [2005, c. 480, §1 (AMD).]

D. Workforce-MaineServe consists of paid employment, subsidized employment, apprenticeships or other mandatory work activities, which may continue until the participant is ineligible for TANF benefits. [1997, c. 530, Pt. A, §26 (AMD).]

[2009, c. 291, §10 (AMD) .]

11. **Individual participation requirements.** Participation in the program components is governed by subsection 10 and this subsection.

A. For recipients whose eligibility for TANF is based on unemployment or underemployment of the primary wage earner, participation in the workforce-MaineServe component is required and any participation in the education, training and treatment component is contingent on satisfactory participation in workforce-MaineServe. [1997, c. 530, Pt. A, §26 (AMD).]

B. ASPIRE-TANF participants who are attending school or are involved in an equivalent educational program recognized by the Department of Education or a local school board are considered to be in the education, training or treatment component and their participation is not limited to 24 months. The department shall encourage recipients younger than 20 years of age who have not completed high school to attend traditional high school. [1997, c. 530, Pt. A, §26 (AMD).]

C. Subject to the requirements of the Americans with Disabilities Act, if a recipient of TANF is hindered from obtaining employment or successfully completing any portion of the ASPIRE-TANF program by reason of drug or alcohol abuse, the recipient must enter into a drug or alcohol abuse treatment program. This treatment activity may occur at any time during the ASPIRE-TANF program. [1997, c. 530, Pt. A, §26 (AMD).]

D. If a claim of disability or other good cause is made by a participant, the department shall assess the circumstances of the claim. If good cause is found to exist, the department shall offer reasonable alternative participation requirements and document them in the participant's family contract and case record. [2001, c. 335, §3 (NEW).]

[2001, c. 335, §3 (AMD) .]

12. **Developing resources.** To assist the department in its efforts to encourage job placement opportunities and provide the services necessary to ensure self-support to recipients of TANF assistance, the department may contract with public and private agencies to establish job placement opportunities.

In order to assist in the development of job placement opportunities, the department in cooperation with the Department of Labor and other state agencies shall explore the feasibility of developing a shared approach to technology to support access to information talent banks, national job banks, Maine's job listings and any other job opportunity listings, to facilitate linking program resources listings and to coordinate case service providers.

In addition, all public and private agencies are subject to the following requirements.

A. All agencies that receive funds from any state department or division must provide at least one workforce-MaineServe opportunity for an ASPIRE-TANF participant. [1997, c. 530, Pt. A, §26 (AMD).]

B. All state agencies that provide funding for child care or transportation services must require that recipients of TANF be given priority for those services. [1997, c. 530, Pt. A, §26 (AMD).]

C. All agencies that receive funds from any state agency for the treatment of drug or alcohol abuse must require that recipients of TANF be given priority for those services. [1997, c. 530, Pt. A, §26 (AMD).]

[2005, c. 480, §2 (AMD) .]

13. **Determination of types of opportunities.**

[1997, c. 530, Pt. A, §26 (RP) .]

14. **Family planning services.**

[2005, c. 480, §3 (RP) .]

SECTION HISTORY

1989, c. 501, §Y5 (NEW). 1989, c. 839, §§10,11 (AMD). 1991, c. 528, §§F13,14 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §§F13,14 (AMD). 1993, c. 385, §21 (AMD). 1995, c. 418, §§A29-33 (AMD). 1997, c. 530, §A26 (AMD). 2001, c. 335, §§2,3 (AMD). 2005, c. 480, §§1-3 (AMD). 2009, c. 291, §§8-10 (AMD). 2013, c. 376, §§1, 2 (AMD).

§3788-A. MAINESERVE

The department shall establish a MaineServe program designed to provide parents who are eligible for TANF assistance opportunities to serve their communities and the State. [1997, c. 530, Pt. A, §27 (AMD).]

1. **Purposes.** The purposes of the MaineServe program are as follows:

A. To meet the human, educational, environmental and public safety needs of this State without displacing existing workers; [1995, c. 418, Pt. A, §34 (NEW).]

B. To renew the ethic of civic responsibility and the spirit of community throughout the State; [1995, c. 418, Pt. A, §34 (NEW).]

C. To encourage parents who are eligible for TANF assistance to engage in voluntary service to the State; [1997, c. 530, Pt. A, §27 (AMD).]

D. To expand and strengthen existing nonprofit and public sector initiatives that are addressing the needs of their communities and of the State; and [1995, c. 418, Pt. A, §34 (NEW).]

E. To provide parents who are eligible for TANF the opportunities to serve their communities and the State in a manner that assists them in developing and renewing their skills in ways that may lead to employment that is sufficient to sustain their families. [1997, c. 530, Pt. A, §27 (AMD).]

[1997, c. 530, Pt. A, §27 (AMD) .]

2. **Eligibility.** Any ASPIRE-TANF participant over 16 years of age is eligible to volunteer for MaineServe, except that any person under 20 years of age who has not completed high school or its equivalent must also participate in an educational activity designed to complete high school education.

[1997, c. 530, Pt. A, §27 (AMD) .]

3. **Duration of service.** MaineServe volunteers may serve for up to 9 months. At the end of the service period, the MaineServe volunteer and the ASPIRE-TANF case manager shall evaluate the MaineServe placement. If it is determined to be appropriate, the MaineServe volunteer may renew the placement within MaineServe.

[1997, c. 530, Pt. A, §27 (AMD) .]

4. **Conditions of service.** The MaineServe program is an alternative work experience program subject to the standards set out in the Social Security Act, 42 United States Code, Section 682(f).

[1995, c. 418, Pt. A, §34 (NEW) .]

SECTION HISTORY
1995, c. 418, §A34 (NEW). 1997, c. 530, §A27 (AMD).

§3788-B. ASPIRE-PLUS

The department shall establish an on-the-job training program called ASPIRE-Plus to encourage employers to develop jobs for ASPIRE-TANF program participants. [1997, c. 530, Pt. A, §28 (NEW).]

SECTION HISTORY
1997, c. 530, §A28 (NEW).

§3789. SELF-INITIATED TRAINING

(REPEALED)

SECTION HISTORY
1989, c. 839, §12 (NEW). 1993, c. 385, §22 (AMD). 1995, c. 418, §A35 (RP).

§3789-A. DECISION-MAKING AUTHORITY RESERVED TO DEPARTMENT

If federal law requires the Department of Health and Human Services to make a case decision, the authority to make that final decision is reserved to the department. [1989, c. 839, §13 (NEW); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY
1989, c. 839, §13 (NEW). 2003, c. 689, §B6 (REV).

§3789-B. INTERDEPARTMENTAL WELFARE REFORM COMMITTEE

(REPEALED)

SECTION HISTORY
RR 1995, c. 2, §43 (COR). 1995, c. 418, §A36 (NEW). 1997, c. 530, §A29 (AMD). 1999, c. 401, §J4 (AMD). 2001, c. 354, §3 (AMD). 2001, c. 439, §G6 (AMD). RR 2003, c. 2, §75 (COR). 2003, c. 20, §OO2 (AMD). 2003, c. 20, §OO4 (AFF). 2005, c. 480, §4 (RP).

§3789-C. COMMITTEE OF STAFF AND RECIPIENTS

(REPEALED)

SECTION HISTORY
1995, c. 418, §A36 (NEW). 2005, c. 480, §5 (RP).

§3789-D. MAINE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES ADVISORY COUNCIL

1. **Duties.** The Maine Temporary Assistance for Needy Families Advisory Council, as established by Title 5, section 12004-I, subsection 36-C, shall advise the commissioner or the commissioner's designee regarding education, training, job opportunities, quality employment and business ownership opportunities, the operation of any postsecondary education programs administered by the department and other matters affecting TANF recipients.

[1997, c. 530, Pt. A, §30 (NEW) .]

2. **Members.** The commissioner shall appoint the members of the council. Members must include at least the following:

A. Two recipients of benefits under the TANF program; [1997, c. 530, Pt. A, §30 (NEW).]

B. One representative of employers within the State; [1997, c. 530, Pt. A, §30 (NEW).]

C. One representative of organized labor; [1997, c. 530, Pt. A, §30 (NEW).]

D. One representative of women's interests; [1997, c. 530, Pt. A, §30 (NEW).]

E. One or more representatives of organizations or agencies that have experience in addressing the training, education and job needs of low-income women; [1997, c. 530, Pt. A, §30 (NEW).]

F. One representative of the one-stop delivery system established under the federal Workforce Investment Act of 1998, 29 United States Code, Section 2841; and [2001, c. 667, Pt. C, §13 (AMD).]

G. Two representatives of postsecondary education, one representing private institutions and one representing public institutions. [1997, c. 530, Pt. A, §30 (NEW).]

[2001, c. 667, Pt. C, §13 (AMD) .]

3. **Advice regarding postsecondary education programs.** The council shall establish a postsecondary education subcommittee, consisting of up to 15 members and nonmembers of the council. The subcommittee must include but is not limited to the following representatives:

A. A representative of the department, appointed by the commissioner; [1997, c. 530, Pt. A, §30 (NEW).]

B. A representative of the University of Maine System who represents the interests of women or nontraditional students at one of the campuses, appointed by the chancellor; [1997, c. 530, Pt. A, §30 (NEW).]

C. A representative of the Finance Authority of Maine appointed by the chief executive officer; [1997, c. 530, Pt. A, §30 (NEW).]

D. Representatives of the Maine Community College System, including a gender coordinator at one of the campuses, appointed by the president; and [1997, c. 530, Pt. A, §30 (NEW); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF).]

E. Representatives of the following groups, appointed by the council:

(1) Nonprofit service organizations that assist parents who are nontraditional students;

(2) TANF participants or participants of the Parents as Scholars Program established in chapter 1054-B who are enrolled in postsecondary education programs;

(3) Nonprofit organizations that prepare parents to be nontraditional postsecondary education students;

(4) Organizations that represent low-income parents and that have significant knowledge of public assistance programs;

(5) Organizations that advocate for the interests of women;

(6) The business community; and

(7) Private postsecondary educational institutions. [1997, c. 530, Pt. A, §30 (NEW).]

By March 1, 1998, the subcommittee shall make recommendations to the council for improving the administration of the Parents as Scholars Program under section 3790, improving the program to make it more successful for participants and maximizing resources to meet the goals of the program. The council shall approve, disapprove or modify the recommendations of the subcommittee and report their recommendation to the commissioner.

[1997, c. 530, Pt. A, §30 (NEW); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]

SECTION HISTORY
1997, c. 530, §A30 (NEW). 2001, c. 667, §C13 (AMD). 2003, c. 20, §OO2 (AMD). 2003, c. 20, §OO4 (AFF).

§3789-E. PEER SUPPORT AND ADVOCACY DEMONSTRATION PROJECT

(REPEALED)

SECTION HISTORY
2003, c. 351, §1 (NEW).

Chapter 1054-B: PARENTS AS SCHOLARS

§3790. PARENTS AS SCHOLARS PROGRAM

1. **Established.** The department shall establish a student financial aid program based on need for up to 2000 participants known as the Parents as Scholars Program, referred to in this section as the "program," to aid needy students who have dependent children and who are matriculating in postsecondary undergraduate 2-year and 4-year degree-granting education programs. Enrollees in the program must be provided with a package of student aid that includes aid for living expenses equivalent to that provided pursuant to chapter 1053-B, medical assistance pursuant to chapter 855 and services equivalent to those provided pursuant to chapter 1054-A. A family that ceases to receive aid under this chapter as a result of increased child support or increased hours of, or increased income from, employment is eligible to receive transitional support services in accordance with section 3762, subsection 8. The program must be supported with funds other than federal block grant funds provided under the United States Social Security Act, Title IV-A, except that federal funds may be used in accordance with federal law if their use does not result in the imposition of conditions of participation or program requirements other than those established by this chapter.

[2003, c. 20, Pt. K, §14 (AMD) .]

2. **Eligibility criteria.** Families that qualify for TANF assistance under chapter 1053-B may apply to participate in the program instead of TANF. Individuals with marketable bachelor's degrees are ineligible for enrollment. Eligibility for and the amount of assistance must be determined in accordance with criteria and procedures used in the TANF program, this chapter and the rules adopted pursuant to this chapter and chapter 1053-B. Individuals applying to the program must be assessed in accordance with the provisions of section 3788. To the extent that program resources and space permit, enrollment in the program must be granted if the assessment results in findings as follows:

A. That the individual does not possess the necessary skills to obtain employment that will enable that individual to support a family at 85% of the median family income in the State for a family of the same size; [1997, c. 530, Pt. B, §1 (NEW).]

B. That, considering potential employment opportunities and local labor market conditions, the postsecondary education sought by the individual will significantly improve the ability of the family to be self-supporting; and [1997, c. 530, Pt. B, §1 (NEW).]

C. That the individual has the aptitude to successfully complete the proposed postsecondary program. [1997, c. 530, Pt. B, §1 (NEW).]

[1997, c. 530, Pt. B, §1 (NEW) .]

3. **Program requirements.** An enrollee must participate in a combination of education, training, study or work-site experience for an average of 20 hours per week in the first 24 months of the program. Aid under this chapter may continue beyond 24 months if the enrollee remains in an educational program and agrees to participate in either of the following options:

A. Fifteen hours per week of work-site experience in addition to other education, training or study; or [1999, c. 407, §1 (NEW).]

B. A total of 40 hours of education, training, study or work-site experience. [1999, c. 407, §1 (NEW).]

The department shall present both options to enrollees and permit them to choose either option. For the purpose of this subsection, work-site experience includes, but is not limited to, paid employment, work study, practicums, internships, clinical placements, laboratory or field work directly related to the enrollee's employment goal or any other work activities that, as determined by the department, will enhance the enrollee's employability in the enrollee's field. In the last semester of the enrollee's educational program, work-site experience may also include resume preparation, employment research, interviews and other activities related to job placement.

The department shall make reasonable adjustments in the participation requirements in this subsection for good cause. For the purpose of this subsection, "good cause" means circumstances in which the required participation would cause the enrollee to seriously compromise academic performance. "Good cause" includes, but is not limited to, a verifiable need to take care of a family member with special needs, a physical or mental health problem, illness, accident, death or a serious personal or family problem that necessitates reduced participation or time off from education, training or work. An enrollee receiving aid under this chapter must make satisfactory progress in the enrollee's educational program. The department shall adopt rules defining satisfactory academic progress. The department may not disapprove an educational plan based solely on the length of the educational program.

[1999, c. 407, §1 (RPR) .]

4. **Child support for participating families.** A family participating in the program shall assign the right to child support to the department in the same manner as if the family were receiving TANF assistance. The department shall distribute to a family child support collected on behalf of a family in the same manner as if the family were receiving TANF assistance.

[1997, c. 530, Pt. B, §1 (NEW) .]

5. **Protection from loss of income.** To the extent permitted by federal law, aid received under this chapter must be disregarded as income and excluded as a resource or asset to the same extent as assistance under the TANF program under chapters 1053-B and 1054-A for the purposes of any state, federal, tribal or municipal assistance program. Aid received under this chapter must be treated in the same manner as assistance received under the TANF program under chapters 1053-B and 1054-A for all tax purposes.

[1997, c. 530, Pt. B, §1 (NEW) .]

6. **Maintenance of effort.** Aid provided under this chapter may not be paid for with federal funds provided under the United States Social Security Act, Title IV-A, provided that the state funds used for this program may be counted, without penalty, toward the State's federal maintenance of effort requirement.

[1997, c. 530, Pt. B, §1 (NEW) .]

7. **Rules.** The department shall adopt rules to implement this chapter that must be consistent with the rules adopted under chapter 1053-B. Rules adopted pursuant to this section are routine technical rules, as defined by Title 5, chapter 375, subchapter II-A.

[1997, c. 530, Pt. B, §1 (NEW) .]

SECTION HISTORY
1997, c. 530, §B1 (NEW). 1999, c. 407, §1 (AMD). 2003, c. 20, §K14 (AMD).

Chapter 1055: NEGLECT OF CHILDREN; CUSTODY

§3791. INVESTIGATIONS AND PROSECUTIONS

(REPEALED)

SECTION HISTORY
1977, c. 511, §1 (RP).

§3792. PROTECTIVE CUSTODY; PETITION, HEARINGS AND CUSTODY

(REPEALED)

SECTION HISTORY
1967, c. 159, §1 (RPR). 1969, c. 305, (AMD). 1969, c. 590, §31 (AMD). 1971, c. 622, §77 (AMD). 1977, c. 118, §6 (AMD). 1977, c. 511, §2 (AMD). 1977, c. 652, §1 (RPR). 1979, c. 481, §5 (AMD). 1979, c. 733, §15 (RP).

§3793. PARENT DIVESTED OF LEGAL RIGHTS BY COURT ORDER; RESPONSIBILITY FOR SUPPORT; DECREE ALTERED; GUARDIANSHIP

(REPEALED)

SECTION HISTORY
1967, c. 159, §2 (AMD). 1969, c. 433, §48 (AMD). 1969, c. 590, §32 (AMD). 1971, c. 598, §38 (AMD). 1975, c. 396, §1 (AMD). 1979, c. 127, §148 (AMD). 1979, c. 733, §15 (RP).

§3794. MAINTENANCE AND CARE

(REPEALED)

SECTION HISTORY
1969, c. 139, (AMD). 1977, c. 511, §3 (RPR). 1979, c. 733, §15 (RP).

§3795. RELIGIOUS FAITH OF PARENTS

(REPEALED)

SECTION HISTORY
1967, c. 123, (RPR). 1979, c. 733, §15 (RP).

§3796. NO CHILD UNDER 16 PLACED IN ALMSHOUSE

(REPEALED)

SECTION HISTORY
1977, c. 457, §6 (RP). 1977, c. 511, §4 (RP).

§3797. CHILDREN'S HOMES LICENSED; "BOARDINGHOUSE FOR CHILDREN" AND "HOME FOR CHILDREN" DEFINED

(REPEALED)

SECTION HISTORY
1965, c. 401, (AMD). 1971, c. 426, (AMD). 1975, c. 304, §§1,2 (AMD). 1975, c. 709, §1 (RP). 1975, c. 719, §5 (RP). 1979, c. 733, §15 (RP).

§3798. RESTORATION OF CUSTODY

(REPEALED)

SECTION HISTORY
1969, c. 85, §1 (AMD). 1975, c. 396, §2 (AMD). 1979, c. 733, §15 (RP). 1979, c. 733, §15 (RP).

§3799. RECOVERY OF EXPENDITURES FROM PARENTS

(REPEALED)

SECTION HISTORY
1979, c. 127, §149 (AMD). 1979, c. 733, §15 (RP).

§3800. PENALTIES FOR VIOLATIONS

(REPEALED)

SECTION HISTORY
1969, c. 85, §2 (AMD). 1979, c. 733, §15 (RP). 1979, c. 733, §15 (RP).

§3801. STATE'S RESPONSIBILITY AFTER DEATH OF COMMITTED CHILD

(REPEALED)

SECTION HISTORY
1969, c. 85, §3 (NEW). 1979, c. 733, §15 (RP). 1979, c. 733, §15 (RP).

§3802. PAYMENTS FOR CARE OF CHILDREN

(REPEALED)

SECTION HISTORY
P&SL 1975, c. 103, §C (NEW). 1977, c. 107, (AMD). 1977, c. 527, §§1,2 (AMD). 1979, c. 564, §1 (AMD). 1979, c. 733, §15 (RP). 1979, c. 733, §15 (RP).

§3803. FAMILY CONTACT

(REPEALED)

SECTION HISTORY
1977, c. 577, §3 (NEW). 1977, c. 644, §1 (AMD). 1977, c. 652, §2 (AMD). 1979, c. 733, §15 (RP). 1979, c. 733, §15 (RP).

Chapter 1055-A: COLLECTION OF OVERPAYMENTS

§3811. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1993, c. 654, §1 (NEW).]

1. **Assistance unit.** "Assistance unit" means the individuals whose need the department considers when determining whether an applicant or recipient is eligible for program benefits.

[1993, c. 654, §1 (NEW) .]

1-A. **Caretaker relative.** "Caretaker relative" as defined by rules adopted by the department means any person, regardless of age, who applies for and receives assistance on behalf of a dependent child.

[2001, c. 551, §1 (NEW) .]

2. **Obligor.** "Obligor" means an individual who receives an overpayment or an adult individual who is a member of an assistance unit that receives an overpayment.

[1993, c. 654, §1 (NEW) .]

3. **Overpayment.** "Overpayment" means program benefits that exceed the amount of program benefits for which an individual or assistance unit is eligible when the department or a court has determined that the benefits were provided as a result of an intentional program violation, an unintentional error by the individual or household or an error by the department. "Overpayment" 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.

[2011, c. 687, §11 (AMD) .]

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 for Needy Families program established in chapter 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.

[2015, c. 1, §22 (COR) .]

SECTION HISTORY
1993, c. 654, §1 (NEW). 1997, c. 466, §27 (AMD). 1997, c. 466, §28 (AFF). 1997, c. 530, §A34 (AMD). 1997, c. 683, §C9 (AMD). 1997, c. 683, §C10 (AFF). 2001, c. 551, §1 (AMD). 2011, c. 687, §§11, 12 (AMD). RR 2015, c. 1, §22 (COR).

§3812. NOTICE TO RECIPIENT

A notice of overpayment issued by a payor of program benefits must inform the recipient of the collection remedies available under this chapter. [1993, c. 654, §1 (NEW).]

SECTION HISTORY

1993, c. 654, §1 (NEW).

§3813. NOTICE TO REPAY

1. **Repayment.** The department may serve a notice to repay upon an individual or other member of an assistance unit that received an overpayment that has not been recouped, repaid or otherwise recovered by the department if the individual or other member of the assistance unit no longer receives benefits from the benefit program that issued the overpayment.

[1993, c. 654, §1 (NEW) .]

2. **Notice.** A notice to repay must state the following:

A. The name of the obligor; [1993, c. 654, §1 (NEW).]

B. The amount of the overpayment, when the overpayment was made and when it was established; [1993, c. 654, §1 (NEW).]

C. The name of the benefit program that issued the overpayment; [1993, c. 654, §1 (NEW).]

D. The amount of the overpayment that has not been recouped, repaid or otherwise recovered by the department; [1993, c. 654, §1 (NEW).]

E. That the obligor may contact the department to execute an assignment of earnings or enter into an agreement to repay the overpayment that has not been recouped, repaid or otherwise recovered by the department; [1993, c. 654, §1 (NEW).]

F. That if the amount of the overpayment that has not been recouped, repaid or otherwise recovered by the department is not repaid within 21 days, the department may collect the amount owed by income withholding, may file liens against the obligor's real and personal property for the amount owed and may report the obligor to a consumer credit reporting agency; and [1993, c. 654, §1 (NEW).]

G. That the obligor has the right to request a hearing within 21 days of service of the notice and that if the obligor requests a hearing, collection action is stayed pending a decision after hearing. [1993, c. 654, §1 (NEW).]

[1993, c. 654, §1 (NEW) .]

3. **Collection action.** The department may use the remedies available under this chapter to collect the amount of an overpayment that has not been recouped, repaid or otherwise recovered by the department 21 days after service of a notice to repay, unless the obligor timely requests a hearing. The department may execute an assignment of earnings with the obligor's consent at any time for repayment of the amount of an overpayment that has not been recouped, repaid or otherwise recovered by the department.

[1993, c. 654, §1 (NEW) .]

4. **Hearing.** An obligor served with a notice to repay may request a hearing within 21 days of the date of service of the notice. The obligor may contest at hearing the accuracy of the notice to repay and whether the notice was issued in accordance with the requirements of this section. The obligor may not contest the amount of an overpayment that the obligor previously had an opportunity to contest or the amount of an overpayment that was established by judicial or administrative action, by agreement of the obligor and the department or by operation of law. The obligor may raise the issue of and the department shall determine whether the obligor is entitled to receive any credits, including credits for underpayments, that would reduce the amount of the overpayment that has not been recouped, repaid or otherwise recovered by the department. The department shall conduct the hearing in accordance with the requirements of Title 5, chapter 375, subchapter IV.

[1993, c. 654, §1 (NEW) .]

5. **Decision after hearing.** The department shall render a decision after hearing without undue delay. The decision must be based on the hearing record and rules adopted by the commissioner. The decision must include a finding of the amount of the overpayment that has not been recouped, repaid or otherwise recovered by the department. The decision must inform the obligor that the obligor may file a petition for judicial review of the decision within 30 days of the date of the decision. The department shall send an attested copy of the decision to the obligor by regular mail to the obligor's most recent address of record. If the finding contained in the decision is that the obligor has received an overpayment that has not been recouped, repaid or otherwise recovered by the department, the department may use the remedies available under this chapter to collect the amount not recouped, repaid or otherwise recovered 30 days after the decision is issued.

[1993, c. 654, §1 (NEW) .]

6. **Stay.** If the obligor named in a notice to repay timely requests a hearing to contest the notice to repay, the department shall stay all collection action pending a decision after hearing.

[1993, c. 654, §1 (NEW) .]

SECTION HISTORY
1993, c. 654, §1 (NEW).

§3814. SERVICE

The department may serve a notice to repay by certified mail, return receipt requested, by personal service by an authorized representative of the commissioner, or as specified by the Maine Rules of Civil Procedure. [1993, c. 654, §1 (NEW).]

SECTION HISTORY
1993, c. 654, §1 (NEW).

§3815. EXEMPT PROPERTY

An obligor's weekly income equal to 30 times the federal minimum wage as prescribed by the United States Code, Title 29, Section 206(a)(1), is exempt from collection by income withholding. Property otherwise exempt from trustee process, attachment and execution is exempt from collection by lien and foreclosure. [1993, c. 654, §1 (NEW).]

SECTION HISTORY
1993, c. 654, §1 (NEW).

§3816. INCOME WITHHOLDING

1. **Payor duty.** Twenty-one days after the department has served a notice to repay, the department may serve an income withholding order upon the obligor's employer or other payor of income to collect the amount of the overpayment not recouped, repaid or otherwise recovered by the department, unless collection action is stayed in accordance with section 3813, subsection 6. Upon receipt of an income withholding order issued by the department, the employer or other payor of income shall begin withholding immediately from the obligor's income the amount specified in the withholding order. Income withheld must be sent to the department within 10 days of the date of the withholding. The department shall send the obligor a copy of an income withholding order issued under this section to the obligor's most recent address of record.

[1993, c. 654, §1 (NEW) .]

2. **Withholding order; payor notice.** An income withholding order must state:

A. The name of the obligor; [1993, c. 654, §1 (NEW).]

B. The amount owed to the department; [1993, c. 654, §1 (NEW).]

C. The amount of income that the employer or other payor of income is required to withhold; [1993, c. 654, §1 (NEW).]

D. That withholding must take place when the obligor is normally paid and that income withheld must be sent to the department within 10 days of each withholding; [1993, c. 654, §1 (NEW).]

E. That the withholding order applies to current and subsequent periods of employment; [1993, c. 654, §1 (NEW).]

F. The income exemption amount and limitation on withholding provided for by this chapter; and [1993, c. 654, §1 (NEW).]

G. The substance of any other rights, obligations and liabilities of the employer or other payor of income provided for or imposed by this chapter. [1993, c. 654, §1 (NEW).]

[1993, c. 654, §1 (NEW) .]

3. **Limitation of amount.** An income withholding order may not exceed 25% of the obligor's gross income and is subject to the income exemption amounts specified in section 3815.

[1993, c. 654, §1 (NEW) .]

4. **Hearing.** An obligor may request a hearing to contest the issuance of an income withholding order. A request for hearing must be received by the department within 30 days of the date of mailing of the obligor's copy of the withholding order. The department shall notify the obligor in writing of the right to hearing at the time of mailing of the obligor's copy of the withholding order. At hearing the obligor may contest the accuracy of the income withholding order and whether the order was issued in accordance with the requirements of this section. The department shall conduct the hearing in accordance with the requirements of Title 5, chapter 375, subchapter IV.

[1993, c. 654, §1 (NEW) .]

5. **Decision after hearing.** The department shall render a decision after hearing without undue delay as to the accuracy of the terms of the withholding order and whether the order was issued in accordance with the requirements of this section. The decision must be based on the hearing record and rules adopted by the commissioner. A copy of the decision must be sent to the obligor's most recent address of record. The decision must state that the obligor may file a petition for judicial review of the decision within 30 days of the date of the decision.

[1993, c. 654, §1 (NEW) .]

6. **Duration of withholding.** An income withholding order remains in effect until:

A. Released in writing by the department; or [1993, c. 654, §1 (NEW).]

B. The order is released or superseded by a subsequent court order. [1993, c. 654, §1 (NEW).]

[1993, c. 654, §1 (NEW) .]

SECTION HISTORY
1993, c. 654, §1 (NEW).

§3817. ASSIGNMENT OF EARNINGS

The department may seek to collect an overpayment by executing an assignment of earnings with the obligor. An employer or other payor of income shall honor an assignment of earnings executed by the department and an obligor. An assignment of earnings continues until released in writing by the department. Income withheld from an obligor pursuant to an assignment of earnings must be sent to the department within 10 days of withholding. The department shall provide an employer or other payor of income served with an assignment of earnings the same payor notice the department is required to provide under section 3816, subsection 2. [1993, c. 654, §1 (NEW).]

SECTION HISTORY
1993, c. 654, §1 (NEW).

§3818. PAYOR COMPENSATION

The department may establish by rule a fee that an employer or other payor of income may deduct from the obligor's income as compensation for honoring an income withholding order or assignment of earnings. [1993, c. 654, §1 (NEW).]

SECTION HISTORY
1993, c. 654, §1 (NEW).

§3819. PAYOR PROTECTED

An employer or other payor of income may not be held liable for action taken to honor a duly executed income withholding order or assignment of earnings issued by the department. [1993, c. 654, §1 (NEW).]

SECTION HISTORY
1993, c. 654, §1 (NEW).

§3820. FAILURE TO HONOR

An employer or other payor of income who knowingly fails to honor an income withholding order or assignment of earnings is liable to the department for the amount of income not withheld or the amount of income withheld and not sent to the department, as applicable. A court may award the department costs, interest and attorney's fees in an action brought under this section. [1993, c. 654, §1 (NEW).]

SECTION HISTORY
1993, c. 654, §1 (NEW).

§3821. EMPLOYEE PROTECTED

An employer may not discharge, refuse to hire, discipline or otherwise discriminate against an employee because of action by the department under this chapter. An employer who violates this section is subject to a fine of up to $5,000 payable to the State to be recovered in a civil action. The employer is also subject to an action by the employee for compensatory and punitive damages, plus attorney's fees and court costs. [1993, c. 654, §1 (NEW).]

SECTION HISTORY
1993, c. 654, §1 (NEW).

§3822. LIENS

The department may issue a certificate of lien 21 days after service of a notice to repay, unless collection action is stayed in accordance with section 3813, subsection 6. A lien issued by the department under this section attaches to all nonexempt real and personal property of the person named in the notice to repay. The department shall send the obligor a copy of a certificate of lien issued under this section to the obligor's most recent address of record. [1993, c. 654, §1 (NEW).]

1. **Filing.** The department may file a certificate of lien issued under this section in the registry of deeds of any county in which the obligor may own real property or with the Secretary of State. The certificate must state the name of the obligor named in the notice to repay, the obligor's most recent address of record, the amount of the overpayment that has not been recouped, repaid or otherwise recovered, the date of the notice to repay and the name and address of the department's agent who issued the lien.

[1993, c. 654, §1 (NEW) .]

2. **Effect.** If the department has issued a certificate of lien in accordance with the requirements of this section, no person having notice of the lien or in possession of any property that may be subject to the lien may pay over, release, sell, transfer, encumber or convey such property, unless:

A. An authorized representative of the commissioner executes a release or waiver and delivers it to the person in possession; or [1993, c. 654, §1 (NEW).]

B. A court of competent jurisdiction orders the department to release the lien. [1993, c. 654, §1 (NEW).]

[1993, c. 654, §1 (NEW) .]

3. **Hearing.** An obligor may request a hearing to contest the issuance of a certificate of lien. A request for hearing must be received by the department within 30 days of the date of mailing of the obligor's copy of the certificate of lien. The department shall notify the obligor in writing of the right to hearing at the time of mailing of the obligor's copy of the certificate of lien. At hearing the obligor may contest the accuracy of the certificate of lien and whether the lien was implemented in accordance with the requirements of this section. The department shall conduct the hearing in accordance with the requirements of Title 5, chapter 375, subchapter IV.

[1993, c. 654, §1 (NEW) .]

4. **Decision after hearing.** The department shall render a decision after hearing without undue delay as to the accuracy of the terms of the certificate of lien and whether the lien was issued in accordance with the requirements of this section. The decision must be based on the hearing record and rules adopted by the commissioner. A copy of the decision must be sent to the obligor at the obligor's most recent address of record. The decision must inform the obligor that the obligor may file a petition for judicial review of the decision within 30 days of the date of the decision.

[1993, c. 654, §1 (NEW) .]

SECTION HISTORY
1993, c. 654, §1 (NEW).

§3823. FORECLOSURE ON LIENS

The commissioner shall proceed as follows with respect to foreclosures on liens filed pursuant to section 3822. [1993, c. 654, §1 (NEW).]

1. **Liens on real property.** Actions to foreclose liens on real property issued under section 3822 may be brought in the county where the property is located pursuant to the procedures of Title 14, chapter 403, subchapter II.

[1993, c. 654, §1 (NEW) .]

2. **Liens on personal property.** Actions to foreclose liens on personal property issued under section 3822 may be brought in the county where the obligor resides or the county where the property is located pursuant to the procedures of Title 14, chapter 509, subchapter III.

[1993, c. 654, §1 (NEW) .]

SECTION HISTORY
1993, c. 654, §1 (NEW).

§3824. CREDIT REPORTING

The department may submit the names of obligors and the amounts of overpayments not recouped, repaid or otherwise recovered to a consumer credit reporting agency. The department may submit the name of an obligor and the amount owed only if the amount owed was established by judicial or administrative action, by agreement of the obligor and the department or by operation of law. [1993, c. 654, §1 (NEW).]

SECTION HISTORY
1993, c. 654, §1 (NEW).

§3825. EXCEPTIONS TO COLLECTIONS FROM MINORS

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

A. "AFDC" means the Aid to Families with Dependent Children program administered pursuant to former chapter 1053. [2001, c. 551, §2 (NEW).]

B. "TANF" means the Temporary Assistance for Needy Families program, under the United States Social Security Act, as amended by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 110 Stat. 2105. [2001, c. 551, §2 (NEW).]

[2001, c. 551, §2 (NEW) .]

2. **TANF and food stamps.** To the extent allowable by federal law, a TANF or food stamp overpayment may not be collected from a person who was a minor dependent in the household at the time the overpayment accrued.

[2001, c. 551, §2 (NEW) .]

3. **AFDC.** If the caretaker relative and all adult members of an overpaid assistance unit can not be located, are deceased or have had the overpayment discharged in bankruptcy and a minor dependent member of the overpaid assistance unit is receiving benefits from AFDC or TANF, or its successor programs, the department may reduce benefits to the extent required by federal law. To the extent allowable by federal law, the department may not otherwise seek to recover overpaid benefits from anyone who was a minor dependent member of the AFDC assistance unit at the time that the AFDC overpayment accrued.

[2001, c. 551, §2 (NEW) .]

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

[2001, c. 551, §2 (NEW) .]

SECTION HISTORY
2001, c. 551, §2 (NEW).

Chapter 1056: PHYSICALLY ABUSED CHILDREN

§3851. PURPOSES

(REPEALED)

SECTION HISTORY
1965, c. 68, (NEW). 1975, c. 167, §1 (RPR). 1979, c. 733, §15 (RP).
1979, c. 733, §15 (RP).

§3852. DEFINITIONS

(REPEALED)

SECTION HISTORY
1965, c. 68, (NEW). 1975, c. 167, §1 (RPR). 1979, c. 733, §15 (RP).

§3853. PERSONS MANDATED TO REPORT SUSPECTED CHILD ABUSE OR NEGLECT

(REPEALED)

SECTION HISTORY
1965, c. 68, (NEW). 1975, c. 167, §1 (RPR). 1975, c. 678, §§1,2 (AMD).
1977, c. 511, §5 (RPR). 1979, c. 733, §15 (RP).

§3854. REPORTING PROCEDURES

(REPEALED)

SECTION HISTORY
1965, c. 68, (NEW). 1975, c. 167, §1 (RPR). 1977, c. 511, §6 (AMD).
1979, c. 733, §15 (RP).

§3855. MANDATORY REPORTING TO A MEDICAL EXAMINER AND A POSTMORTEM INVESTIGATION

(REPEALED)

SECTION HISTORY
1965, c. 68, (NEW). 1975, c. 167, §1 (RPR). 1979, c. 733, §15 (RP).

§3856. IMMUNITY FROM LIABILITY

(REPEALED)

SECTION HISTORY
1975, c. 167, §2 (NEW). 1979, c. 733, §15 (RP). 1979, c. 733, §15 (RP).

§3856-A. PRIVILEGED COMMUNICATIONS

(REPEALED)

SECTION HISTORY
1977, c. 511, §7 (NEW). 1979, c. 733, §15 (RP).

§3857. LIABILITY FOR FAILURE TO REPORT

(REPEALED)

SECTION HISTORY
1975, c. 167, §2 (NEW). 1977, c. 78, §150 (AMD). 1977, c. 511, §8 (AMD). 1979, c. 733, §15 (RP).

§3858. THE GUARDIAN AD LITEM

(REPEALED)

SECTION HISTORY
1975, c. 167, §2 (NEW). 1979, c. 733, §15 (RP).

§3859. CONFIDENTIALITY OF RECORDS; ACCESS TO RECORDS

(REPEALED)

SECTION HISTORY
1975, c. 167, §2 (NEW). 1977, c. 511, §9 (RPR). 1979, c. 733, §15 (RP).

§3860. DEPARTMENT'S RESPONSIBILITIES

(REPEALED)

SECTION HISTORY
1975, c. 167, §2 (NEW). 1977, c. 511, §10 (RPR). 1977, c. 644, §§1-A (AMD). 1979, c. 733, §15 (RP).

§3861. APPEALS PROCESS

(REPEALED)

SECTION HISTORY
1979, c. 282, (NEW). 1979, c. 733, §15 (RP).

Chapter 1057: CHILD ABUSE AND NEGLECT PREVENTION COUNCILS

§3871. PURPOSE

The purpose of this chapter is to encourage and maintain coordinated community efforts in each county to prevent child abuse and neglect through the provision of family-strengthening programs, including, but not limited to, public awareness activities, child safety education, parent education, support and information for parents, referral to services and training for professionals, and to ensure adequate intervention and treatment for abused and neglected children and their families. [2009, c. 204, §1 (AMD).]

SECTION HISTORY
1985, c. 483, (NEW). 1993, c. 142, §2 (AMD). 2009, c. 204, §1 (AMD).

§3872. DEFINITIONS

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [1985, c. 483, (NEW).]

1. **Community coordinating committee.**

[1993, c. 142, §2 (RP) .]

1-A. **Child abuse and neglect prevention council.** "Child abuse and neglect prevention council" means a community organization that provides continuous year-round service as a county's primary organization that serves to encourage and coordinate community efforts to prevent child abuse from occurring. Services may include public awareness activities, child safety education, parent education, support and information for parents, referral to services and training for professionals.

[2009, c. 204, §2 (AMD) .]

2. **Fiscal agent.** "Fiscal agent" means an incorporated community organization, agency or institution designated by the child abuse and neglect prevention council and authorized by the Department of Health and Human Services to receive and distribute grants to that child abuse and neglect prevention council.

[2009, c. 204, §3 (AMD) .]

3. **Maine Child Abuse Prevention Councils.** "Maine Child Abuse Prevention Councils" means the statewide organization composed of a majority of the child abuse and neglect prevention councils. The organization must have at least one representative from each member council. The organization shall work collaboratively to maintain a list of core activities offered in each of the counties represented by its membership and shall also maintain a statewide network that works to develop statewide plans and effective implementation strategies.

[2009, c. 204, §4 (AMD) .]

SECTION HISTORY
1985, c. 483, (NEW). 1993, c. 142, §2 (AMD). 2003, c. 689, §B6 (REV). 2009, c. 204, §§2-4 (AMD).

§3872-A. CHILD ABUSE AND NEGLECT PREVENTION COUNCIL'S RESPONSIBILITIES

1. **Duties.** A child abuse and neglect prevention council shall review existing data to assess and monitor the extent and causes of child abuse and neglect in its county and carry out the following activities:

A. Coordinate services, utilizing community, state and federal resources to ensure that direct services are being provided to children and families, including education and support services; [2009, c. 204, §5 (AMD).]

B. Provide training to professionals who work directly with children and families; and [2009, c. 204, §5 (AMD).]

C. Provide education and awareness concerning child abuse and neglect and its prevention. [1993, c. 142, §3 (NEW).]

[2009, c. 204, §5 (AMD) .]

SECTION HISTORY
1993, c. 142, §3 (NEW). 2009, c. 204, §5 (AMD).

§3873. AUTHORIZATION FOR EXPENDITURE OF FUNDS

The department and other state agencies shall, from funds authorized to the department and state agencies, make grants to, or purchase services from, the child abuse and neglect prevention councils or fiscal agents to further the purposes of this chapter. [2009, c. 204, §6 (AMD).]

1. **Funding authorized.** Grants or funds must be made on a competitive basis and allocated to child abuse and neglect prevention councils according to rules adopted or amended by the commissioner. Grants or funds in excess of $15,000 must be made on a one-to-one matching basis with contributions from the community. Community contributions may be donations of cash or may be in-kind contributions, as determined by departmental rule.

[2009, c. 204, §6 (AMD) .]

2. **Distribution of funds.** Grants or funds must be awarded or allocated to support existing child abuse and neglect prevention councils and to assist the establishment of new child abuse and neglect prevention councils. It is the intent of this chapter to support a statewide network of child abuse and neglect prevention councils in each county as resources permit. Nothing in this chapter requires the department to fully fund the activities of any child abuse and neglect prevention council.

[2009, c. 204, §6 (AMD) .]

3. **Consultation with Maine Child Abuse Prevention Councils.** The Maine Child Abuse Prevention Councils, in conjunction with the department, shall develop a plan, updated annually, establishing a statewide strategy for child abuse and neglect prevention in local counties and communities. Grants or allocated funds must be awarded in accordance with the goals and strategies set out in the plan.

[2009, c. 204, §6 (AMD) .]

SECTION HISTORY
1985, c. 483, (NEW). 1993, c. 142, §4 (AMD). 2009, c. 204, §6 (AMD).

§3874. FISCAL AGENTS

A fiscal agent receiving grants or funds under this chapter shall act only in an administrative capacity to receive and distribute grant or fund money to the child abuse and neglect prevention councils, as described in the rules adopted by the department for regulating the local administration of these programs. [2009, c. 204, §7 (AMD).]

SECTION HISTORY
1985, c. 483, (NEW). 1993, c. 142, §4 (AMD). 2009, c. 204, §7 (AMD).

§3875. COMMUNITY COORDINATING COMMITTEE; MEMBERSHIP

(REPEALED)

SECTION HISTORY
1985, c. 483, (NEW). 1993, c. 142, §5 (RP).

§3875-A. CHILD ABUSE AND NEGLECT PREVENTION COUNCILS; MEMBERSHIP

The child abuse and neglect prevention councils are responsible for facilitating the community programs under this chapter. Each council shall establish a governing or advisory board of directors. The board must be diverse with broad-based participation in each county. Terms of the directors and methods of appointment

or election of members must be determined by the child abuse and neglect prevention council's bylaws or by rules of procedure adopted for the advisory board if an advisory board is established. [2009, c. 204, §8 (AMD).]

SECTION HISTORY
1993, c. 142, §6 (NEW). 2009, c. 204, §8 (AMD).

§3876. WAIVER OF CERTAIN REQUIREMENTS

(REPEALED)

SECTION HISTORY
1985, c. 483, (NEW). 1993, c. 142, §7 (RP).

Chapter 1058: MAINE CHILDREN'S TRUST INCORPORATED

§3881. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1993, c. 600, Pt. A, §16 (NEW).]

1. **Board.** "Board" means the Board of the Maine Children's Trust Incorporated.

[1993, c. 600, Pt. A, §16 (NEW) .]

2. **Eligible organization.** "Eligible organization" means a nonprofit organization, local government or public school system.

[1993, c. 600, Pt. A, §16 (NEW) .]

3. **Fund.** "Fund" means the repository for funds donated to the Maine Children's Trust Incorporated by the taxpayers of the State through an income tax checkoff pursuant to Title 36, section 5285 as well as federal grants and contracts, privately donated funds and in-kind donations for prevention programs, or by any means for the purposes of this chapter.

[1995, c. 402, Pt. A, §4 (RPR) .]

4. **Income.** "Income" means annual contributions made to the fund through the income tax checkoff.

[1997, c. 149, §1 (AMD) .]

5. **Prevention policies.** "Prevention policies" means laws, rules, policies, procedures and practices, whether in the public or private sector, that have an actual or potential impact on the nature and incidence of child abuse and neglect.

[1993, c. 600, Pt. A, §16 (NEW) .]

6. **Prevention programs.** "Prevention programs" means programs, plans or training associated with the primary prevention of child abuse and neglect and the promotion of high-quality child care.

[1999, c. 529, §1 (AMD) .]

7. **Trust.** "Trust" means the Maine Children's Trust Incorporated.

[1995, c. 402, Pt. A, §5 (NEW) .]

SECTION HISTORY
1993, c. 600, §A16 (NEW). 1995, c. 402, §§A4,5 (AMD). 1997, c. 149, §1 (AMD). 1999, c. 529, §1 (AMD).

§3882. ESTABLISHMENT; PURPOSE; NONPROFIT ORGANIZATION

The Maine Children's Trust Incorporated, referred to in this chapter as the "trust," is established to provide a mechanism for voluntary contributions by individuals and groups for annual and long-term funding of prevention programs. [1995, c. 402, Pt. A, §6 (AMD).]

The trust is a private nonprofit corporation with a broad public purpose pursuant to this chapter. The exercise by the trust of the powers conferred by this chapter is held to be an essential governmental function. [1995, c. 402, Pt. A, §6 (AMD).]

SECTION HISTORY
1993, c. 600, §A16 (NEW). 1995, c. 402, §A6 (AMD).

§3883. BOARD; ESTABLISHMENT

1. **Establishment.** The Board of the Maine Children's Trust Incorporated, referred to in this chapter as the "board," is established.

[1993, c. 600, Pt. A, §16 (NEW) .]

2. **Membership.** The board consists of at least 17 members, appointed as follows:

A. One Senator, appointed by the President of the Senate for a 2-year term served concurrently with the legislative term; [1993, c. 600, Pt. A, §16 (NEW).]

B. One Representative, appointed by the Speaker of the House of Representatives for a 2-year term served concurrently with the legislative term; [1993, c. 600, Pt. A, §16 (NEW).]

C. Four members of the Maine Child Abuse Prevention Councils, selected by that organization. Of the initial appointees, one is appointed for a one-year term, one is appointed for a 2-year term and 2 are appointed for 3-year terms. After the initial appointments, appointees are appointed for 3-year terms; [2009, c. 204, §9 (AMD).]

D. Two representatives of the Department of Health and Human Services appointed by the Commissioner of Health and Human Services. One member must be a senior policy-making official and the other must be a line manager with several years of experience in child abuse and neglect. Of the initial appointees, one is appointed for a 2-year term and the other is appointed for a 3-year term. After the initial appointments, appointees are appointed for 3-year terms; and [1993, c. 600, Pt. A, §16 (NEW); 2003, c. 689, Pt. B, §§6, 7 (REV).]

E. Nine members of the public and the business community.

(1) Three members must be appointed by the Governor. Of the initial appointees, one is appointed for a one-year term, one is appointed for a 2-year term and one is appointed for a 3-year term. After the initial appointments, appointees are appointed for 3-year terms.

(2) Three leaders from the business community must be appointed by the Maine Chamber of Commerce and Industry. Of the initial appointees, one is appointed for a one-year term, one is appointed for a 2-year term and one is appointed for a 3-year term. After the initial appointments, appointees are appointed for 3-year terms.

(3) At least 3 members must be elected by majority vote of the board. Of the initial appointees, one is appointed for a one-year term, one is appointed for a 2-year term and one is appointed for a 3-year term. After the initial appointments, appointees are appointed for 3-year terms.

The public members may include representatives of the following groups: parents; persons under the age of 21; the business and labor communities; the legal community; the religious community; and providers of child abuse and neglect prevention services. [1997, c. 149, §2 (AMD).]

[2009, c. 204, §9 (AMD) .]

3. **Board officers.** The board shall elect annually a chair from among its members to serve for one year. The chair may be reelected. The board shall elect annually a member to serve as a secretary, who shall maintain the minutes of board meetings, and another member to serve as treasurer, who shall maintain and oversee financial records and issue an annual financial report at the end of each fiscal year. The secretary and treasurer may be reelected. The board may elect from among its members other officers it determines necessary to carry out the board's purposes.

[1993, c. 600, Pt. A, §16 (NEW) .]

4. **Compensation.** The members are ineligible for per diem compensation, but may be reimbursed for travel expenses and other out-of-pocket expenses associated with board business pursuant to board policy.

[1993, c. 600, Pt. A, §16 (NEW) .]

5. **Meetings.** The board shall meet at least 4 times annually. A simple majority constitutes a quorum.

[1993, c. 600, Pt. A, §16 (NEW) .]

6. **Advice and consultation.** The Commissioner of Health and Human Services, the Commissioner of Education, the Commissioner of Corrections and the Commissioner of Public Safety, upon request, shall provide the board with technical information, assistance and advice.

[2003, c. 2, §76 (COR) .]

SECTION HISTORY
1993, c. 600, §A16 (NEW). RR 1995, c. 2, §44 (COR). 1997, c. 149, §2 (AMD). 2001, c. 354, §3 (AMD). RR 2003, c. 2, §76 (COR). 2003, c. 689, §§B6,7 (REV). 2009, c. 204, §9 (AMD).

§3884. POWERS

(REPEALED)

SECTION HISTORY
1993, c. 600, §A16 (NEW). 1995, c. 402, §A7 (AMD). 1999, c. 529, §§2-4 (AMD). 2001, c. 11, §1 (RP).

§3884-A. DUTIES OF BOARD; POWERS OF BOARD

1. **Duties.** The board shall:

A. Develop a biennial working plan for trust activities that sets overall statewide goals and objectives for child abuse prevention activities, establishes priorities for distribution of money in the fund and provides a working plan for the trust for the biennium. In developing the plan, the board may:

(1) Review and evaluate existing prevention programs, including high-quality child care options;

(2) Ensure that equal opportunity exists for the establishment of prevention programs and receipt of money from the fund among all geographic areas in the State; and

(3) Review and evaluate public and private funding sources; [2001, c. 11, §2 (NEW).]

B. Develop, initiate, propose or recommend ideas for innovations in rules, laws, policies and programs concerning child abuse and neglect to the Governor, the Legislature, state executive agencies, the business community and other entities. The board may also assist in the coordination and exchange of information and the maintenance of prevention programs; [2001, c. 11, §2 (NEW).]

C. Publicize criteria and review applications for grants and award those grants to recipients that best address the purposes of this chapter and submit to the Legislature the list of both successful and unsuccessful applicants who have allowed their names to be placed on the list along with reasons for and against the application; [2001, c. 11, §2 (NEW).]

D. Establish a process for monitoring and review of grants awarded pursuant to this chapter; [2001, c. 11, §2 (NEW).]

E. As a primary prevention activity of the trust, develop and implement a campaign to provide statewide education and public information to enhance public awareness concerning child abuse and neglect; [2001, c. 11, §2 (NEW).]

F. Enter into contracts with public or private agencies and accept gifts or grants from federal, state or private sources to carry out this chapter; [2001, c. 11, §2 (NEW).]

G. Employ staff as the board determines necessary to implement its responsibilities; [2001, c. 11, §2 (NEW).]

H. Cooperate with and avail itself of the services of governmental agencies and the University of Maine System and cooperate with, assist and otherwise encourage local or regional, private or public organizations in the various communities of the State in the prevention of abuse and neglect among children in the community and the State; and [2001, c. 11, §2 (NEW).]

I. Develop plans, with the cooperation of the child abuse and neglect prevention councils established under chapter 1057, to provide a stable base for funding the councils in amounts no lower than the amounts provided in the biennial budget of fiscal years 1999-00 and 2000-01. [2009, c. 204, §10 (AMD).]

[2009, c. 204, §10 (AMD) .]

2. Powers. The board may:

A. Apply for and receive funds from any private source or governmental entity, whether by way of grant, donation, loan or other means; [2001, c. 11, §2 (NEW).]

B. Create partnerships between the public and private sectors to facilitate the purposes of this chapter and to:

(1) Bridge the gap in knowledge and communication between the public and private sectors regarding prevention programs and prevention policies;

(2) Build the leadership capacity of public and private sector individuals and institutions regarding prevention programs, prevention policies and the importance of high-quality child care in all children's early years; and

(3) Encourage active financial and in-kind participation from the public and private sectors in carrying out the purposes of this chapter; [2001, c. 11, §2 (NEW).]

C. Adopt bylaws, have the general powers accorded corporations under Title 13, chapter 81 and perform other acts necessary or convenient to carry out the lawful purposes of the trust; [2001, c. 11, §2 (NEW).]

D. Sue or be sued in the board's own name; [2001, c. 11, §2 (NEW).]

E. Purchase, receive, hold, lease or acquire by foreclosure, operate, manage, license and sell, convey, transfer, grant or lease real and personal property, together with those rights and privileges that may be incidental and appurtenant to the property and the use of the property, including, but not limited to, real or personal property acquired by the board from time to time in the satisfaction of debts or enforcement of obligations; [2001, c. 11, §2 (NEW).]

F. Make expenditures and incur obligations reasonably required in the exercise of sound business principles to secure possession of, preserve, maintain, insure and improve real and personal property interests acquired by the board; [2001, c. 11, §2 (NEW).]

G. Acquire, subscribe for, own, hold, sell, assign, transfer, mortgage or pledge the stock, shares, bonds, debentures, notes or other securities and evidences of interest in or indebtedness of a person, firm, corporation, joint stock company, partnership, association or trust, and, while the owner or holder of stock, shares, bonds, debentures, notes or other securities, exercise the rights, powers and privileges of ownership, including the right to vote on the stock, shares, bonds, debentures, notes or other securities; [2001, c. 11, §2 (NEW).]

H. Mortgage, pledge or otherwise encumber any property right or thing of value acquired pursuant to the powers contained in paragraph E, F or G as security for the payment of any part of the purchase price of the property right or thing of value; and [2001, c. 11, §2 (NEW).]

I. Expend principal from the endowment fund established in section 3885, subsection 5 only under emergency circumstances by 2/3 vote of the board. [2001, c. 11, §2 (NEW).]

[2001, c. 11, §2 (NEW) .]

SECTION HISTORY
2001, c. 11, §2 (NEW). 2009, c. 204, §10 (AMD).

§3885. FUNDS

1. **Control.** The board may accept funds from a public or private source. Revenue to the fund must be managed, deposited, invested and disbursed by the board in a manner that is independent of control by the Department of Administrative and Financial Services.

[1993, c. 600, Pt. A, §16 (NEW) .]

2. **Grants disbursement.** The board shall establish a procedure and form for applications for grants of fund resources under this chapter. Upon board approval of an application, the board may disburse money from the fund to eligible recipients for the development, operation or awareness of prevention programs and prevention policies under this chapter.

[1993, c. 600, Pt. A, §16 (NEW) .]

3. **Administrative expenses.** Income must be allocated for the support of administrative expenses as follows.

A. The board may expend, for administrative expenses, no more than 45% in calendar year 1994, 40% in calendar year 1995, 35% in calendar year 1996, 30% in calendar year 1997 and 25% in calendar year 1998 of annual revenues from the state income tax checkoff contributed by individuals. After 1998, the board may expend, for administrative expenses, no more than 20% of annual revenues from the state income tax checkoff contributed by individuals. [1993, c. 600, Pt. A, §16 (NEW).]

B. [1997, c. 149, §3 (RP).]

[1997, c. 149, §3 (AMD) .]

4. **Discretion.** The board has sole discretion in the use of resources from sources other than the income tax checkoff by individuals.

[1997, c. 149, §4 (AMD) .]

5. **Endowment fund.** An endowment fund is established pursuant to this subsection. A minimum of 10% of tax checkoff revenue received each year from individuals must be set aside for allocation to the segregated endowment fund. Up to 90% of the checkoff revenue and other income received by the endowment fund may be expended annually by the board in accordance with this chapter.

[1993, c. 600, Pt. A, §16 (NEW) .]

6. **Income greater than $200,000.** At least 1/3 of the total annual revenue that exceeds $200,000 must be allocated to the endowment fund established under subsection 5.

[1993, c. 600, Pt. A, §16 (NEW) .]

SECTION HISTORY
1993, c. 600, §A16 (NEW). 1997, c. 149, §§3,4 (AMD).

§3886. LIMITATION OF POWERS

The board, notwithstanding section 3884-A, subsection 1, paragraph F, may not enter into contracts, obligations or commitments of any kind on behalf of the State or its agencies, nor does it have the power of eminent domain or other powers not provided to business corporations generally. Bonds, notes and other evidences of indebtedness of the board are not debts or liabilities of the State and do not constitute a pledge of the faith and credit of the State. [2001, c. 11, §3 (AMD).]

SECTION HISTORY
1993, c. 600, §A16 (NEW). 2001, c. 11, §3 (AMD).

§3887. LIABILITY OF OFFICERS, DIRECTORS AND EMPLOYEES

Officers, directors, employees and other agents of the board entrusted with the custody of the securities of the fund or authorized to disburse the money of the fund must be bonded, either by a blanket bond or individual bonds, with a surety bond or bonds with a minimum limitation of $100,000 coverage for each person covered by the bond, conditioned upon the faithful performance of their duties, the premiums for which must be paid out of the assets of the fund. [1993, c. 600, Pt. A, §16 (NEW).]

SECTION HISTORY
1993, c. 600, §A16 (NEW).

§3888. PROHIBITED INTERESTS OF OFFICERS, DIRECTORS AND EMPLOYEES

An officer, director or employee of the trust or a spouse or dependent child of an officer, director or employee of the trust may not receive direct personal benefit from the activities of the trust in assisting a private entity. This provision does not prohibit corporations or other entities with which an officer, director or employee is associated by reason of ownership or employment from participating in prevention programs of the trust, if that ownership or employment is made known to the board and the officer, director or employee abstains from voting on matters relating to that participation. This prohibition does not extend to corporators who are not officers, directors or employees of the trust. [1995, c. 402, Pt. A, §8 (AMD).]

SECTION HISTORY
1993, c. 600, §A16 (NEW). 1995, c. 402, §A8 (AMD).

§3889. DONATIONS TO THE STATE

The State, through the Governor, may accept donations, bequests, devises, grants or other interests of any nature on behalf of the trust and shall transfer those funds, that property or other interests to the fund. [1995, c. 402, Pt. A, §9 (AMD).]

SECTION HISTORY
1993, c. 600, §A16 (NEW). 1995, c. 402, §A9 (AMD).

§3890. ANNUAL REPORT; AUDIT

By February 15th, the board shall provide an annual report and an annual independent audit of its activities to the Governor, the joint standing committee of the Legislature having jurisdiction over human resources matters and the public. The annual report must provide a summary of the fund for the previous fiscal year according to generally accepted accounting principles. [1993, c. 600, Pt. A, §16 (NEW).]

SECTION HISTORY
1993, c. 600, §A16 (NEW).

§3890-A. GENERAL CONDITIONS; DISSOLUTION

The following conditions apply to the operation or dissolution of the fund. [1993, c. 600, Pt. A, §16 (NEW).]

1. **Net earnings of the fund.** A member, officer, director or employee may not benefit from any part of the net earnings of the fund. Net earnings of the fund may be used to pay reasonable compensation for services rendered and to hold, manage and dispose of its property in furtherance of the purposes of the fund.

[1993, c. 600, Pt. A, §16 (NEW) .]

2. **Dissolution of fund.** Upon dissolution of the fund, the members shall transfer any unexpended General Fund appropriations to the State and pay or make provisions for the payment of all other liabilities of the fund.

All other principal and accrued interest in the fund must be transferred to the Maine Child Abuse Prevention Councils and restricted to the support of primary prevention of child abuse and neglect in the State.

[2009, c. 204, §11 (AMD) .]

SECTION HISTORY
1993, c. 600, §A16 (NEW). 2009, c. 204, §11 (AMD).

§3890-B. LIBERAL CONSTRUCTION

This chapter must be construed liberally to effect the interests and purposes of the fund for the prevention of child abuse and neglect in the State and must be broadly interpreted to effect the intent and purposes and may not be interpreted as a limitation of powers. [1993, c. 600, Pt. A, §16 (NEW).]

SECTION HISTORY
1993, c. 600, §A16 (NEW).

Chapter 1059: SHORT-TERM EMERGENCY SERVICES FOR CHILDREN

§3891. DEFINITIONS

(REPEALED)

SECTION HISTORY
1977, c. 577, §4 (NEW). 1977, c. 644, §2 (RP).

§3891-A. DEFINITIONS

(REPEALED)

SECTION HISTORY
1977, c. 644, §3 (NEW). 1979, c. 733, §16 (RP).

§3891-B. AUTHORIZATION

(REPEALED)

SECTION HISTORY
1977, c. 644, §3 (NEW). 1979, c. 733, §16 (RP).

§3891-C. CONTACTING PARENTS; CONSENT OF PARENT; CHILD

(REPEALED)

SECTION HISTORY
1977, c. 644, §3 (NEW). 1979, c. 733, §16 (RP).

§3891-D. LENGTH OF SERVICES

(REPEALED)

SECTION HISTORY
1977, c. 644, §3 (NEW). 1979, c. 733, §16 (RP).

§3891-E. LIABILITY OF PARENTS

(REPEALED)

SECTION HISTORY
1977, c. 644, §3 (NEW). 1979, c. 733, §16 (RP).

§3891-F. RULES

(REPEALED)

SECTION HISTORY
1977, c. 644, §3 (NEW). 1979, c. 733, §16 (RP).

§3892. AUTHORIZATION

(REPEALED)

SECTION HISTORY
1977, c. 577, §4 (NEW). 1977, c. 644, §2 (RP).

§3893. MECHANISM

(REPEALED)

SECTION HISTORY
1977, c. 577, §4 (NEW). 1977, c. 644, §2 (RP).

§3894. LENGTH OF SERVICES

(REPEALED)

SECTION HISTORY
1977, c. 577, §4 (NEW). 1977, c. 644, §2 (RP).

§3895. NOTIFICATION OF PARENTS

(REPEALED)

SECTION HISTORY
1977, c. 577, §4 (NEW). 1977, c. 644, §2 (RP).

§3896. CONSENT OF CHILD AND PARENT

(REPEALED)

SECTION HISTORY
1977, c. 577, §4 (NEW). 1977, c. 644, §2 (RP).

§3897. LIABILITY OF PARENTS

(REPEALED)

SECTION HISTORY
1977, c. 577, §4 (NEW). 1977, c. 644, §2 (RP).

§3898. RULES

(REPEALED)

SECTION HISTORY
1977, c. 577, §4 (NEW). 1977, c. 644, §2 (RP).

Chapter 1061: LONG-TERM FOSTER CARE

§3901. PURPOSE

(REPEALED)

SECTION HISTORY
1977, c. 454, §2 (NEW). 1979, c. 733, §17 (RP).

§3902. DEFINITIONS

(REPEALED)

SECTION HISTORY
1977, c. 454, §2 (NEW). 1979, c. 733, §17 (RP).

§3903. AUTHORITY FOR PLACEMENT

(REPEALED)

SECTION HISTORY
1977, c. 454, §2 (NEW). 1979, c. 733, §17 (RP).

§3904. DUTY AND AUTHORITY DELEGATED BY THE DEPARTMENT

(REPEALED)

SECTION HISTORY
1977, c. 454, §2 (NEW). 1979, c. 733, §17 (RP).

§3905. RIGHTS OF THE DEPARTMENT

(REPEALED)

SECTION HISTORY
1977, c. 454, §2 (NEW). 1979, c. 733, §17 (RP).

§3906. RULES AND REGULATIONS

(REPEALED)

SECTION HISTORY
1977, c. 454, §2 (NEW). 1977, c. 694, §369 (RPR). 1979, c. 733, §17 (RP).

Chapter 1063: SOCIAL WORKERS' AND CASEWORKERS' TRAINING

§3911. TRAINING PLAN

The department shall develop a training plan for persons employed in social worker and caseworker job classifications. The department shall establish the goals and objectives of the plan. The department shall also establish goals and objectives for each course and training program that must be designed to meet the goals and objectives of the plan. The plan shall include, but is not limited to: [1989, c. 268, §1 (NEW).]

1. **Differentiation of training to meet specific needs.** Courses and training programs designed to meet the specific needs of social workers and caseworkers engaged in different activities based on the different responsibilities of these social workers and caseworkers;

[1989, c. 268, §1 (NEW) .]

2. **Mandatory training.** Courses and training programs designed to meet the specific needs of social workers and caseworkers for which successful completion shall be mandatory;

[1989, c. 268, §1 (NEW) .]

3. **Optional training.** Optional courses and training programs for social workers and caseworkers;

[1989, c. 268, §1 (NEW) .]

4. **Assessment and investigation.** Courses and training programs in assessment and investigation that shall be mandatory for social workers and caseworkers who conduct investigations or assessments involving clients of the department that may result in the filing of civil or criminal actions;

[1989, c. 268, §1 (NEW) .]

5. **Sources of training.** A description of courses and training programs that departmental staff will conduct and a description of courses and training programs to be conducted by persons outside the department;

[1989, c. 268, §1 (NEW) .]

6. **Evaluation procedure.** An evaluation procedure by which the effectiveness of the courses and training programs can be determined. The department, to the greatest possible extent, will use objective criteria to conduct evaluations of courses and training programs; and

[1989, c. 268, §1 (NEW) .]

7. **Equivalent training.** Provisions for the waiver of training programs and courses for social workers and caseworkers with equivalent training or training that exceeds the training requirements in the plan.

[1989, c. 268, §1 (NEW) .]

SECTION HISTORY
1989, c. 268, §1 (NEW).

§3912. IMPLEMENTATION

The department shall establish a schedule governing successful completion of course and training requirements for newly employed social workers and caseworkers of the department and a schedule for all other social workers and caseworkers currently employed by the department. [1989, c. 268, §1 (NEW).]

SECTION HISTORY
1989, c. 268, §1 (NEW).

§3913. REPORT

The department shall report to the joint standing committee of the Legislature having jurisdiction over human resource matters and the joint standing committee of the Legislature having jurisdiction over state and local government regarding the training plan and any findings and recommendations, including any necessary implementing legislation of the department, no later than January 3, 1990. The report shall include a statistical analysis of social workers who have taken and completed various courses and training programs provided by the department or by agencies, organizations, or persons outside the department. [1989, c. 268, §1 (NEW).]

SECTION HISTORY
1989, c. 268, §1 (NEW).

Chapter 1071: CHILD AND FAMILY SERVICES AND CHILD PROTECTION ACT

Subchapter 1: GENERAL PROVISIONS

§4001. TITLE

This chapter may be cited as the "Child and Family Services and Child Protection Act." [1979, c. 733, §18 (NEW).]

SECTION HISTORY
1979, c. 733, §18 (NEW).

§4002. DEFINITIONS

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [1979, c. 733, §18 (NEW).]

1. **Abuse or neglect.** "Abuse or neglect" means a threat to a child's health or welfare by physical, mental or emotional injury or impairment, sexual abuse or exploitation including under Title 17-A, sections 282, 852, 853 and 855, deprivation of essential needs or lack of protection from these or failure to ensure compliance with school attendance requirements under Title 20-A, section 3272, subsection 2, paragraph B or section 5051-A, subsection 1, paragraph C, by a person responsible for the child.

[2015, c. 360, §2 (AMD) .]

1-A. **Abandonment.** "Abandonment" means any conduct on the part of the parent showing an intent to forego parental duties or relinquish parental claims. The intent may be evidenced by:

A. Failure, for a period of at least 6 months, to communicate meaningfully with the child; [1995, c. 481, §1 (AMD).]

B. Failure, for a period of at least 6 months, to maintain regular visitation with the child; [1995, c. 481, §1 (AMD).]

C. Failure to participate in any plan or program designed to reunite the parent with the child; [1983, c. 184, §1 (NEW).]

D. Deserting the child without affording means of identifying the child and his parent or custodian; [1983, c. 184, §1 (NEW).]

E. Failure to respond to notice of child protective proceedings; or [1983, c. 184, §1 (NEW).]

F. Any other conduct indicating an intent to forego parental duties or relinquish parental claims. [1983, c. 184, §1 (NEW).]

[1995, c. 481, §1 (AMD) .]

1-B. **Aggravating factor.** "Aggravating factor" means any of the following circumstances with regard to the parent.

A. The parent has subjected any child for whom the parent was responsible to aggravated circumstances, including, but not limited to, the following:

(1) Rape, gross sexual misconduct, gross sexual assault, sexual abuse, incest, aggravated assault, kidnapping, promotion of prostitution, sexual exploitation of a minor, sex trafficking or aggravated sex trafficking, abandonment, torture, chronic abuse or any other treatment that is heinous or abhorrent to society. [2015, c. 360, §3 (AMD).]

A-1. The parent refused for 6 months to comply with treatment required in a reunification plan with regard to the child. [2001, c. 696, §11 (NEW).]

B. The parent has been convicted of any of the following crimes and the victim of the crime was a child for whom the parent was responsible or the victim was a child who was a member of a household lived in or frequented by the parent:

(1) Murder;

(2) Felony murder;

(3) Manslaughter;

(4) Aiding, conspiring or soliciting murder or manslaughter;

(5) Felony assault that results in serious bodily injury; or

(6) Any comparable crime in another jurisdiction. [1997, c. 715, Pt. B, §1 (NEW).]

C. The parental rights of the parent to a sibling have been terminated involuntarily. [1997, c. 715, Pt. B, §1 (NEW).]

D. The parent has abandoned the child. [1997, c. 715, Pt. B, §1 (NEW).]

[2015, c. 360, §3 (AMD) .]

2. **Child.** "Child" means any person who is less than 18 years of age.

[1979, c. 733, §18 (NEW) .]

3. **Child protection proceeding.** "Child protection proceeding" means a proceeding on a child protection petition under subchapter IV, a subsequent proceeding to review or modify a case disposition under section 4038, an appeal under section 4006, a proceeding on a termination petition under subchapter VI, or a proceeding on a medical treatment petition under subchapter VIII.

[1979, c. 733, §18 (NEW) .]

3-A. **Child Welfare Services Ombudsman.**

[2001, c. 439, Pt. X, §1 (RP) .]

4. **Custodial parent.** "Custodial parent" means a parent with custody.

[1979, c. 733, §18 (NEW) .]

5. **Custodian.** "Custodian" means the person who has legal custody and power over the person of a child.

[1979, c. 733, §18 (NEW) .]

5-A. **Foster parent.** "Foster parent" means a person whose home is licensed by the department as a family foster home as defined in section 8101, subsection 3 and with whom the child lives pursuant to a court order or agreement with the department.

[1997, c. 715, Pt. B, §2 (NEW) .]

5-B. **Fetal alcohol spectrum disorders.** "Fetal alcohol spectrum disorders" means conditions whose effects include having facial characteristics, growth restriction, central nervous system abnormalities or other characteristics consistent with prenatal alcohol exposure identified in a child from birth to 12 months of age.

[2013, c. 192, §1 (NEW) .]

6. **Jeopardy to health or welfare or jeopardy.** "Jeopardy to health or welfare" or "jeopardy" means serious abuse or neglect, as evidenced by:

A. Serious harm or threat of serious harm; [1979, c. 733, §18 (NEW).]

B. Deprivation of adequate food, clothing, shelter, supervision or care or education when the child is at least 7 years of age and has not completed grade 6; [2007, c. 304, §11 (AMD).]

B-1. Deprivation of necessary health care when the deprivation places the child in danger of serious harm; [2005, c. 373, §5 (NEW).]

C. Abandonment of the child or absence of any person responsible for the child, which creates a threat of serious harm; or [1983, c. 184, §2 (AMD).]

D. The end of voluntary placement, when the imminent return of the child to his custodian causes a threat of serious harm. [1979, c. 733, §18 (NEW).]

[2007, c. 304, §11 (AMD) .]

6-A. **Licensed mental health professional.** "Licensed mental health professional" means a psychiatrist, licensed psychologist, licensed clinical social worker or certified social worker.

[1985, c. 495, §16 (NEW) .]

7. **Parent.** "Parent" means a natural or adoptive parent or a parent established under Title 19-A, chapter 61, unless parental rights have been terminated.

[2015, c. 296, Pt. C, §26 (AMD); 2015, c. 296, Pt. D, §1 (AFF) .]

7-A. **Permanent plan.**

[2005, c. 372, §2 (RP) .]

8. **Person.** "Person" means an individual, corporation, facility, institution or agency, public or private.

[1979, c. 733, §18 (NEW) .]

9. **Person responsible for the child.** "Person responsible for the child" means a person with responsibility for a child's health or welfare, whether in the child's home or another home or a facility which, as part of its function, provides for care of the child. It includes the child's custodian.

[1979, c. 733, §18 (NEW) .]

9-A. **Preadoptive parent.** "Preadoptive parent" means a person who has entered into a preadoption agreement with the department with respect to the child.

[1997, c. 715, Pt. B, §3 (NEW) .]

9-B. **Relative.** "Relative" means the biological or adoptive parent of the child's biological or adoptive parent, or the biological or adoptive sister, brother, aunt, uncle or cousin of the child.

[2007, c. 371, §1 (AMD) .]

9-C. **Removal of the child from home.** "Removal of the child from home" means that the department or a court has taken a child out of the home of the parent, legal guardian or custodian without the permission of the parent or legal guardian.

[1997, c. 715, Pt. B, §3 (NEW) .]

9-D. **Resource family.** "Resource family" means a person or persons who provide care to a child in the child welfare system and who are foster parents, permanency guardians, adoptive parents or members of the child's extended birth family.

[2011, c. 402, §1 (NEW) .]

10. **Serious harm.** "Serious harm" means:

A. Serious injury; [1979, c. 733, §18 (NEW).]

B. Serious mental or emotional injury or impairment which now or in the future is likely to be evidenced by serious mental, behavioral or personality disorder, including severe anxiety, depression or withdrawal, untoward aggressive behavior, seriously delayed development or similar serious dysfunctional behavior; or [1985, c. 739, §3 (AMD).]

C. Sexual abuse or exploitation. [1979, c. 733, §18 (NEW).]

[1985, c. 739, §3 (AMD) .]

11. **Serious injury.** "Serious injury" means serious physical injury or impairment.

[1979, c. 733, §18 (NEW) .]

12. **Suspicious child death.** "Suspicious child death" means the death of a child under circumstances in which there is reasonable cause to suspect that abuse or neglect was a cause of or factor contributing to the child's death.

[2007, c. 586, §1 (NEW) .]

SECTION HISTORY
1979, c. 733, §18 (NEW). 1983, c. 184, §§1,2 (AMD). 1985, c. 495, §16 (AMD). 1985, c. 739, §§1-3 (AMD). 1987, c. 511, §A2 (AMD). 1987, c. 769, §A77 (AMD). 1995, c. 481, §1 (AMD). 1997, c. 715, §§B1-3 (AMD). 2001, c. 439, §X1 (AMD). 2001, c. 696, §§10,11 (AMD). 2005, c. 372, §2 (AMD). 2005, c. 373, §§4,5 (AMD). 2007, c. 304, §§10, 11 (AMD). 2007, c. 371, §1 (AMD). 2007, c. 586, §1 (AMD). 2011, c. 402, §1 (AMD). 2013, c. 192, §1 (AMD). 2015, c. 296, Pt. C, §26 (AMD). 2015, c. 296, Pt. D, §1 (AFF). 2015, c. 360, §§2, 3 (AMD).

§4003. PURPOSES

Recognizing that the health and safety of children must be of paramount concern and that the right to family integrity is limited by the right of children to be protected from abuse and neglect and recognizing also that uncertainty and instability are possible in extended foster home or institutional living, it is the intent of the Legislature that this chapter: [1997, c. 715, Pt. B, §4 (AMD).]

1. **Authorization.** Authorize the department to protect and assist abused and neglected children, children in circumstances which present a substantial risk of abuse and neglect, and their families;

[1979, c. 733, §18 (NEW) .]

2. **Removal from parental custody.** Provide that children will be taken from the custody of their parents only where failure to do so would jeopardize their health or welfare;

[1979, c. 733, §18 (NEW) .]

3. **Reunification as a priority.** Give family rehabilitation and reunification priority as a means for protecting the welfare of children, but prevent needless delay for permanent plans for children when rehabilitation and reunification is not possible;

[1999, c. 731, Pt. AA, §3 (AMD) .]

3-A. **Kinship placement.** Place children who are taken from the custody of their parents with an adult relative when possible;

[2005, c. 374, §1 (NEW) .]

4. **Permanent plans for care and custody.** Promote the early establishment of permanent plans for the care and custody of children who cannot be returned to their family. It is the intent of the Legislature that the department reduce the number of children receiving assistance under the United States Social Security Act, Title IV-E, who have been in foster care more than 24 months, by 10% each year beginning with the federal fiscal year that starts on October 1, 1983; and

[1999, c. 731, Pt. AA, §4 (AMD) .]

5. **Report.** Require the department to report monthly to the joint standing committees of the Legislature having jurisdiction over appropriations and financial affairs and health and human services matters, beginning in July 2000, on the status of children served by the Office of Child and Family Services. The report must include, at a minimum, information on the department's caseload, the location of the children in the department's custody and the number of cases of abuse and neglect that were not opened for assessment. This information must be identified by program and funding source.

[1999, c. 731, Pt. AA, §5 (NEW); 2013, c. 368, Pt. CCCC, §7 (REV) .]

SECTION HISTORY
1979, c. 733, §18 (NEW). 1981, c. 369, §9 (AMD). 1981, c. 698, §96 (AMD). 1985, c. 739, §4 (AMD). 1997, c. 715, Pt. B, §4 (AMD). 1999, c. 731, Pt. AA, §§3-5 (AMD). 2005, c. 374, §1 (AMD). 2013, c. 368, Pt. CCCC, §7 (REV).

§4004. AUTHORIZATIONS

1. **General.** The department may take appropriate action, consistent with available funding, that will help prevent child abuse and neglect and achieve the goals of section 4003 and subchapter XI-A, including:

A. Developing and providing services which:

(1) Support and reinforce parental care of children;

(2) Supplement that care; and

(3) When necessary, substitute for parental care of children; [1979, c. 733, §18 (NEW).]

B. Encouraging the voluntary use of these and other services by families and children who may need them; [1979, c. 733, §18 (NEW).]

C. Cooperating and coordinating with other agencies, facilities or persons providing related services to families and children; [1993, c. 294, §1 (AMD).]

D. Establishing and maintaining a Child Protective Services Contingency Fund to provide temporary assistance to families to help them provide proper care for their children; [2007, c. 586, §2 (AMD).]

E. Establishing a child death and serious injury review panel for reviewing deaths and serious injuries to children. The panel consists of the following members: the Chief Medical Examiner, a pediatrician, a public health nurse, forensic and community mental health clinicians, law enforcement officers, departmental child welfare staff, district attorneys and criminal or civil assistant attorneys general.

The purpose of the panel is to recommend to state and local agencies methods of improving the child protection system, including modifications of statutes, rules, policies and procedures ; and [2007, c. 586, §3 (AMD).]

F. Investigating suspicious child deaths. An investigation under this paragraph is subject to and may not interfere with the authority and responsibility of the Attorney General to investigate and prosecute homicides pursuant to Title 5, section 200-A. [2007, c. 586, §4 (NEW).]

[2007, c. 586, §§2-4 (AMD) .]

2. **Duties.** The department shall act to protect abused and neglected children and children in circumstances that present a substantial risk of abuse and neglect, to prevent further abuse and neglect, to enhance the welfare of these children and their families and to preserve family life wherever possible. The department shall:

A. Receive reports of abuse and neglect and suspicious child deaths; [2007, c. 586, §5 (AMD).]

B. Promptly investigate all abuse and neglect cases and suspicious child deaths coming to its attention or, in the case of out-of-home abuse and neglect investigations, the department shall act in accordance with subchapter 11-A; [2007, c. 586, §6 (AMD).]

C. [2009, c. 558, §1 (RP).]

C-1. Determine in each case investigated under paragraph B whether or not a child has been harmed and the degree of harm or threatened harm by a person responsible for the care of that child by deciding whether allegations are unsubstantiated, indicated or substantiated. Each allegation must be considered separately and may result in a combination of findings.

The department shall adopt rules that define "unsubstantiated," "indicated" and "substantiated" findings for the purposes of this paragraph and that specify an individual's rights to appeal the department's findings. Rules adopted pursuant to this paragraph are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A; [2009, c. 558, §2 (NEW).]

D. [2001, c. 559, Pt. CC, §1 (RP).]

E. If, after investigation, the department does not file a petition under section 4032 but does open a case to provide services to the family to alleviate child abuse and neglect in the home, assign a caseworker, who shall:

(1) Provide information about rehabilitation and other services that may be available to assist the family; and

(2) Develop with the family a written child and family plan.

The child and family plan must identify the problems in the family and the services needed to address those problems; must describe responsibilities for completing the services, including, but not limited to, payment for services, transportation and child care services and responsibilities for seeking out and participating in services; and must state the names, addresses and telephone numbers of any relatives or family friends known to the department or parent to be available as resources to the family.

The child and family plan must be reviewed every 6 months, or sooner if requested by the family or the department; [2007, c. 586, §7 (AMD).]

F. File a petition under section 4032 if, after investigation, the department determines that a child is in immediate risk of serious harm or in jeopardy as defined in this chapter ; and [2007, c. 586, §8 (AMD).]

G. In the case of a suspicious child death, determine:

(1) Whether abuse or neglect was a cause or factor contributing to the child's death; and

(2) The degree of threatened harm to any other child for whom the person or persons responsible for the deceased child may be responsible now or in the future. [2007, c. 586, §9 (NEW).]

[2009, c. 558, §§1, 2 (AMD) .]

3. **Objection of parent.** Except as specifically authorized by law, no person may take charge of a child over the objection of his parent or custodian.

[1979, c. 733, §18 (NEW) .]

SECTION HISTORY
1979, c. 733, §18 (NEW). 1987, c. 744, §§1,2 (AMD). 1991, c. 824, §§A44,45 (AMD). 1993, c. 294, §§1,2 (AMD). 2001, c. 11, §4 (AMD). 2001, c. 559, §CC1 (AMD). 2007, c. 586, §§2-9 (AMD). 2009, c. 558, §§1, 2 (AMD).

§4004-A. VOLUNTARY AGREEMENTS

1. **Agreement authorized.** If the following conditions are met, the department and a custodian may enter into a mutual agreement in which the custodian retains custody of the child and the department agrees to provide services to the child.

A. The department finds that staying in the custodian's home would be detrimental to the welfare of the child. [1993, c. 724, §1 (NEW).]

B. The department finds that, absent a mutual agreement, the child is at risk of entering the child protection system or the juvenile justice system. [1993, c. 724, §1 (NEW).]

[1993, c. 724, §1 (NEW) .]

2. **Agreement requirements.** An agreement entered into pursuant to subsection 1 must meet the following requirements.

A. The agreement may not exceed 180 days unless, within the 180 days, the District Court has found that returning to the custodian's home would be detrimental to the welfare of the child. If the court has made that determination, the agreement may continue but must be reviewed by the court no more than 18 months after commencement of the agreement and at least every 2 years following the 18-month review. [1993, c. 724, §1 (NEW).]

B. The agreement must specify the legal status of the child and the rights and obligations of the custodian, the child, the department and any other parties to the agreement. [1993, c. 724, §1 (NEW).]

C. If the custodian is able to contribute resources to the care of the child, that contribution must be specified in the agreement. Resources include, but are not limited to, insurance coverage and disposable income. [1993, c. 724, §1 (NEW).]

D. The agreement must be approved by the commissioner or the commissioner's designee. [1993, c. 724, §1 (NEW).]

[1993, c. 724, §1 (NEW) .]

3. **Additional parties.** The Department of Corrections, the Department of Education and any other appropriate state agency may be additional parties to the agreement.

[2011, c. 657, Pt. AA, §64 (AMD) .]

4. **Section 4022 not affected.** This section does not apply to agreements entered into under section 4022.

[1993, c. 724, §1 (NEW) .]

5. **Rules.** The department may adopt rules to implement this section.

[1993, c. 724, §1 (NEW) .]

SECTION HISTORY
1993, c. 724, §1 (NEW). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). RR 2003, c. 2, §77 (COR). 2011, c. 657, Pt. AA, §64 (AMD).

§4004-B. INFANTS BORN AFFECTED BY SUBSTANCE ABUSE OR AFTER PRENATAL EXPOSURE TO DRUGS OR WITH FETAL ALCOHOL SPECTRUM DISORDERS

The department shall act to protect infants born identified as being affected by illegal substance abuse, demonstrating withdrawal symptoms resulting from prenatal drug exposure, whether the prenatal exposure was to legal or illegal drugs, or having fetal alcohol spectrum disorders, regardless of whether the infant is abused or neglected. The department shall: [2013, c. 192, §2 (AMD).]

1. **Receive notifications.** Receive notifications of infants who may be affected by illegal substance abuse or demonstrating withdrawal symptoms resulting from prenatal drug exposure or who have fetal alcohol spectrum disorders;

[2013, c. 192, §2 (AMD) .]

2. **Investigate.** Promptly investigate notifications received of infants born who may be affected by illegal substance abuse or demonstrating withdrawal symptoms resulting from prenatal drug exposure or who have fetal alcohol spectrum disorders as determined to be necessary by the department to protect the infant;

[2013, c. 192, §2 (AMD) .]

3. **Determine if infant is affected.** Determine whether each infant for whom the department conducts an investigation is affected by illegal substance abuse, demonstrates withdrawal symptoms resulting from prenatal drug exposure or has fetal alcohol spectrum disorders;

[2013, c. 192, §2 (AMD) .]

4. **Determine if infant is abused or neglected.** Determine whether the infant for whom the department conducts an investigation is abused or neglected and, if so, determine the degree of harm or threatened harm in each case;

[2013, c. 192, §2 (AMD) .]

5. **Develop plan for safe care.** For each infant whom the department determines to be affected by illegal substance abuse, to be demonstrating withdrawal symptoms resulting from prenatal drug exposure or to have fetal alcohol spectrum disorders, develop, with the assistance of any health care provider involved in the

mother's or the child's medical or mental health care, a plan for the safe care of the infant and, in appropriate cases, refer the child or mother or both to a social service agency or voluntary substance abuse prevention service; and

[2013, c. 192, §2 (AMD) .]

6. **Comply with section 4004.** For each infant whom the department determines to be abused or neglected, comply with section 4004, subsection 2, paragraphs E and F.

[2003, c. 673, Pt. Z, §1 (NEW) .]

SECTION HISTORY
2003, c. 673, §Z1 (NEW). 2013, c. 192, §2 (AMD).

§4005. PARTIES' RIGHTS TO REPRESENTATION; LEGAL COUNSEL

1. **Child; guardian ad litem.** The following provisions shall govern guardians ad litem. The term guardian ad litem is inclusive of lay court appointed special advocates under Title 4, chapter 31.

A. The court, in every child protection proceeding except a request for a preliminary protection order under section 4034 or a petition for a medical treatment order under section 4071, but including hearings on those orders, shall appoint a guardian ad litem for the child. The guardian ad litem's reasonable costs and expenses must be paid by the District Court. The appointment must be made as soon as possible after the proceeding is initiated. Guardians ad litem appointed on or after March 1, 2000 must meet the qualifications established by the Supreme Judicial Court. [1999, c. 251, §2 (AMD).]

B. The guardian ad litem shall act in pursuit of the best interests of the child. The guardian ad litem must be given access to all reports and records relevant to the case and investigate to ascertain the facts. The investigation must include, when possible and appropriate, the following:

(1) Review of relevant mental health records and materials;

(2) Review of relevant medical records;

(3) Review of relevant school records and other pertinent materials;

(4) Interviews with the child with or without other persons present; and

(5) Interviews with parents, foster parents, teachers, caseworkers and other persons who have been involved in caring for or treating the child.

The guardian ad litem shall have face-to-face contact with the child in the child's home or foster home within 7 days of appointment by the court and at least once every 3 months thereafter or on a schedule established by the court for reasons specific to the child and family. The guardian ad litem shall report to the court and all parties in writing at 6-month intervals, or as is otherwise ordered by the court, regarding the guardian ad litem's activities on behalf of the child and recommendations concerning the manner in which the court should proceed in the best interest of the child. The court may provide an opportunity for the child to address the court personally if the child requests to do so or if the guardian ad litem believes it is in the child's best interest. [1997, c. 715, Pt. A, §1 (AMD).]

C. The guardian ad litem may subpoena, examine and cross-examine witnesses and shall make a recommendation to the court. [1983, c. 183, (NEW).]

D. The guardian ad litem shall make a written report of the investigation, findings and recommendations and shall provide a copy of the report to each of the parties reasonably in advance of the hearing and to the court, except that the guardian ad litem need not provide a written report prior to a hearing on a preliminary protection order. The court may admit the written report into evidence. [2001, c. 696, §12 (AMD).]

E. The guardian ad litem shall make the wishes of the child known to the court if the child has expressed his wishes, regardless of the recommendation of the guardian ad litem. [1983, c. 183, (NEW).]

F. The guardian ad litem or the child may request the court to appoint legal counsel for the child. The District Court shall pay reasonable costs and expenses of the child's legal counsel. [1995, c. 405, §20 (AMD).]

G. A person serving as a guardian ad litem under this section acts as the court's agent and is entitled to quasi-judicial immunity for acts performed within the scope of the duties of the guardian ad litem. [2001, c. 253, §4 (NEW).]

[2001, c. 696, §12 (AMD) .]

2. **Parents.** Parents and custodians are entitled to legal counsel in child protection proceedings, except a request for a preliminary protection order under section 4034 or a petition for a medical treatment order under section 4071, but including hearings on those orders. They may request the court to appoint legal counsel for them. The court, if it finds them indigent, shall appoint and pay the reasonable costs and expenses of their legal counsel.

[1983, c. 783, §2 (AMD) .]

3. **Wishes of child.** The District Court shall consider the wishes of the child, in a manner appropriate to the age of the child, including, but not limited to, whether the child wishes to participate or be heard in court. In addition, when a child's expressed views are inconsistent with those of the guardian ad litem, the court shall consider whether to consult with the child directly, when the child's age is appropriate.

[2009, c. 557, §1 (NEW) .]

SECTION HISTORY
1979, c. 733, §18 (NEW). 1983, c. 183, (AMD). 1983, c. 783, §§1,2 (AMD). 1985, c. 581, §2 (AMD). 1995, c. 405, §§18-20 (AMD). 1997, c. 257, §5 (AMD). 1997, c. 715, §§A1,2 (AMD). 1999, c. 251, §2 (AMD). 2001, c. 253, §4 (AMD). 2001, c. 696, §12 (AMD). 2009, c. 557, §1 (AMD).

§4005-A. FOSTER PARENTS RIGHT TO STANDING AND INTERVENOR STATUS IN CHILD PROTECTION PROCEEDINGS

(REPEALED)

SECTION HISTORY
1985, c. 424, (NEW). 1991, c. 176, §1 (AMD). 1997, c. 343, §1 (AMD). 2001, c. 696, §13 (RP).

§4005-B. GRANDPARENT'S RIGHT TO STANDING AND INTERVENOR STATUS IN CHILD PROTECTION PROCEEDINGS

(REPEALED)

SECTION HISTORY
1993, c. 697, §1 (NEW). 1995, c. 290, §§3,4 (AMD). 1995, c. 694, §D36 (AMD). 1995, c. 694, §E2 (AFF). 2001, c. 58, §1 (AMD). 2001, c. 696, §14 (RP).

§4005-C. RIGHTS OF PERSONS WHO ARE NOT PARTIES

(REPEALED)

SECTION HISTORY
1997, c. 715, §B5 (NEW). 1999, c. 189, §1 (AMD). 1999, c. 675, §1 (AMD). 2001, c. 696, §15 (RP).

§4005-D. ACCESS TO AND PARTICIPATING IN PROCEEDINGS

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

A. "Foster parent" means a person whose home is licensed by the department as a family foster home as defined in section 8101, subsection 3 and with whom a child lives pursuant to a court order or agreement of the department. [2007, c. 255, §2 (AMD).]

B. "Grandparent" means the biological or adoptive parent of a child's biological or adoptive parent. "Grandparent" includes the parent of a child's parent whose parental rights have been terminated, but only until the child is placed for adoption. [2001, c. 696, §16 (NEW).]

C. "Interested person" means a person the court has determined as having a substantial relationship with a child or a substantial interest in the child's well-being, based on the type, strength and duration of the relationship or interest. A person may request interested person status in a child protection proceeding either orally or in writing. [2001, c. 696, §16 (NEW).]

D. "Intervenor" means a person who is granted intervenor status in a child protective proceeding pursuant to the Maine Rules of Civil Procedure, Rule 24, as long as intervention is consistent with section 4003. [2001, c. 696, §16 (NEW).]

E. "Participant" means a person who is designated as an interested person under paragraph C and who demonstrates to the court that designation as a participant is in the best interests of the child and consistent with section 4003. A person may request participant status in a child protection proceeding either orally or in writing. [2001, c. 696, §16 (NEW).]

[2007, c. 255, §2 (AMD) .]

2. **Interested persons.** Upon request, the court shall designate a foster parent, grandparent, preadoptive parent or a relative of a child by blood or marriage as an interested person unless the court finds good cause not to do so. The court may also grant interested person status to other individuals who have a significant relationship to the child, including, but not limited to, teachers, coaches, counselors or a person who has provided or is providing care for the child.

[2001, c. 696, §16 (NEW) .]

3. **Access to proceedings.** An interested person, participant or intervenor may attend and observe all court proceedings under this chapter unless the court finds good cause to exclude the person. The opportunity to attend court proceedings does not include the right to be heard or the right to present or cross-examine witnesses, present evidence or have access to pleadings or records.

[2001, c. 696, §16 (NEW) .]

4. **Right to be heard.** A participant or an intervenor has the right to be heard in any court proceeding under this chapter. The right to be heard does not include the right to present or cross-examine witnesses, present evidence or have access to pleadings or records.

[2001, c. 696, §16 (NEW) .]

5. **Intervention.** An intervenor may participate in any court proceeding under this chapter as a party as provided by the court when granting intervenor status under Maine Rules of Civil Procedure, Rule 24. An intervenor has the rights of a party as ordered by the court in granting intervenor status, including the right to present or cross-examine witnesses, present evidence and have access to pleadings and records.

[2001, c. 696, §16 (NEW) .]

6. **Foster parents, preadoptive parents and relatives providing care.** The foster parent of a child, if any, and any preadoptive parent or relative providing care for the child must be provided notice of and the right to be heard in any proceeding to be held with respect to the child. The right to be heard includes the right to testify but does not include the right to present other witnesses or evidence, to attend any other portion of the proceeding or to have access to pleadings or records. This subsection may not be construed to require that any foster parent, preadoptive parent or relative providing care for the child be made a party to the proceeding solely on the basis of the notice and right to be heard.

The foster parent of a child, if any, and any preadoptive parent or relative providing care for the child may attend a proceeding in its entirety under this subsection unless specifically excluded by decision of the presiding judge.

[2007, c. 255, §3 (AMD) .]

7. **Confidentiality and disclosure limitations.** Interested persons, participants and intervenors are subject to the confidentiality and disclosure limitations of section 4008.

[2001, c. 696, §16 (NEW) .]

SECTION HISTORY
2001, c. 696, §16 (NEW). 2007, c. 255, §§2, 3 (AMD).

§4005-E. RELATIVES; VISITATION AND ACCESS; PLACEMENT

1. **Grandparent visitation and access.** A grandparent who is designated as an interested person or a participant under section 4005-D or who has been granted intervenor status under the Maine Rules of Civil Procedure, Rule 24 may request the court to grant reasonable rights of visitation or access. When a child is placed in a prospective adoptive home and the prospective adoptive parents have signed an adoptive placement agreement, a grandparent's right to contact or have access to the child that was granted pursuant to this chapter is suspended. If the adoption is not final within 18 months of adoptive placement, then the grandparent whose rights of contact or access were suspended pursuant to this subsection may resume, as a matter of right and without further court order, contact with the child in accordance with the order granting that contact or access, unless the court determines after a hearing that the contact is not in the child's best interests. A grandparent's rights of visitation or access terminate when the adoption is finalized pursuant to Title 18-A, section 9-308. Nothing in this section prohibits prospective adoptive parents from independently facilitating or permitting contact between a child and a grandparent, especially when a court has previously ordered rights of contact.

[2007, c. 371, §2 (AMD) .]

2. **Placement.** A relative who is designated as an interested person or a participant under section 4005-D or who has been granted intervenor status under the Maine Rules of Civil Procedure, Rule 24 may request the court to order that the child be placed with the relative. A relative who has not been designated as a participant under section 4005-D may make the request for placement in writing. In making a decision on the request, the court shall make placement with a relative a priority for consideration for placement if that placement is in the best interests of the child and consistent with section 4003.

[2007, c. 371, §2 (AMD) .]

3. **Conviction or adjudication for certain sex offenses; presumption.** There is a rebuttable presumption that the relative would create a situation of jeopardy for the child if any contact were to be permitted and that contact is not in the best interest of the child if the court finds that the relative:

A. Has been convicted of an offense listed in Title 19-A, section 1653, subsection 6-A, paragraph A in which the victim was a minor at the time of the offense and the relative was at least 5 years older than the minor at the time of the offense except that, if the offense was gross sexual assault under Title 17-A, section 253, subsection 1, paragraph B or C, or an offense in another jurisdiction that involves conduct that is substantially similar to that contained in Title 17-A, section 253, subsection 1, paragraph B or C, and the minor victim submitted as a result of compulsion, the presumption applies regardless of the ages of the relative and the minor victim at the time of the offense; or [2007, c. 513, §5 (AMD).]

B. Has been adjudicated in an action under Title 22, chapter 1071 of sexually abusing a person who was a minor at the time of the abuse. [2005, c. 366, §6 (NEW).]

The relative seeking visitation with or access to the child may produce evidence to rebut the presumption.

[2007, c. 513, §5 (AMD) .]

SECTION HISTORY
2001, c. 696, §16 (NEW). 2005, c. 366, §6 (AMD). 2007, c. 371, §2 (AMD). 2007, c. 513, §5 (AMD).

§4005-F. DETERMINATIONS OF PARENTAGE

As part of a child protection proceeding, the District Court may determine parentage of the child. Title 19-A, chapter 61 applies to determinations of parentage in a child protection proceeding. [2015, c. 296, Pt. C, §27 (AMD); 2015, c. 296, Pt. D, §1 (AFF).]

This section may not be construed to limit the right of a person to file an action pursuant to Title 19-A, chapter 53, subchapter 1 to enforce a father's obligations pursuant to that subchapter. [2007, c. 257, §1 (NEW).]

SECTION HISTORY
2007, c. 257, §1 (NEW). 2015, c. 296, Pt. C, §27 (AMD). 2015, c. 296, Pt. D, §1 (AFF).

§4006. APPEALS

A party aggrieved by an order of a court entered pursuant to section 4035, 4054 or 4071 may appeal directly to the Supreme Judicial Court sitting as the Law Court and such appeals are governed by the Maine Rules of Civil Procedure, chapter 9. [1997, c. 715, Pt. A, §3 (RPR).]

Appeals from any order under section 4035, 4054 or 4071 must be expedited. Any attorney appointed to represent a party in a District Court proceeding under this chapter shall continue to represent that client in any appeal unless otherwise ordered by the court. [1997, c. 715, Pt. A, §3 (RPR).]

Orders entered under this chapter under sections other than section 4035, 4054 or 4071 are interlocutory and are not appealable. [1997, c. 715, Pt. A, §3 (RPR).]

SECTION HISTORY
1979, c. 733, §18 (NEW). 1983, c. 772, §3 (AMD). 1997, c. 715, §A3 (RPR).

§4007. CONDUCTING PROCEEDINGS

1. **Procedures.** All child protection proceedings shall be conducted according to the rules of civil procedure and the rules of evidence, except as provided otherwise in this chapter. All the proceedings shall be recorded. All proceedings and records shall be closed to the public, unless the court orders otherwise.

[1985, c. 495, §17 (AMD) .]

1-A. **Nondisclosure of certain identifying information.** This subsection governs the disclosure of certain identifying information.

A. At each proceeding, the court shall inquire whether there are any court orders in effect at the time of the proceeding that prohibit contact between the parties and participants. If such an order is in effect at the time of the proceeding, the court shall keep records that pertain to the protected person's current or intended address or location confidential, subject to disclosure only as authorized in this section. Any records in the file that contain such information must be sealed by the clerk and not disclosed to other parties or their attorneys or authorized agents unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety or liberty of the protected person and determines that the disclosure is in the interests of justice. [2007, c. 351, §2 (NEW).]

B. If, at any stage of the proceedings, a party or a participant alleges in an affidavit or a pleading under oath that the health, safety or liberty of the person would be jeopardized by disclosure of information pertaining to the person's current or intended address or location, the court shall keep records that contain the information confidential, subject to disclosure only as authorized in this section. Upon receipt of the affidavit or pleading, the records in the file that contain such information must be sealed by the clerk and not disclosed to other parties or participants or their attorneys or authorized agents unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety or liberty of the person seeking protection and determines that the disclosure is in the interests of justice. [2007, c. 351, §2 (NEW).]

C. If the current or intended address or location of a party or participant is required to be kept confidential under paragraph A or B, and the current or intended address or location of that person is a material fact necessary to the proceeding, the court shall hear the evidence outside of the presence of the person and the person's attorney from whom the information is being kept confidential unless the court determines after a hearing that takes into consideration the health, safety or liberty of the protected person that the exclusion of the party or participant is not in the interests of justice. If such evidence is taken outside the presence of a party or participant, the court shall take measures to prevent the excluded person and the person's attorney from accessing the recorded information and the information must be redacted in printed transcripts. [2007, c. 351, §2 (NEW).]

D. Records that are required to be maintained by the court as confidential under this subsection may be disclosed to:

(1) A state agency if necessary to carry out the statutory function of that agency;

(2) A guardian ad litem appointed to the case; or

(3) A criminal justice agency, as defined by Title 16, section 703, subsection 4, if necessary to carry out the administration of criminal justice or the administration of juvenile justice, and such disclosure is otherwise permitted pursuant to section 4008.

In making such disclosure, the court shall order the party receiving the information to maintain the information as confidential. [2013, c. 267, Pt. B, §18 (AMD).]

[2013, c. 267, Pt. B, §18 (AMD) .]

2. **Interviewing children.** The court may interview a child witness in chambers, with only the guardian ad litem and counsel present, provided that the statements made are a matter of record. The court may admit and consider oral or written evidence of out-of-court statements made by a child, and may rely on that evidence to the extent of its probative value.

[1979, c. 733, §18 (NEW) .]

3. **Motion for examination.** At any time during the proceeding, the court may order that a child, parent, alleged parent, person frequenting the household or having custody at the time of the alleged abuse or neglect, any other party to the action or person seeking care or custody of the child be examined pursuant to the Maine Rules of Civil Procedure, Rule 35.

[1989, c. 270, §1 (AMD) .]

3-A. **Report of licensed mental health professional.** In any hearing held in connection with a child protection proceeding under this chapter, the written report of a licensed mental health professional who has treated or evaluated the child shall be admitted as evidence, provided that the party seeking admission of the written report has furnished a copy of the report to all parties at least 21 days prior to the hearing. The report shall not be admitted as evidence without the testimony of the mental health professional if a party objects at least 7 days prior to the hearing. This subsection does not apply to the caseworker assigned to the child.

[1989, c. 226, (NEW) .]

4. **Interstate compact.** The provisions of the Interstate Compact for the Placement of Children, sections 4251 to 4269, if in effect and ratified by the other state involved, apply to proceedings under this chapter; otherwise, the provisions of the Interstate Compact on Placement of Children, sections 4191 to 4247, apply to proceedings under this chapter. Any report submitted pursuant to the compact is admissible in evidence for purposes of indicating compliance with the compact and the court may rely on evidence to the extent of its probative value.

[2007, c. 255, §4 (AMD) .]

5. **Records.**

[2005, c. 300, §1 (RP) .]

6. **Benefits and support for children in custody of department.** When a child has been ordered into the custody of the department under this chapter, Title 15, chapter 507 or Title 19-A, chapter 55, within 30 days of the order, each parent shall provide the department with information necessary for the department to make a determination regarding the eligibility of the child for state, federal or other 3rd-party benefits and shall provide any necessary authorization for the department to apply for these benefits for the child.

Prior to a hearing under section 4034, subsection 4, section 4035 or section 4038, each parent shall file income affidavits as required by Title 19-A, sections 2002 and 2004 unless current information is already on file with the court. If a child is placed in the custody of the department, the court shall order child support from each parent according to the guidelines pursuant to Title 19-A, chapter 63, designate each parent as a nonprimary care provider and apportion the obligation accordingly.

Income affidavits and instructions must be provided to each parent by the department at the time of service of the petition or motion. The court may order a deviation pursuant to Title 19-A, section 2007. Support ordered pursuant to this section must be paid directly to the department pursuant to Title 19-A, chapter 65, subchapter

IV. The failure of a parent to file an affidavit does not prevent the entry of a protection order. A parent may be subject to Title 19-A, section 2004, subsection 1, paragraph D for failure to complete and file income affidavits.

[1995, c. 694, Pt. D, §37 (AMD); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY
1979, c. 733, §18 (NEW). 1983, c. 772, §4 (AMD). 1983, c. 783, §3 (AMD). 1985, c. 495, §17 (AMD). 1985, c. 506, §§A41,42 (AMD). 1989, c. 226, (AMD). 1989, c. 270, §1 (AMD). 1991, c. 840, §6 (AMD). 1993, c. 248, §1 (AMD). 1995, c. 694, §D37 (AMD). 1995, c. 694, §E2 (AFF). 2005, c. 300, §1 (AMD). 2007, c. 255, §4 (AMD). 2007, c. 351, §2 (AMD). 2013, c. 267, Pt. B, §18 (AMD).

§4008. RECORDS; CONFIDENTIALITY; DISCLOSURE

1. **Confidentiality of records and information.** All department records that contain personally identifying information and are created or obtained in connection with the department's child protective activities and activities related to a child while in the care or custody of the department, and all information contained in those records, are confidential and subject to release only under the conditions of subsections 2 and 3.

Within the department, the records are available only to and may be used only by appropriate departmental personnel and legal counsel for the department in carrying out their functions.

Any person who receives department records or information from the department may use the records or information only for the purposes for which that release was intended.

[2007, c. 485, §1 (AMD); 2007, c. 485, §2 (AFF) .]

2. **Optional disclosure of records.** The department may disclose relevant information in the records to the following persons:

A. An agency or person investigating or participating on a team investigating a report of child abuse or neglect when the investigation or participation is authorized by law or by an agreement with the department; [1987, c. 511, Pt. B, §1 (RPR).]

A-1. A law enforcement agency, to the extent necessary for reporting, investigating and prosecuting an alleged crime, the victim of which is a department employee, an employee of the Attorney General's Office, an employee of any court or court system, a person mandated to report suspected abuse or neglect, a person who has made a report to the department, a person who has provided information to the department or an attorney, guardian ad litem, party, participant, witness or prospective witness in a child protection proceeding; [2005, c. 300, §3 (NEW).]

B. [1983, c. 327, §3 (RP).]

C. A physician treating a child whom he reasonably suspects may be abused or neglected; [1979, c. 733, §18 (NEW).]

D. A child named in a record who is reported to be abused or neglected, or the child's parent or custodian, or the subject of the report, with protection for identity of reporters and other persons when appropriate; [1987, c. 744, §3 (AMD).]

D-1. A parent, custodian or caretaker of a child when the department believes the child may be at risk of harm from the person who is the subject of the records or information, with protection for identity of reporters and other persons when appropriate; [2005, c. 300, §4 (NEW).]

D-2. A party to a child protection proceeding, when the records or information is relevant to the proceeding, with protection for identity of reporters and other persons when appropriate; [2005, c. 300, §4 (NEW).]

E. A person having the legal responsibility or authorization to evaluate, treat, educate, care for or supervise a child, parent or custodian who is the subject of a record, or a member of a panel appointed by the department to review child deaths and serious injuries, or a member of the Domestic Abuse Homicide Review Panel established under Title 19-A, section 4013, subsection 4. This includes a member of a treatment team or group convened to plan for or treat a child or family that is the subject of a record. This may also include a member of a support team for foster parents, if that team has been reviewed and approved by the department; [2005, c. 300, §5 (AMD).]

E-1. [2007, c. 371, §3 (RP).]

F. Any person engaged in bona fide research, provided that no personally identifying information is made available, unless it is essential to the researcher and the commissioner or the commissioner's designee gives prior approval. If the researcher desires to contact a subject of a record, the subject's consent shall be obtained by the department prior to the contact; [1989, c. 270, §2 (RPR).]

G. Any agency or department involved in licensing or approving homes for, or the placement of, children or dependent adults, with protection for identity of reporters and other persons when appropriate; [1989, c. 270, §3 (RPR).]

H. Persons and organizations pursuant to Title 5, section 9057, subsection 6, and pursuant to chapter 857; [1989, c. 270, §4 (RPR); 1989, c. 502, Pt. A, §76 (RPR); 1989, c. 878, Pt. A, §62 (RPR).]

I. The representative designated to provide child welfare services by the tribe of an Indian child as defined by the federal Indian Child Welfare Act, 25 United States Code, Section 1903, or a representative designated to provide child welfare services by an Indian tribe of Canada; [2007, c. 140, §5 (AMD).]

J. A person making a report of suspected abuse or neglect. The department may only disclose that it has not accepted the report for investigation, unless other disclosure provisions of this section apply; [2015, c. 194, §1 (AMD); 2015, c. 198, §1 (AMD).]

K. The local animal control officer or the animal welfare program of the Department of Agriculture, Conservation and Forestry established pursuant to Title 7, section 3902 when there is a reasonable suspicion of animal cruelty, abuse or neglect. For purposes of this paragraph, "cruelty, abuse or neglect" has the same meaning as provided in Title 34-B, section 1901, subsection 1, paragraph B; [2015, c. 494, Pt. A, §21 (AMD).]

L. A person, organization, employer or agency for the purpose of carrying out background or employment-related screening of an individual who is or may be engaged in:

(1) Child-related activities or employment; or

(2) Activities or employment relating to adults with intellectual disabilities, autism, related conditions as set out in 42 Code of Federal Regulations, Section 435.1010 or acquired brain injury; and [2015, c. 494, Pt. A, §22 (RPR).]

M. The personal representative of the estate of a child named in a record who is reported to be abused or neglected. [2015, c. 494, Pt. A, §23 (NEW).]

[2015, c. 494, Pt. A, §§21-23 (AMD) .]

3. **Mandatory disclosure of records.** The department shall disclose relevant information in the records to the following persons:

A. The guardian ad litem of a child, appointed pursuant to section 4005, subsection 1; [2005, c. 300, §8 (AMD).]

A-1. The court-appointed guardian ad litem or attorney of a child who is the subject of a court proceeding involving parental rights and responsibilities, grandparent visitation, custody, guardianship or involuntary commitment. The access of the guardian ad litem or attorney to the records or information under this paragraph is limited to reviewing the records in the offices of the department. Any other use of the information or records during the proceeding in which the guardian ad litem or attorney is appointed is governed by paragraph B; [2009, c. 38, §1 (AMD).]

B. A court on its finding that access to those records may be necessary for the determination of any issue before the court or a court requesting a home study from the department pursuant to Title 18-A, section 9-304 or Title 19-A, section 905. Access to such a report or record is limited to counsel of record unless otherwise ordered by the court. Access to actual reports or records is limited to in camera inspection, unless the court determines that public disclosure of the information is necessary for the resolution of an issue pending before the court; [1995, c. 694, Pt. D, §38 (AMD); 1995, c. 694, Pt. E, §2 (AFF).]

C. A grand jury on its determination that access to those records is necessary in the conduct of its official business; [1983, c. 327, §4 (AMD); 1983, c. 470, §12 (AMD).]

D. An appropriate state executive or legislative official with responsibility for child protection services, provided that no personally identifying information may be made available unless necessary to that official's functions; [2001, c. 439, Pt. X, §2 (AMD).]

E. The protection and advocacy agency for persons with disabilities, as designated pursuant to Title 5, section 19502, in connection with investigations conducted in accordance with Title 5, chapter 511. The determination of what information and records are relevant to the investigation must be made by agreement between the department and the agency; [1991, c. 630, §2 (AMD).]

F. The Commissioner of Education when the information concerns teachers and other professional personnel issued certificates under Title 20-A, persons employed by schools approved pursuant to Title 20-A or any employees of schools operated by the Department of Education; [2001, c. 696, §18 (AMD).]

G. The prospective adoptive parents. Prior to a child being placed for the purpose of adoption, the department shall comply with the requirements of Title 18-A, section 9-304, subsection (b) and section 8205; [2003, c. 673, Pt. Z, §2 (AMD).]

H. Upon written request, a person having the legal authorization to evaluate or treat a child, parent or custodian who is the subject of a record. This includes a member of a treatment team or group convened to plan for or treat a child or family that is the subject of a record; [2003, c. 673, Pt. Z, §3 (AMD).]

I. Any government entity that needs such information in order to carry out its responsibilities under law to protect children from abuse and neglect. For purposes of this paragraph, "government entity" means a federal entity, a state entity of any state, a local government entity of any state or locality or an agent of a federal, state or local government entity; [2007, c. 371, §4 (AMD).]

J. To a juvenile court when the child who is the subject of the records has been brought before the court pursuant to Title 15, Part 6; [2013, c. 293, §1 (AMD).]

K. A relative or other person whom the department is investigating for possible custody or placement of the child; [2015, c. 381, §1 (AMD).]

L. To a licensing board of a mandated reporter, in the case of a mandated reporter under section 4011-A, subsection 1 who appears from the record or relevant circumstances to have failed to make a required report. Any information disclosed by the department personally identifying a licensee's client or patient remains confidential and may be used only in a proceeding as provided by Title 5, section 9057, subsection 6; and [2015, c. 381, §2 (AMD).]

M. Law enforcement authorities for entry into the National Crime Information Center database of the Federal Bureau of Investigation and to a national information clearinghouse for missing and exploited children operated pursuant to 42 United States Code, Section 5773(b). Information disclosed pursuant

to this paragraph is limited to information on missing or abducted children or youth that is required to be disclosed pursuant to 42 United States Code, Section 671(a)(35)(B). [2015, c. 381, §3 (NEW).]

[2015, c. 381, §§1-3 (AMD) .]

3-A. **Confidentiality.** The proceedings and records of the child death and serious injury review panel created in accordance with section 4004, subsection 1, paragraph E are confidential and are not subject to subpoena, discovery or introduction into evidence in a civil or criminal action. The commissioner shall disclose conclusions of the review panel upon request, but may not disclose data that is otherwise classified as confidential.

[1993, c. 294, §4 (NEW) .]

4. **Unlawful dissemination; penalty.** A person is guilty of unlawful dissemination if he knowingly disseminates records which are determined confidential by this section, in violation of the mandatory or optional disclosure provisions of this section. Unlawful dissemination is a Class E crime, which, notwithstanding Title 17-A, section 1252, subsection 2, paragraph E, is punishable by a fine of not more than $500 or by imprisonment for not more than 30 days.

[1989, c. 502, Pt. D, §18 (AMD) .]

5. **Retention of unsubstantiated child protection services records.** Except as provided in this subsection, the department shall retain unsubstantiated child protective services case records for no more than 18 months following a finding of unsubstantiation and then expunge unsubstantiated case records from all departmental files or archives unless a new referral has been received within the 18-month retention period. An expunged record or unsubstantiated record that should have been expunged under this subsection may not be used for any purpose, including admission into evidence in any administrative or judicial proceeding. Unsubstantiated child protective services records of persons who were eligible for Medicaid services under the federal Social Security Act, Title XIX, at the time of the investigation may be retained for up to 5 years for the sole purpose of state and federal audits of the Medicaid program. Unsubstantiated child protective services case records retained for audit purposes pursuant to this subsection must be stored separately from other child protective services records and may not be used for any other purpose.

[2015, c. 501, §1 (AMD) .]

6. **Disclosing information; establishment of fees; rules.** The department may charge fees for searching and disclosing information in its records as provided in this subsection.

A. The department may charge fees for the services listed in paragraph B to any person except the following:

(1) A parent in a child protection proceeding, an attorney who represents a parent in a child protection proceeding or a guardian ad litem in a child protection proceeding when the parent, attorney or guardian ad litem requests the service for the purposes of the child protection proceeding;

(2) An adoptive parent or prospective adoptive parent who requests information in the department's records relating to the child who has been or might be adopted;

(3) A person having the legal authorization to evaluate or treat a child, parent or custodian who is the subject of a record, including a member of a treatment team or group convened to plan for or treat a child or family that is the subject of a record; the information in the record must be requested for the purpose of evaluating or treating the child, parent or custodian who is the subject of the record;

(4) Governmental entities of this State that are not engaged in licensing; and

(5) Governmental entities of any county or municipality of this State that are not engaged in licensing.

An order by a court for disclosure of information in records pursuant to subsection 3, paragraph B must be deemed to have been made by the person requesting that the court order the disclosure. [2015, c. 194, §4 (AMD).]

B. The department may charge fees for the following services:

(1) Searching its records to determine whether a particular person is named in the records;

(2) Receiving and responding to a request for disclosure of information in department records, whether or not the department grants the request; and

(3) Disclosing information in department records. [2015, c. 194, §4 (AMD).]

C. The department shall adopt rules governing requests for the services listed in paragraph B. Those rules may provide for a mechanism for making a request, the information required in making a request, the circumstances under which requests will be granted or denied and any other matter that the department determines necessary to efficiently respond to requests for disclosure of information in the records. The rules must establish a list of specified categories of activities or employment for which the department may provide information for background or employment-related screening pursuant to subsection 2, paragraph L. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2015, c. 194, §4 (AMD).]

D. The department shall establish a schedule of fees by rule. The schedule of fees may provide that certain classes of persons are exempt from the fees, and it may establish different fees for different classes of persons. All fees collected by the department must be deposited in the General Fund. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2003, c. 673, Pt. W, §1 (NEW).]

E. A governmental entity that is engaged in licensing may charge an applicant for the fees imposed on it by the department for searching and disclosing information in its records. [2015, c. 194, §4 (AMD).]

F. This subsection may not be construed to permit or require the department to make a disclosure in any particular case. [2003, c. 673, Pt. W, §1 (NEW).]

[2015, c. 194, §4 (AMD) .]

7. **Appeal of denial of disclosure of records.** A parent, legal guardian, custodian or caretaker of a child who requests disclosure of information in records under subsection 2 and whose request is denied may request an administrative hearing to contest the denial of disclosure. The request for hearing must be made in writing to the department. The department shall conduct hearings under this subsection in accordance with the requirements of Title 5, chapter 375, subchapter 4. The issues that may be determined at hearing are limited to whether the nondisclosure of some or all of the information requested is necessary to protect the child or any other person. The department shall render after hearing without undue delay a decision as to whether some or all of the information requested should be disclosed. The decision must be based on the hearing record and rules adopted by the commissioner. The decision must inform the requester that the requester may file a petition for judicial review of the decision within 30 days of the date of the decision. The department shall send a copy of the decision to the requester by regular mail to the requester's most recent address of record.

[2015, c. 501, §2 (NEW) .]

SECTION HISTORY
1979, c. 733, §18 (NEW). 1983, c. 327, §§3-5 (AMD). 1983, c. 354, §§1,2 (AMD). 1983, c. 470, §§12,13 (AMD). 1983, c. 783, §4 (AMD). 1985, c. 495, §18 (AMD). 1985, c. 506, §§A43-45 (AMD). 1985, c. 739, §§5,6 (AMD). 1987, c. 511, §§A3,B1 (AMD). 1987, c. 714, §§5-7 (AMD). 1987,

c. 744, §§3-7 (AMD). 1989, c. 118, (AMD). 1989, c. 270, §§2-5 (AMD). 1989, c. 483, §A33 (AMD). 1989, c. 502, §§A76,77,D18 (AMD). 1989, c. 700, §A89 (AMD). 1989, c. 857, §58 (AMD). 1989, c. 878, §§A62,63 (AMD). 1991, c. 630, §§2-4 (AMD). 1993, c. 294, §§3, 4 (AMD). 1993, c. 686, §8 (AMD). 1993, c. 686, §13 (AFF). 1995, c. 391, §2 (AMD). 1995, c. 694, §§D38,39 (AMD). 1995, c. 694, §E2 (AFF). 2001, c. 439, §X2 (AMD). 2001, c. 696, §§17-20 (AMD). 2003, c. 673, §§W1,Z2-4 (AMD). 2005, c. 300, §§2-9 (AMD). 2007, c. 140, §§5-7 (AMD). 2007, c. 335, §1-3 (AMD). 2007, c. 335, §5 (AFF). 2007, c. 371, §§3-6 (AMD). 2007, c. 473, §1 (AFF). 2007, c. 485, §1 (AMD). 2007, c. 485, §2 (AFF). 2009, c. 38, §1 (AMD). 2011, c. 657, Pt. W, §5 (REV). 2013, c. 293, §§1-3 (AMD). 2015, c. 194, §§1-4 (AMD). 2015, c. 198, §§1-3 (AMD). 2015, c. 381, §§1-3 (AMD). 2015, c. 494, Pt. A, §§21-23 (AMD). 2015, c. 501, §§1, 2 (AMD).

§4008-A. CHILD ABUSE AND NEGLECT INVESTIGATIONS; DISCLOSURE

1. **Disclosure permitted.** Notwithstanding any other provision of law, the commissioner, with the advice of the Attorney General, may disclose information as set forth in this section regarding the abuse or neglect of a child and the investigation of and any services related to the abuse and neglect if the commissioner determines that such disclosure is not contrary to the best interests of the child, the child's siblings or other children in the household and any one of the following factors is present:

A. The alleged perpetrator of the abuse or neglect has been charged with committing a crime related to the allegation of abuse or neglect maintained by the department; [1997, c. 328, §1 (NEW).]

B. A judge, a law enforcement agency official, a district attorney or another state or local investigative agency or official has publicly disclosed, as required by law in the performance of official duties, the provision of child welfare services or the investigation by child welfare services of the abuse or neglect of the child; or [2009, c. 38, §2 (AMD).]

C. An individual who is the parent, custodian or guardian of the victim or a child victim over 14 years of age has made a prior knowing, voluntary, public disclosure. [2009, c. 38, §2 (AMD).]

D. [2009, c. 38, §2 (RP).]

[2009, c. 38, §2 (AMD) .]

1-A. **Disclosure required.** The commissioner shall make public disclosure of the findings or information pursuant to this section in situations where child abuse or neglect results in a child fatality or near fatality, with the exception of circumstances, as determined with the advice of the Attorney General or appropriate district attorney, in which disclosure of child protective information would jeopardize a criminal investigation or proceeding.

[2009, c. 38, §3 (NEW) .]

2. **Information.** For the purposes of this section, the following information may be disclosed:

A. The name and age of the abused or neglected child. If the child is under 13 years of age, the guardian ad litem must agree with the commissioner to release the information. If the child is 13 years of age or older, the guardian ad litem and the child must agree with the commissioner to release the information; [1997, c. 328, §1 (NEW).]

B. The determination by the local child protective service or the state agency that investigated the alleged abuse or neglect and the findings of the applicable investigating agency upon which the determination was based; [1997, c. 328, §1 (NEW).]

C. Identification of child protective or other services provided or actions, if any, taken regarding the child and the child's family; [1997, c. 328, §1 (NEW).]

D. Whether any report of abuse or neglect regarding the child has been substantiated as maintained by the department; [1997, c. 328, §1 (NEW).]

E. Any actions taken by child protective services in response to reports of abuse or neglect of the child to the department, including, but not limited to, actions taken after every report of abuse or neglect of the child and the dates of the reports; [1997, c. 328, §1 (NEW).]

F. Whether the child or the child's family has received care or services from the child welfare services prior to every report of abuse or neglect of the child; and [1997, c. 328, §1 (NEW).]

G. Any extraordinary or pertinent information concerning the circumstances of the abuse or neglect of the child and the investigation of the abuse or neglect, if the commissioner determines the disclosure is consistent with the public interest. [1997, c. 328, §1 (NEW).]

[1997, c. 328, §1 (NEW) .]

3. **Limitations.** The following limitations apply to information disclosed pursuant to this section.

A. Information released prior to the completion of the investigation of a report must be limited to a statement that a report is under investigation. [1997, c. 328, §1 (NEW).]

B. If there has been a prior disclosure pursuant to paragraph A, information released in a case in which the report has not been substantiated is limited to the statement that the investigation has been completed and the report has not been substantiated. [1997, c. 328, §1 (NEW).]

C. If the report has been substantiated, information may be released pursuant to subsection 2. [1997, c. 328, §1 (NEW).]

D. The disclosure may not identify or provide any identifying description of the source of the report, and may not identify the name of the abused or neglected child's siblings, the parent or other person legally responsible for the child or any other members of the child's household, other than the subject of the report. [1997, c. 328, §1 (NEW).]

[1997, c. 328, §1 (NEW) .]

4. **Considerations.** In determining pursuant to subsection 1 whether disclosure would be contrary to the best interests of the child, the child's siblings or other children in the household, the commissioner shall consider the privacy of the child and the child's family and the effects that disclosure may have on efforts to reunite and provide services to the family.

[1997, c. 328, §1 (NEW) .]

5. **Other releases and disclosure.** Except as it applies directly to the cause of the abuse or neglect of the child, nothing in this section authorizes the release or disclosure of the substance or content of any psychological, psychiatric, therapeutic, clinical or medical reports, evaluations or similar materials or information pertaining to the child or the child's family.

[1997, c. 328, §1 (NEW) .]

SECTION HISTORY
1997, c. 328, §1 (NEW). 2009, c. 38, §§2, 3 (AMD).

§4009. PENALTY FOR VIOLATIONS

A person who knowingly violates a provision of this chapter commits a civil violation for which a forfeiture of not more than $500 may be adjudged. [1979, c. 733, §18 (NEW).]

SECTION HISTORY
1979, c. 733, §18 (NEW).

§4010. SPIRITUAL TREATMENT

1. **Treatment not considered abuse or neglect.** Under subchapters I to VII, a child shall not be considered to be abused or neglected, in jeopardy of health or welfare or in danger of serious harm solely because treatment is by spiritual means by an accredited practitioner of a recognized religious organization.

[1979, c. 733, §18 (NEW) .]

2. **Treatment to be considered if requested.** When medical treatment is authorized under this chapter, treatment by spiritual means by an accredited practitioner of a recognized religious organization may also be considered if requested by the child or his parent.

[1979, c. 733, §18 (NEW) .]

SECTION HISTORY
1979, c. 733, §18 (NEW).

§4010-A. CHILD ABUSE POLICIES

1. **Policy development.** Every public or private agency or program that is administered, licensed or funded by the Department of Health and Human Services or the Department of Corrections and hires staff or selects volunteers and provides care or services for children shall develop a written policy regarding child abuse and neglect.

The policy must include:

A. A description of how the program and children are managed to prevent abuse or neglect; [2003, c. 2, §78 (COR).]

B. The reporting of suspected abuse or neglect or other violations to the appropriate designated authorities; [1989, c. 223, (NEW).]

C. The agency's course of action if allegations of abuse or neglect are made against the agency or its staff; and [1989, c. 223, (NEW).]

D. The agency's grievance procedures for staff and for children and their parents or guardians regarding alleged abuse or neglect. [2003, c. 2, §78 (COR).]

[2003, c. 2, §78 (COR) .]

2. **Filing.** The agency shall file the policy as part of its application for licensure or renewal with the state entity that regulates the agency within one year of the effective date of this subsection or of the date the agency comes into existence.

[1989, c. 223, (NEW) .]

3. **Availability of policy.** The agency shall make the policy available to its staff, clients and the public.

[1989, c. 223, (NEW) .]

SECTION HISTORY
1989, c. 223, (NEW). 1989, c. 819, §1 (AMD). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). RR 2003, c. 2, §78 (COR).

§4010-B. WRITTEN POLICIES

1. **Written policies.** By February 1, 2003, the department shall put in writing all policies that direct or guide procedural and substantive decision making by caseworkers, supervisors and other department personnel concerning child protective cases.

[2001, c. 696, §21 (NEW) .]

2. **Publicly available.** By February 1, 2003, the department shall make available to the public all policies that direct or guide procedural and substantive decision making by caseworkers, supervisors and other department personnel concerning child protective cases. The department shall post and maintain the policies on a publicly accessible site on the Internet.

[2001, c. 696, §21 (NEW) .]

3. **Kinship care policies.** By September 1, 2002, the department shall make kinship care policies available in writing to the public.

[2001, c. 696, §21 (NEW) .]

4. **Rules.** This section does not affect the department's responsibility to adopt rules as otherwise required by law.

[2001, c. 696, §21 (NEW) .]

SECTION HISTORY
2001, c. 696, §21 (NEW).

§4010-C. TRANSITION GRANT PROGRAM

The Department of Health and Human Services shall establish a transition grant program to provide financial support to eligible individuals to pay for postsecondary education. [2013, c. 577, §1 (NEW).]

1. **Age; enrollment in postsecondary education institution.** In order to be eligible to participate in the program, an individual must be at least 21 years of age but less than 27 years of age, must have exited the voluntary extended care and support agreement with the State under section 4037-A at 21 years of age and must be enrolled in a postsecondary education institution.

[2013, c. 577, §1 (NEW) .]

2. **Level of financial support.** The transition grant is for postsecondary support up to the completion of an undergraduate degree. The level of financial support must be equivalent to the current voluntary extended foster care supports pursuant to section 4037-A. The department shall set duration limits, including a 6-year maximum for a 4-year degree, a 4-year maximum for a 2-year degree and other duration limits for other types of postsecondary education.

[2013, c. 577, §1 (NEW) .]

3. **Postsecondary education navigator services.** The program must include postsecondary education navigator services that provide transitional services and college support. The department shall determine the specifics of those services.

[2013, c. 577, §1 (NEW) .]

4. **Advisory committee.** The department shall establish an advisory committee to provide oversight of the implementation of the transition grant program. The advisory committee must include stakeholders in the postsecondary education field, the department's postsecondary education navigator under subsection 6, professionals who work with transitional foster youth, employers, representatives of the department and other interested parties. The department shall adopt rules to determine the membership, terms of office and voting procedures of the advisory committee and other specifics of the advisory committee's governance structure. The advisory committee shall provide an annual report to the department and the joint standing committee of the Legislature having jurisdiction over health and human services matters.

[2013, c. 577, §1 (NEW) .]

5. **Limit on number of individuals receiving transition grants.** No more than 40 individuals at any one time may receive transition grants under this section.

[2013, c. 577, §1 (NEW) .]

6. **Postsecondary education navigator.** The department shall develop the roles and responsibilities for the postsecondary education navigator to provide transitional services and college student support for individuals pursuant to this section. The postsecondary education navigator shall provide data to the advisory committee.

[2013, c. 577, §1 (NEW) .]

The department shall adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2013, c. 577, §1 (NEW).]

SECTION HISTORY
2013, c. 577, §1 (NEW).

Subchapter 2: REPORTING OF ABUSE OR NEGLECT

§4011. PERSONS MANDATED TO REPORT SUSPECTED ABUSE OR NEGLECT

(REPEALED)

SECTION HISTORY
1979, c. 733, §18 (NEW). 1983, c. 354, §3 (AMD). 1985, c. 495, §§19,20 (AMD). 1985, c. 530, §1 (AMD). 1985, c. 739, §7 (AMD). 1985, c. 819, §§A25,26 (AMD). 1987, c. 744, §8 (AMD). 1989, c. 270, §6 (AMD). 1989, c. 819, §2 (AMD). 1997, c. 251, §1 (AMD). 1999, c. 300, §§1,2 (AMD). 2001, c. 345, §4 (RP).

§4011-A. REPORTING OF SUSPECTED ABUSE OR NEGLECT

1. **Required report to department.** The following adult persons shall immediately report or cause a report to be made to the department when the person knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected or that a suspicious child death has occurred:

A. When acting in a professional capacity:

(1) An allopathic or osteopathic physician, resident or intern;

(2) An emergency medical services person;

(3) A medical examiner;

(4) A physician's assistant;

(5) A dentist;

(6) A dental hygienist;

(7) A dental assistant;

(8) A chiropractor;

(9) A podiatrist;

(10) A registered or licensed practical nurse;

(11) A teacher;

(12) A guidance counselor;

(13) A school official;

(14) A youth camp administrator or counselor;

(15) A social worker;

(16) A court-appointed special advocate or guardian ad litem for the child;

(17) A homemaker;

(18) A home health aide;

(19) A medical or social service worker;

(20) A psychologist;

(21) Child care personnel;

(22) A mental health professional;

(23) A law enforcement official;

(24) A state or municipal fire inspector;

(25) A municipal code enforcement official;

(26) A commercial film and photographic print processor;

(27) A clergy member acquiring the information as a result of clerical professional work except for information received during confidential communications;

(28) A chair of a professional licensing board that has jurisdiction over mandated reporters;

(29) A humane agent employed by the Department of Agriculture, Conservation and Forestry;

(30) A sexual assault counselor;

(31) A family or domestic violence victim advocate; and

(32) A school bus driver or school bus attendant; [2009, c. 211, Pt. B, §18 (AMD); 2011, c. 657, Pt. W, §5 (REV).]

B. Any person who has assumed full, intermittent or occasional responsibility for the care or custody of the child, regardless of whether the person receives compensation; and [2003, c. 210, §3 (AMD).]

C. Any person affiliated with a church or religious institution who serves in an administrative capacity or has otherwise assumed a position of trust or responsibility to the members of that church or religious institution, while acting in that capacity, regardless of whether the person receives compensation. [2003, c. 210, §4 (NEW).]

Whenever a person is required to report in a capacity as a member of the staff of a medical or public or private institution, agency or facility, that person immediately shall notify either the person in charge of the institution, agency or facility or a designated agent who then shall cause a report to be made. The staff also may make a report directly to the department.

If a person required to report notifies either the person in charge of the institution, agency or facility or the designated agent, the notifying person shall acknowledge in writing that the institution, agency or facility has provided confirmation to the notifying person that another individual from the institution, agency or facility has made a report to the department. The confirmation must include, at a minimum, the name of the individual making the report to the department, the date and time of the report and a summary of the information conveyed. If the notifying person does not receive the confirmation from the institution, agency or facility within 24 hours of the notification, the notifying person immediately shall make a report directly to the department.

An employer may not take any action to prevent or discourage an employee from making a report.

[2015, c. 117, §1 (AMD) .]

1-A. **Permitted reporters.** An animal control officer, as defined in Title 7, section 3907, subsection 4, may report to the department when that person knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected.

[2007, c. 139, §2 (NEW) .]

2. **Required report to district attorney.** When, while acting in a professional capacity, any person required to report under this section knows or has reasonable cause to suspect that a child has been abused or neglected by a person not responsible for the child or that a suspicious child death has been caused by a person not responsible for the child, the person immediately shall report or cause a report to be made to the appropriate district attorney's office.

Whenever a person is required to report in a capacity as a member of the staff of a medical or public or private institution, agency or facility, that person immediately shall notify either the person in charge of the institution, agency or facility or a designated agent who then shall cause a report to be made. The staff also may make a report directly to the appropriate district attorney's office.

If a person required to report notifies either the person in charge of the institution, agency or facility or the designated agent, the notifying person shall acknowledge in writing that the institution, agency or facility has provided confirmation to the notifying person that another individual from the institution, agency or facility has made a report to the appropriate district attorney's office. The confirmation must include, at a minimum, the name of the individual making the report to the appropriate district attorney's office, the date and time of the report and a summary of the information conveyed. If the notifying person does not receive the confirmation from the institution, agency or facility within 24 hours of the notification, the notifying person immediately shall make a report directly to the appropriate district attorney's office.

An employer may not take any action to prevent or discourage an employee from making a report.

[2015, c. 117, §2 (AMD) .]

3. **Optional report.** Any person may make a report if that person knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected or that there has been a suspicious child death.

[2007, c. 586, §12 (AMD) .]

4. **Mental health treatment.** When a licensed mental health professional is required to report under subsection 1 and the knowledge or reasonable cause to suspect that a child has been or is likely to be abused or neglected or that a suspicious child death has occurred comes from treatment of a person responsible for the abuse, neglect or death, the licensed mental health professional shall report to the department in accordance with subsection 1 and under the following conditions.

A. The department shall consult with the licensed mental health professional who has made the report and shall attempt to reach agreement with the mental health professional as to how the report is to be pursued. If agreement is not reached, the licensed mental health professional may request a meeting under paragraph B. [2001, c. 345, §5 (NEW).]

B. Upon the request of the licensed mental health professional who has made the report, after the department has completed its investigation of the report under section 4021 or has received a preliminary protection order under section 4034 and when the department plans to initiate or has initiated a jeopardy order under section 4035 or plans to refer or has referred the report to law enforcement officials, the department shall convene at least one meeting of the licensed mental health professional who made the report, at least one representative from the department, a licensed mental health professional with expertise in child abuse or neglect and a representative of the district attorney's office having jurisdiction over the report, unless that office indicates that prosecution is unlikely. [2001, c. 345, §5 (NEW).]

C. The persons meeting under paragraph B shall make recommendations regarding treatment and prosecution of the person responsible for the abuse, neglect or death. The persons making the recommendations shall take into account the nature, extent and severity of abuse or neglect, the safety of the child and the community and needs of the child and other family members for treatment of the effects of the abuse or neglect and the willingness of the person responsible for the abuse, neglect or death to engage in treatment. The persons making the recommendations may review or revise these recommendations at their discretion. [2007, c. 586, §13 (AMD).]

The intent of this subsection is to encourage offenders to seek and effectively utilize treatment and, at the same time, provide any necessary protection and treatment for the child and other family members.

[2007, c. 586, §13 (AMD) .]

5. **Photographs of visible trauma.** Whenever a person is required to report as a staff member of a law enforcement agency or a hospital, that person shall make reasonable efforts to take, or cause to be taken, color photographs of any areas of trauma visible on a child.

A. The taking of photographs must be done with minimal trauma to the child and in a manner consistent with professional standards. The parent's or custodian's consent to the taking of photographs is not required. [2001, c. 345, §5 (NEW).]

B. Photographs must be made available to the department as soon as possible. The department shall pay the reasonable costs of the photographs from funds appropriated for child welfare services. [2001, c. 345, §5 (NEW).]

C. The person shall notify the department as soon as possible if that person is unable to take, or cause to be taken, these photographs. [2001, c. 345, §5 (NEW).]

D. Designated agents of the department may take photographs of any subject matter when necessary and relevant to an investigation of a report of suspected abuse or neglect or to subsequent child protection proceedings. [2001, c. 345, §5 (NEW).]

[2001, c. 345, §5 (NEW) .]

6. **Permissive reporting of animal cruelty, abuse or neglect.** Notwithstanding any other provision of state law imposing a duty of confidentiality, a person listed in subsection 1 may report a reasonable suspicion of animal cruelty, abuse or neglect to the local animal control officer or to the animal welfare program of the Department of Agriculture, Conservation and Forestry established pursuant to Title 7, section 3902.

For purposes of this subsection, the reporter shall disclose only such limited confidential information as is necessary for the local animal control officer or animal welfare program employee to identify the animal's location and status and the owner's name and address. For purposes of this subsection, "cruelty, abuse or neglect" has the same meaning as provided in Title 34-B, section 1901, subsection 1, paragraph B. A reporter under this subsection may assert immunity from civil and criminal liability under Title 34-B, chapter 1, subchapter 6.

[2007, c. 140, §8 (NEW); 2011, c. 657, Pt. W, §5 (REV) .]

7. **Children under 6 months of age or otherwise nonambulatory.** A person required to make a report under subsection 1 shall report to the department if a child who is under 6 months of age or otherwise nonambulatory exhibits evidence of the following:

A. Fracture of a bone; [2013, c. 268, §1 (NEW).]

B. Substantial bruising or multiple bruises; [2013, c. 268, §1 (NEW).]

C. Subdural hematoma; [2013, c. 268, §1 (NEW).]

D. Burns; [2013, c. 268, §1 (NEW).]

E. Poisoning; or [2013, c. 268, §1 (NEW).]

F. Injury resulting in substantial bleeding, soft tissue swelling or impairment of an organ. [2013, c. 268, §1 (NEW).]

This subsection does not require the reporting of injuries occurring as a result of the delivery of a child attended by a licensed medical practitioner or the reporting of burns or other injuries occurring as a result of medical treatment following the delivery of the child while the child remains hospitalized following the delivery.

[2015, c. 178, §1 (AMD) .]

8. **Required report of residence with nonfamily.** A person required to make a report under subsection 1 shall report to the department if the person knows or has reasonable cause to suspect that a child is not living with the child's family. Although a report may be made at any time, a report must be made immediately if there is reason to suspect that a child has been living with someone other than the child's family for more than 6 months or if there is reason to suspect that a child has been living with someone other than the child's family for more than 12 months pursuant to a power of attorney or other nonjudicial authorization.

[2015, c. 274, §7 (NEW) .]

9. **Training requirement.** A person required to make a report under subsection 1 shall complete at least once every 4 years mandated reporter training approved by the department.

[2015, c. 407, §1 (NEW) .]

SECTION HISTORY
2001, c. 345, §5 (NEW). 2003, c. 145, §2 (AMD). 2003, c. 210, §§3,4 (AMD). 2003, c. 510, §E3 (AMD). 2003, c. 510, §E4 (AFF). 2003, c. 599, §8 (AMD). 2003, c. 599, §§9,14 (AFF). 2007, c. 139, §2 (AMD). 2007, c. 140, §8 (AMD). 2007, c. 577, §6 (AMD). 2007, c. 586, §§10-13 (AMD). 2009, c. 41, §1 (AMD). 2009, c. 211, Pt. B, §18 (AMD). 2011, c. 657, Pt. W, §5 (REV). 2013, c. 268, §1 (AMD). 2015, c. 117, §§1, 2 (AMD). 2015, c. 178, §1 (AMD). 2015, c. 274, §7 (AMD). 2015, c. 407, §1 (AMD).

§4011-B. NOTIFICATION OF PRENATAL EXPOSURE TO DRUGS OR HAVING FETAL ALCOHOL SPECTRUM DISORDERS

1. **Notification of prenatal exposure to drugs or having fetal alcohol spectrum disorders.** A health care provider involved in the delivery or care of an infant who the provider knows or has reasonable cause to suspect has been born affected by illegal substance abuse, is demonstrating withdrawal symptoms that require medical monitoring or care beyond standard newborn care when those symptoms have resulted from or have likely resulted from prenatal drug exposure, whether the prenatal exposure was to legal or illegal drugs, or has fetal alcohol spectrum disorders shall notify the department of that condition in the infant. The notification required by this subsection must be made in the same manner as reports of abuse or neglect required by this subchapter.

A. This section, and any notification made pursuant to this section, may not be construed to establish a definition of "abuse" or "neglect." [2003, c. 673, Pt. Z, §5 (NEW).]

B. This section, and any notification made pursuant to this section, may not be construed to require prosecution for any illegal action, including, but not limited to, the act of exposing a fetus to drugs or other substances. [2003, c. 673, Pt. Z, §5 (NEW).]

[2013, c. 192, §3 (AMD) .]

2. **Definition.** For purposes of this section, "health care provider" means a person described in section 4011-A, subsection 1, paragraph A, subparagraphs (1) to (10), (15), (17) to (20) or (22) or any person who assists in the delivery or birth of a child for compensation, including, but not limited to, a midwife.

[2003, c. 673, Pt. Z, §5 (NEW) .]

SECTION HISTORY
2003, c. 673, §Z5 (NEW). 2013, c. 192, §3 (AMD).

§4012. REPORTING PROCEDURES

1. **Immediate report.** Reports regarding abuse or neglect must be made immediately by telephone to the department and must be followed by a written report within 48 hours if requested by the department.

Hospitals, medical personnel and law enforcement personnel may submit emergency reports through password-protected e-mail submissions. A faxed report may also be accepted when preceded by a telephone call informing the department of the incoming fax transmission.

[2011, c. 402, §2 (AMD) .]

2. **Information required.** The reports shall include the following information if within the knowledge of the person reporting:

A. The name and address of the child and the persons responsible for his care or custody; [1979, c. 733, §18 (NEW).]

B. The child's age and sex; [1979, c. 733, §18 (NEW).]

C. The nature and extent of abuse or neglect, including a description of injuries and any explanation given for them; [1979, c. 733, §18 (NEW).]

D. A description of sexual abuse or exploitation; [1979, c. 733, §18 (NEW).]

E. Family composition and evidence of prior abuse or neglect of the child or his siblings; [1979, c. 733, §18 (NEW).]

F. The source of the report, the person making the report, his occupation and where he can be contacted; [1979, c. 733, §18 (NEW).]

G. The actions taken by the reporting source, including a description of photographs or x rays taken; and [1979, c. 733, §18 (NEW).]

H. Any other information that the person making the report believes may be helpful. [1979, c. 733, §18 (NEW).]

[1979, c. 733, §18 (NEW) .]

SECTION HISTORY
1979, c. 733, §18 (NEW). 2011, c. 402, §2 (AMD).

§4013. MANDATORY REPORTING TO MEDICAL EXAMINER FOR POSTMORTEM INVESTIGATION

(REPEALED)

SECTION HISTORY
1979, c. 733, §18 (NEW). 1983, c. 343, §2 (AMD). 2005, c. 373, §6 (RP).

§4014. IMMUNITY FROM LIABILITY

1. **Reporting and proceedings.** A person, including an agent of the department, participating in good faith in reporting under this subchapter or participating in a related child protection investigation or proceeding, including, but not limited to, a multidisciplinary team, out-of-home abuse investigating team or other investigating or treatment team, is immune from any criminal or civil liability for the act of reporting or participating in the investigation or proceeding. Good faith does not include instances when a false report is made and the person knows the report is false. Nothing in this section may be construed to bar criminal or civil action regarding perjury or regarding the abuse or neglect which led to a report, investigation or proceeding.

[1987, c. 395, Pt. A, §89 (AMD) .]

2. **Photographs and x rays.** A person participating in good faith in taking photographs or x rays under this subchapter is immune from civil liability for invasion of privacy that might otherwise result from these actions.

[1979, c. 733, §18 (NEW) .]

3. **Presumption of good faith.** In a proceeding regarding immunity from liability, there shall be a rebuttable presumption of good faith.

[1979, c. 733, §18 (NEW) .]

SECTION HISTORY
1979, c. 733, §18 (NEW). 1983, c. 783, §5 (AMD). 1987, c. 395, §A89 (AMD).

§4015. PRIVILEGED OR CONFIDENTIAL COMMUNICATIONS

The husband-wife and physician and psychotherapist-patient privileges under the Maine Rules of Evidence and the confidential quality of communication under Title 16, section 53-B; Title 20-A, sections 4008 and 6001, to the extent allowed by applicable federal law; Title 24-A, section 4224; Title 32, sections 7005 and 18393; and Title 34-B, section 1207, are abrogated in relation to required reporting, cooperating with the department or a guardian ad litem in an investigation or other child protective activity or giving

evidence in a child protection proceeding. Information released to the department pursuant to this section must be kept confidential and may not be disclosed by the department except as provided in section 4008. [2015, c. 429, §7 (AMD).]

Statements made to a licensed mental health professional in the course of counseling, therapy or evaluation where the privilege is abrogated under this section may not be used against the client in a criminal proceeding. Nothing in this section may limit any responsibilities of the professional pursuant to this Act. [2001, c. 696, §22 (AMD).]

SECTION HISTORY
1979, c. 733, §18 (NEW). 1981, c. 211, §1 (AMD). 1983, c. 781, §2 (AMD). 1985, c. 495, §21 (AMD). 2001, c. 696, §22 (AMD). 2015, c. 429, §7 (AMD).

§4016. CONFIDENTIALITY OF EMPLOYEE RECORDS

Notwithstanding Title 5, section 554, subsection 2, paragraph E or any other provision of law, the confidentiality of employee records is abrogated in relation to required reporting, cooperating with the department or guardian ad litem in an investigation or other child protective activity or giving evidence in a child protective proceeding. [1983, c. 354, §4 (NEW).]

SECTION HISTORY
1983, c. 354, §4 (NEW).

§4017. DISCRIMINATION

No person may be discriminated against by any employer in any way for participating in good faith in reporting under this subchapter or in a related child protection investigation or proceeding. [1983, c. 354, §4 (NEW).]

SECTION HISTORY
1983, c. 354, §4 (NEW).

§4018. ABANDONED CHILD; SAFE HAVEN PROVIDER

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

A. "Medical services provider" means an individual certified, registered or licensed in the healing arts, including, but not limited to, a physician, nurse, podiatrist, optometrist, chiropractor, physical therapist, dentist, psychologist, physician's assistant or emergency medical services person. [2001, c. 543, §2 (NEW).]

B. "Safe haven provider" means:

(1) A law enforcement officer;

(2) Staff at a medical emergency room;

(3) A medical services provider; or

(4) A hospital staff member at a hospital. [2001, c. 543, §2 (NEW).]

[2001, c. 543, §2 (NEW) .]

2. **Request for information.** A person who voluntarily delivers a child less than 31 days of age to a safe haven provider and who does not express an intent to return for the child may be requested to provide information helpful to the welfare of the child. The person who accepts a child under this section may not detain the person delivering the child to obtain information.

[2001, c. 543, §2 (NEW) .]

3. **Action by safe haven provider; guidelines.** A safe haven provider who accepts a child under this section shall promptly notify the department of the delivery of the child, transfer the child to the department at the earliest opportunity and provide to the department all information provided by the person delivering the child to the safe haven provider. The department shall establish guidelines to assist safe haven providers concerning procedures when a child is delivered to a safe haven provider under this section.

[2001, c. 543, §2 (NEW) .]

4. **Confidentiality.** All personally identifiable information provided by the person delivering the child to a safe haven provider is confidential and may not be disclosed by the safe haven provider to anyone except to the extent necessary to provide temporary custody of the child until the child is transferred to the department and except as otherwise provided by court order. All health care or other information obtained by a safe haven provider in providing temporary custody of the child may also be provided to the department upon request.

[2001, c. 543, §2 (NEW) .]

5. **Liability.** A person or entity who accepts a child under this section or provides temporary custody of a child accepted under this section is not subject to civil, criminal or administrative liability for accepting the child or providing temporary custody of the child in the good faith belief that the action is required or authorized by this section. This subsection does not affect liability for personal injury or wrongful death, including, but not limited to, injury resulting from medical malpractice.

[2001, c. 543, §2 (NEW) .]

SECTION HISTORY
2001, c. 543, §2 (NEW).

§4019. CHILD ADVOCACY CENTERS

This section governs the establishment, organization and duties of child advocacy centers to coordinate the investigation and prosecution of child sexual abuse and other child abuse and neglect and the referral of victims of child sexual abuse and other child abuse and neglect for treatment. [2013, c. 364, §1 (NEW).]

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

A. "Board" means a child advocacy advisory board established pursuant to subsection 2. [2013, c. 364, §1 (NEW).]

B. "Child advocacy center" or "center" means a community-based center that provides multidisciplinary services for children and families affected by child sexual abuse and other child abuse and neglect. [2013, c. 364, §1 (NEW).]

C. "District" means one of the 9 public health districts as defined in section 411, subsection 5. [2013, c. 364, §1 (NEW).]

[2013, c. 364, §1 (NEW) .]

2. Center; child advocacy advisory board. A district may establish one center within the district. A district that establishes a center shall establish a child advocacy advisory board to govern the center.

A. Each of the following officers or agencies shall designate one representative from within the district to serve on the board: a county sheriff; the Bureau of Child and Family Services; the district attorney; the State Police; a municipal police department; a sexual assault support center; and a county mental health organization; or a comparable representative for each who carries out these duties. [2013, c. 364, §1 (NEW).]

B. The board shall organize itself and elect from among its members a chair. Until a chair is elected, the district attorney representative or comparable representative who carries out the duty of prosecuting serves as interim chair. [2013, c. 364, §1 (NEW).]

C. The chair of the board may appoint additional members of the board as necessary to accomplish the purposes of this section. Additional members may include but are not limited to representatives of law enforcement agencies, the judicial branch and tribal courts. [2013, c. 364, §1 (NEW).]

D. The board shall adopt by a majority vote of its members a written protocol on child sexual abuse and other child abuse and neglect. The purpose of the protocol is to ensure coordination and cooperation of all agencies involved in child sexual abuse cases and other child abuse and neglect cases to increase efficiency and effectiveness of those agencies and to minimize stress created for the child and the child's family by the investigation and criminal justice process and to ensure that more effective treatment is provided for the child and the child's family. [2013, c. 364, §1 (NEW).]

E. In preparing its written protocol under paragraph D, the board shall consider the following:

(1) An interdisciplinary, coordinated approach to the investigation of child sexual abuse and other child abuse and neglect, which must at a minimum include:

(a) An interagency notification procedure;

(b) A dispute resolution process for the involved agencies when a conflict arises in how to proceed with the investigation of a case;

(c) A policy on interagency decision making; and

(d) A description of the role each agency has in the investigation of a case;

(2) A safe, separate space, with assigned personnel, designated for the investigation and coordination of child sexual abuse cases and other child abuse and neglect cases;

(3) An interdisciplinary case review process for purposes of decision making, problem solving, systems coordination and information sharing;

(4) A comprehensive tracking system to receive and coordinate information concerning child sexual abuse cases and other child abuse and neglect cases from each participating agency;

(5) Interdisciplinary specialized training for all professionals involved with the cases of victims and families of child sexual abuse and other child abuse and neglect; and

(6) A process for evaluating the implementation and effectiveness of the protocol. [2013, c. 364, §1 (NEW).]

F. The board shall annually evaluate the implementation and effectiveness of the protocol required under paragraph D and shall amend the protocol as necessary to maximize its effectiveness. [2013, c. 364, §1 (NEW).]

G. The board shall file the written protocol under paragraph D and each amendment to it with the Bureau of Child and Family Services and shall provide copies of the protocol and each amendment to it to each agency participating in the district. [2013, c. 364, §1 (NEW).]

[2013, c. 364, §1 (NEW) .]

3. **Child advocacy centers; memorandum of understanding; participants.** On the execution of a memorandum of understanding, a center may be established. A memorandum of understanding regarding participation in the operation of the center must be executed among the following:

A. The Bureau of Child and Family Services; [2013, c. 364, §1 (NEW).]

B. Representatives of state, county and municipal law enforcement agencies that investigate child sexual abuse and other child abuse and neglect in the district; [2013, c. 364, §1 (NEW).]

C. The district attorney who prosecutes child sexual abuse cases and other child abuse and neglect cases in the district; [2013, c. 364, §1 (NEW).]

D. Representatives of a sexual assault support center; and [2013, c. 364, §1 (NEW).]

E. Representatives of any other governmental entity that participates in child sexual abuse or other child abuse and neglect investigations or offers services to victims of child sexual abuse and other child abuse and neglect in the district and that wants to participate in the operation of the center. [2013, c. 364, §1 (NEW).]

[2013, c. 364, §1 (NEW) .]

4. **Elements of memorandum of understanding.** A memorandum of understanding under this section must include the agreement of each participant to cooperate in:

A. Developing a cooperative team approach to investigating child sexual abuse and other child abuse and neglect; [2013, c. 364, §1 (NEW).]

B. Reducing to the greatest extent possible the number of interviews required of a victim of child sexual abuse or other child abuse or neglect to minimize the negative impact of an investigation on the child; and [2013, c. 364, §1 (NEW).]

C. Developing, maintaining and supporting an environment that emphasizes the best interest of children and provides investigatory and rehabilitative services. [2013, c. 364, §1 (NEW).]

[2013, c. 364, §1 (NEW) .]

5. **Office space and administrative services.** A memorandum of understanding under this section may include the agreement of one or more participants to provide office space and administrative services necessary for the center's operation.

[2013, c. 364, §1 (NEW) .]

6. **Child advocacy center duties.** A center shall:

A. Assess victims of child sexual abuse and other child abuse and neglect and their families referred to the center by the department, a law enforcement agency or a district attorney to determine their needs for services relating to the investigation of child sexual abuse and other child abuse and neglect and provide those services; [2013, c. 364, §1 (NEW).]

B. Provide a facility at which a multidisciplinary team appointed under subsection 7 can meet to facilitate the efficient and appropriate disposition of child sexual abuse cases and other child abuse and neglect cases through the civil and criminal justice systems; and [2013, c. 364, §1 (NEW).]

C. Coordinate the activities of governmental entities relating to child sexual abuse and other child abuse and neglect investigations and delivery of services to victims of child sexual abuse and other child abuse and neglect and their families. [2013, c. 364, §1 (NEW).]

[2013, c. 364, §1 (NEW) .]

7. **Multidisciplinary team.** A center shall appoint a multidisciplinary team.

A. A multidisciplinary team must include employees of the participating agencies who are professionals involved in the investigation or prosecution of child sexual abuse cases and other child abuse and neglect cases. A multidisciplinary team may also include representatives of sexual assault support centers and professionals involved in the delivery of services, including medical and mental health services, to victims of child sexual abuse and other child abuse and neglect and the victims' families. [2013, c. 364, §1 (NEW).]

B. A multidisciplinary team shall meet at regularly scheduled intervals to:

(1) Review child sexual abuse and other child abuse and neglect cases determined to be appropriate for review by the multidisciplinary team. A multidisciplinary team may review a child sexual abuse case or other child abuse or neglect case in which the alleged abuser does not have custodial control or supervision of the child or is not responsible for the child's welfare or care; and

(2) Coordinate the actions of the entities involved in the investigation and prosecution of the cases and the delivery of services to the victims of child sexual abuse and other child abuse and neglect and the victims' families. [2013, c. 364, §1 (NEW).]

C. When acting in the member's official capacity, a multidisciplinary team member is authorized to receive confidential information for the purpose of carrying out the member's duties under this section. For purposes of this paragraph, "confidential information" includes confidential records regarding the investigation of reports of child sexual abuse and other child abuse and neglect, including videotaped interviews, and records, papers, files and communications regarding a person receiving services from or being investigated by the department. [2013, c. 364, §1 (NEW).]

[2013, c. 364, §1 (NEW) .]

8. **Immunity from liability.** A person is immune from civil liability for a recommendation or an opinion given in good faith while acting in the official scope of the person's duties as a member of a center's multidisciplinary team or as a staff member or volunteer of a center.

[2013, c. 364, §1 (NEW) .]

9. **Confidential records.** The files, reports, records, communications and working papers used or developed in providing services under this section are confidential and are not public records for purposes of Title 1, chapter 13, subchapter 1. Information may be disclosed only to the following in order for them to carry out their duties:

A. The department, department employees, law enforcement agencies, prosecuting attorneys, medical professionals and other state agencies that provide services to children and families; [2013, c. 364, §1 (NEW).]

B. The attorney for a child who is the subject of confidential records; and [2013, c. 364, §1 (NEW).]

C. A guardian ad litem appointed under section 4005 for a child who is the subject of confidential records. [2013, c. 364, §1 (NEW).]

[2013, c. 364, §1 (NEW) .]

10. **Reports.** Beginning January 2015, the department shall annually report to the joint standing committee of the Legislature having jurisdiction over health and human services matters regarding the centers. The report must include the number of centers and an overview of the protocols adopted by the

centers and the effectiveness of the centers in coordinating the investigation and prosecution of child sexual abuse and other child abuse and neglect and referral of victims of child sexual abuse and other child abuse and neglect for treatment. The committee may submit legislation related to the report.

[2013, c. 364, §1 (NEW) .]

SECTION HISTORY
2013, c. 364, §1 (NEW).

Subchapter 3: INVESTIGATIONS AND EMERGENCY SERVICES

§4021. INVESTIGATIONS

1. **Subpoenas and obtaining criminal history.** The commissioner, his delegate or the legal counsel for the department may:

A. Issue subpoenas requiring persons to disclose or provide to the department information or records in their possession that are necessary and relevant to an investigation of a report of suspected abuse or neglect or suspicious child death, to a subsequent child protection proceeding or to a panel appointed by the department to review child deaths and serious injuries.

(1) The department may apply to the District Court to enforce a subpoena.

(2) A person who complies with a subpoena is immune from civil or criminal liability that might otherwise result from the act of turning over or providing information or records to the department; and [2007, c. 586, §14 (AMD).]

B. Obtain confidential criminal history record information and other criminal history record information under Title 16, chapter 7 that the commissioner, the commissioner's delegate or the legal counsel for the department considers relevant to an abuse or neglect case or the investigation of a suspicious child death. [2013, c. 267, Pt. B, §19 (AMD).]

[2013, c. 267, Pt. B, §19 (AMD) .]

2. **Confidentiality.** Information or records obtained by subpoena shall be treated in accordance with section 4008.

[1979, c. 733, §18 (NEW) .]

3. **Interviewing the child without prior notification.** The department may interview a child without prior notification under the following provisions.

A. The department may interview a child without prior notification to the parent or custodian when the department has reasonable grounds to believe that prior notice would increase the threat of serious harm to the child or another person. The department may conduct one initial interview with a child without prior notification to the parent or custodian of the child when the child contacts the department or a person providing services puts the child into contact with the department. [1989, c. 270, §7 (AMD).]

B. The interview may take place at a school, hospital, police station or other place where the child is present. [1981, c. 369, §10 (NEW).]

C. Upon the request of a department employee, school officials shall permit the department to meet with and interview the child when the child is present at the school.

(1) School officials may require that the department employee requesting to interview the child provide a written certification that in the department's judgment the interview is necessary to carry out the department's duties under this chapter.

(2) The department caseworker shall discuss the circumstances of the interview and any relevant information regarding the alleged abuse or neglect with the child's teacher or guidance counselor or the school's nurse, social worker or principal, as the caseworker determines is necessary for the provision of any needed emotional support to the child prior to and following the interview.

(3) In order for the department to be able to conduct interviews in a manner consistent with good forensic practice, except as provided in subparagraph (1), school officials may not place any conditions on the department's ability to conduct the interview. Without limiting the generality of this subparagraph, school officials are specifically prohibited from:

(a) Requiring that certain persons be present during the interview;

(b) Prohibiting certain persons from being present during the interview; and

(c) Requiring notice to or consent from a parent or guardian.

(4) School officials shall provide an appropriate, quiet and private place for the interview to occur.

(5) That the department intends to interview the child is confidential information and may not be disclosed to any person except those school officials, including an attorney for the school, who need the information to comply with the provisions of this paragraph.

(6) School personnel who assist the department in making the child available for the interview or who otherwise comply with this paragraph are "participating in a related child protection investigation or proceeding" for purposes of section 4014.

Violation of this paragraph subjects any person involved in the violation, including individual school personnel, to the penalty provided in section 4009. This section does not apply to out-of-home abuse and neglect allegations as covered under chapter 1674. [2015, c. 283, §1 (AMD).]

[2015, c. 283, §1 (AMD) .]

4. **Audio recording of planned interviews of children.** To the extent possible, the department shall audio record all planned questioning of and planned interviews with children. No later than February 1, 2003, the commissioner shall provisionally adopt rules in accordance with Title 5, chapter 375 to establish procedures for the audio recording of planned questioning of and planned interviews with children. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A and must be reviewed before final approval by the joint standing committee of the Legislature having jurisdiction over judiciary matters.

Information collected in an interview that was not audio recorded may not be excluded from use in court proceedings solely because the interview was not audio recorded.

[2001, c. 696, §23 (NEW) .]

5. **Right to record.** A person being questioned or interviewed under this chapter or the parent of a child who is the subject of a proceeding under this chapter may not be prohibited from audio recording the questioning or interview.

[2001, c. 696, §23 (NEW) .]

SECTION HISTORY
1979, c. 733, §18 (NEW). 1981, c. 369, §10 (AMD). 1989, c. 270, §7 (AMD). 1993, c. 294, §5 (AMD). 2001, c. 696, §23 (AMD). 2007, c. 132, §1 (AMD). 2007, c. 586, §§14, 15 (AMD). 2013, c. 267, Pt. B, §19 (AMD). 2015, c. 283, §1 (AMD).

§4022. VOLUNTARY CARE

On the written request of a person responsible for the child, the department may care for that child for a specified period by agreement, unless a custodian objects. Voluntary care agreements shall not affect custody. The department may require reimbursement from a parent or custodian for these services. [1979, c. 733, §18 (NEW).]

SECTION HISTORY
1979, c. 733, §18 (NEW).

§4023. SHORT-TERM EMERGENCY SERVICES

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

A. "Agency" means a person with a contract or written agreement with the department to provide short-term emergency services. [1979, c. 733, §18 (NEW).]

B. "Short-term emergency services" means protective services, emergency shelter care, counselling, emergency medical treatment and other services which are essential to the care and protection of a child. These services may include emergency caretaker or homemaker services in the child's home or care outside his home when no parent or other responsible adult is available and willing to care for the child in his home. [1979, c. 733, §18 (NEW).]

[1979, c. 733, §18 (NEW) .]

2. **Authorization.** The department may provide short-term emergency services, directly or through contracts or written agreements with agencies, to a child who has been or appears to be:

A. Threatened with serious harm; [1979, c. 733, §18 (NEW).]

B. A runaway from the child's parents or custodian; [1989, c. 270, §8 (AMD).]

C. Without any person responsible for the child; [2003, c. 626, §1 (AMD).]

D. Taken into interim care under Title 15, section 3501, by a law enforcement officer; or [2003, c. 626, §2 (AMD).]

E. In a situation in which the child has lost both parents as a result of a homicide or has lost one parent and the other parent has been arrested, detained or sentenced and committed to a state correctional facility, state mental health institute or county jail for an offense related to the homicide. [2003, c. 626, §3 (NEW).]

[2003, c. 626, §§1-3 (AMD) .]

3. **Consent to treatment.** The department may give consent for the child to receive necessary emergency medical treatment while receiving short-term emergency services. When the department has given its consent, a physician or health care provider shall be immune from civil liability for providing emergency medical treatment without the informed consent of the child or the child's parents or custodian.

[1979, c. 733, §18 (NEW) .]

4. **Contacting parents.** The following procedures shall apply.

A. Prior to or on initiating short-term emergency services, the department or agency shall take reasonable steps to notify a custodian that the child will receive or is receiving the services. Notwithstanding this subsection, shelters for homeless children, as defined in section 8101, subsection 4-A, are governed by

the parental notification requirements contained in the Department of Health and Human Services rules for the licensure of shelters for homeless children. [1989, c. 270, §9 (AMD); 1989, c. 819, §3 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

B. Short-term emergency services, except for medical treatment, shall not be provided to a child who expresses a clear desire not to receive them. [1979, c. 733, §18 (NEW).]

C. If a parent or custodian objects to medical treatment, it shall be discontinued within 6 hours of receiving the objection. [1979, c. 733, §18 (NEW).]

[1989, c. 270, §9 (AMD); 1989, c. 819, §3 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

5. **Time limit.** Short-term emergency services shall not exceed 72 hours from the time of the department's assumption of responsibility for the child. Notwithstanding this subsection, shelters for homeless children, as defined in section 8101, subsection 4-A, are governed by the time-limit requirements contained in the Department of Health and Human Services rules for the licensure of shelters for homeless children.

[1989, c. 270, §10 (AMD); 1989, c. 819, §4 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

6. **Parent's obligations.** Providing short-term emergency services to a child shall not affect a parent's obligation for the support of the child.

[1979, c. 733, §18 (NEW) .]

7. **Reimbursement.** The department may, by agreement or court order, obtain reimbursement from a parent for the support of a child who receives short-term emergency services. An agency may also obtain reimbursement from a parent subject to its contract or written agreement with the department.

[1979, c. 733, §18 (NEW) .]

8. **Emergency assessment.** In the event of a homicide as described in subsection 2, paragraph E, the department shall perform an emergency assessment for the purposes of temporary placement with a relative or other responsible person. The department shall provide a copy of the assessment performed under this subsection to the law enforcement personnel involved with the family of the child.

[2003, c. 626, §4 (NEW) .]

SECTION HISTORY
1979, c. 733, §18 (NEW). 1983, c. 354, §5 (AMD). 1989, c. 270, §§8-10 (AMD). 1989, c. 819, §§3,4 (AMD). 2003, c. 626, §§1-4 (AMD). 2003, c. 689, §B6 (REV).

§4024. DEPARTMENT RESPONSIBLE FOR REQUIRED SERVICES

If the department requires that a child receive mental health services or other medical services as an alternative to the initiation of a child protection proceeding, the department shall inform the person responsible for the child that the services must be approved by the department. If the person responsible for the child's medical expenses is unable to pay for the services required, the department shall inform the person responsible for the child that the department will pay for the services if the services are approved by the department. [1991, c. 623, (NEW).]

SECTION HISTORY
1991, c. 623, (NEW).

Subchapter 4: PROTECTION ORDERS; PERMANENCY GUARDIANSHIP

§4031. JURISDICTION; VENUE

1. **Jurisdiction.** The following provisions govern jurisdiction.

A. The District Court has jurisdiction over child protection proceedings and jurisdiction over petitions for adoption from permanency guardianship filed by the department. [2011, c. 402, §3 (AMD).]

B. The Probate Court and the Superior Court have concurrent jurisdiction to act on requests for preliminary child protection orders under section 4034. As soon as the action is taken by the Probate Court or the Superior Court, the matter must be transferred to the District Court. [2011, c. 402, §3 (AMD).]

C. [1989, c. 270, §12 (RP).]

D. The District Court has jurisdiction over judicial reviews transferred to the District Court pursuant to Title 18-A, section 9-205. [1995, c. 694, Pt. D, §40 (AMD); 1995, c. 694, Pt. E, §2 (AFF).]

[2011, c. 402, §3 (AMD) .]

2. **Venue.**

A. Petitions shall be brought in the district where the child legally resides or where the child is present. When a child is in voluntary placement with the department or an agency, the petition may be brought only in the district where he legally resides. [1979, c. 733, §18 (NEW).]

B. The court, for the convenience of the parties or in the interests of justice, may transfer the petitions to another district or division. [1979, c. 733, §18 (NEW).]

C. A judge from another district, division or county may hear a petition and make a preliminary or final protection order if no judge is available in the district and division in which the petition is filed. [1979, c. 733, §18 (NEW).]

[1979, c. 733, §18 (NEW) .]

3. **Scope of authority.** The court shall consider and act on child protection petitions regardless of other decrees regarding a child's care and custody. The requirements and provisions of Title 19-A, chapter 58 do not apply to child protection proceedings. If custody or parentage is an issue in another pending proceeding, the proceedings may be consolidated in the District Court with respect to the issue of custody, parentage or both. In any event, the court shall make an order on the child protection petition in accordance with this chapter. That order takes precedence over any prior order regarding the child's care and custody.

[2015, c. 296, Pt. C, §28 (AMD); 2015, c. 296, Pt. D, §1 (AFF) .]

SECTION HISTORY
1979, c. 733, §18 (NEW). 1985, c. 547, (AMD). 1989, c. 270, §§11,12 (AMD). 1991, c. 548, §A19 (AMD). 1993, c. 686, §9 (AMD). 1993, c. 686, §13 (AFF). 1995, c. 694, §§D40,41 (AMD). 1995, c. 694, §E2 (AFF). RR 1999, c. 1, §29 (COR). 2011, c. 402, §3 (AMD). 2015, c. 296, Pt. C, §28 (AMD). 2015, c. 296, Pt. D, §1 (AFF).

§4032. CHILD PROTECTION PETITION; PETITIONERS; CONTENT; FILING

1. **Who may petition.** Petitions may be brought by:

A. The department through an authorized agent; [1979, c. 733, §18 (NEW).]

B. A police officer or sheriff; or [1979, c. 733, §18 (NEW).]

C. Three or more persons. [1979, c. 733, §18 (NEW).]

[1979, c. 733, §18 (NEW) .]

2. **Contents of petition.** A petition must be sworn and include at least the following:

A. Name, date, place of birth and municipal residence, if known, of each child; [1979, c. 733, §18 (NEW).]

B. The name and address of the petitioner and the nature of the petitioner's relationship to the child; [2001, c. 696, §24 (AMD).]

C. Name and municipal residence, if known, of each parent and custodian; [1979, c. 733, §18 (NEW).]

D. A summary statement of the facts that the petitioner believes constitute the basis for the petition; [2001, c. 696, §24 (AMD).]

E. An allegation that is sufficient for court action; [2001, c. 696, §24 (AMD).]

F. A request for specific court action; [1979, c. 733, §18 (NEW).]

G. A statement that the parents and custodians are entitled to legal counsel in the proceedings and that, if they want an attorney but are unable to afford one, they should contact the court as soon as possible to request appointed counsel; [2001, c. 696, §24 (AMD).]

H. A statement that petition proceedings could lead to the termination of parental rights under section 4051 et seq.; [2001, c. 696, §24 (AMD).]

I. A statement explaining the specific reasonable efforts made to prevent the need to remove the child from the home or to resolve jeopardy; [2001, c. 696, §24 (NEW).]

J. The names of relatives who may be able to provide care for the child; and [2001, c. 696, §24 (NEW).]

K. The names of relatives who are members of an Indian tribe. [2001, c. 696, §24 (NEW).]

[2001, c. 696, §24 (AMD) .]

3. **Hearing date.** On the filing of a petition, the court shall set the earliest practicable time and date for a hearing.

[1979, c. 733, §18 (NEW) .]

SECTION HISTORY
1979, c. 733, §18 (NEW). 2001, c. 696, §24 (AMD).

§4033. SERVICE AND NOTICE

1. **Petition service.** A child protection petition shall be served as follows:

A. The petition and a notice of hearing must be served on the parents, legal guardian and custodians, the guardian ad litem for the child and any other party at least 10 days prior to the hearing date. A party may waive this time requirement if the waiver is written and voluntarily and knowingly executed in court before a judge. Service must be made in accordance with the Maine Rules of Civil Procedure. [2015, c. 501, §3 (AMD).]

B. If the department is not the petitioner, the petitioner shall serve a copy of the petition and notice of hearing on the State. [1979, c. 733, §18 (NEW).]

[2015, c. 501, §3 (AMD) .]

2. **Notice of preliminary protection order.** If there is to be a request for a preliminary protection order, the petitioner shall, by any reasonable means, notify the parents, legal guardian and custodians of the intent to request that order and of the court in which counsel for the parents, legal guardian or custodians may file motions, including motions to modify or vacate any preliminary protection order issued. This notice is not required if the petitioner includes in the petition a sworn statement detailing a sufficient factual basis that:

A. The child would suffer serious harm during the time needed to notify the parents, legal guardian or custodians; or [2015, c. 501, §4 (AMD).]

B. Prior notice to the parents, legal guardian or custodians would increase the risk of serious harm to the child or petitioner. [2015, c. 501, §4 (AMD).]

Failure to provide the notice required by this section, after a good faith attempt to do so, does not constitute grounds for denial of a preliminary protection order.

[2015, c. 501, §4 (AMD) .]

3. **Service of preliminary protection order.** If the court makes a preliminary protection order, a copy of the order must be served on the parents, legal guardian and custodians by:

A. In-hand delivery by the judge or court clerk to any parent, legal guardian, custodian or their counsel who is present when the order is made; [2015, c. 501, §5 (AMD).]

B. Service in accordance with the Maine Rules of Civil Procedure. Notwithstanding the Maine Rules of Civil Procedure, the court may waive service by publication of a preliminary protection order for a party whose whereabouts are unknown if the department shows by affidavit that diligent efforts have been made to locate the party; or [1989, c. 819, §5 (AMD).]

C. Another manner ordered by the court. [1979, c. 733, §18 (NEW).]

[2015, c. 501, §5 (AMD) .]

3-A. **Information provided to parents.** When the court makes a preliminary protection order on a child who is physically removed from the child's parents, legal guardian or custodians, the following information must be provided to the parents, legal guardian or custodians in written form by the petitioner at the time of removal of the child:

A. The assigned caseworker's name and work telephone number; [1987, c. 395, Pt. A, §90 (NEW).]

B. The placement with a relative or other location where the child will be taken; and [2015, c. 501, §6 (AMD).]

C. A copy of the complete preliminary protection order. [1987, c. 395, Pt. A, §90 (NEW).]

This information is not required if the petitioner includes in the petition a sworn statement of the petitioner's belief that providing the information would cause the threat of serious harm to the child, the substitute care giver, the petitioner or any other person.

[2015, c. 501, §6 (AMD) .]

4. **Service of final protection order.** The court shall deliver in-hand at the court, or send by ordinary mail promptly after it is entered, a copy of the final protection order to the parent's, legal guardian's or custodian's counsel or, if no counsel, to the parents, legal guardian or custodians. The copy of the order must include a notice to them of their rights under section 4038. Lack of compliance with this subsection does not affect the validity of the order.

[2015, c. 501, §7 (AMD) .]

5. **Notice to foster parents, preadoptive parents and relatives providing care.** The department shall provide written notice of all proceedings in advance of the proceeding to foster parents, preadoptive parents and relatives providing care. The notice must be dated and signed, must include a statement that foster parents, preadoptive parents and relatives providing care are entitled to notice of and a right to be heard in any proceeding held with respect to the child and must contain the following language:

> "The right to be heard includes only the right to testify and does not include the right to present other witnesses or evidence, to attend any other portion of the proceeding or to have access to pleadings or records."

A copy of the notice must be filed with the court prior to the proceeding.

[2007, c. 255, §5 (AMD) .]

6. **Notice to legal guardians.** When notice is required to be given to the legal guardian of a child, the department shall provide notice to all of the child's legal guardians that are known to the department.

[2015, c. 501, §8 (NEW) .]

SECTION HISTORY
1979, c. 733, §18 (NEW). 1987, c. 395, §A90 (AMD). 1989, c. 819, §5 (AMD). 1997, c. 715, Pt. B, §6 (AMD). 2007, c. 255, §5 (AMD). 2015, c. 501, §§3-8 (AMD).

§4034. REQUEST FOR A PRELIMINARY PROTECTION ORDER

1. **Request.** A petitioner may add to a child protection petition a request for a preliminary protection order or may request a preliminary protection order separately from the child protection petition. A request for a preliminary protection order must include a sworn summary of facts to support the request and identify the specific services offered and provided under section 4036-B, subsection 3 to prevent the removal of the child from the home.

[2015, c. 501, §9 (AMD) .]

2. **Order.** If the court finds by a preponderance of the evidence presented in the sworn summary or otherwise that there is an immediate risk of serious harm to the child, it may order any disposition under section 4036. A preliminary protection order automatically expires at the time of the issuing of a final protection order under section 4035 or a judicial review order under section 4038.

[2001, c. 696, §25 (AMD) .]

3. **Custodial consent.** If the custodian consents in writing and the consent is voluntarily and knowingly executed in court before a judge, or the custodian does not appear after proper notice has been given, then the hearing on the preliminary protection order need not be held, except as provided in subsection 4.

[1983, c. 184, §3 (AMD) .]

4. **Summary preliminary hearing.** The court shall schedule a summary preliminary hearing on a preliminary protection order within 14 days but not less than 7 days after issuance of the preliminary protection order, except that counsel for a parent may request that the hearing take place sooner. Upon request of counsel, the court may conduct the summary preliminary hearing as expeditiously as the court determines the interests of justice require. If a parent, custodian or legal guardian appears for the summary preliminary hearing and does not consent to the preliminary protection order, the court shall conduct a hearing at which the petitioner bears the burden of proof. At a summary preliminary hearing, the court may limit testimony to the testimony of the caseworker, parent, custodian, legal guardian, guardian ad litem, foster parent, preadoptive parent or relative providing care and may admit evidence, including reports and records, that would otherwise be inadmissable as hearsay evidence. If after the hearing the court finds by a preponderance of the evidence that returning the child to the child's custodian would place the child in immediate risk of serious harm, it shall continue the order or make another disposition under section 4036. If the court's preliminary protection order includes a finding of an aggravating factor, the court may order the department not to commence reunification or to cease reunification, in which case the court shall conduct a hearing on jeopardy and conduct a permanency planning hearing. The hearings must commence within 30 days of entry of the preliminary protection order.

If the petitioner has not been able to serve a parent, custodian or legal guardian before the scheduled summary preliminary hearing, the parent, custodian or legal guardian may request a subsequent summary preliminary hearing within 10 days after receipt of the petition.

[2015, c. 501, §10 (AMD) .]

5. **Contents of order.** The preliminary protection order must include a notice to the parents and custodians of their right to counsel, as required under section 4032, subsection 2, paragraph G and, if the order was made without consent, notice of the date and time of the summary preliminary hearing. The order must include a notice to the parent or custodian that if a parent or custodian is not served with the petition before the summary preliminary hearing, the parent or custodian is entitled to request a subsequent preliminary hearing within 10 days after receipt of the petition. The order must include a notice that visitation must be scheduled within 7 days of the issuance of the order unless there is a compelling reason not to schedule visitation.

[2001, c. 696, §27 (AMD) .]

6. **Visitation.** When the court issues a preliminary protection order, the court shall order the department to schedule visitation with the child's parents and siblings within 7 days of the issuance of the order, unless there is a compelling reason not to schedule such visitation.

[2001, c. 696, §28 (NEW) .]

SECTION HISTORY
1979, c. 733, §18 (NEW). 1983, c. 184, §§3,4 (AMD). 1997, c. 715, §§A4,5 (AMD). 2001, c. 696, §§25-28 (AMD). 2015, c. 501, §§9, 10 (AMD).

§4034-A. EVIDENCE AND FINDINGS INADMISSIBLE

1. **Evidence.** The exception under section 4034, subsection 4 for the admission of evidence that would otherwise be inadmissible hearsay applies to only the preliminary protection hearing under section 4034, subsection 4. Evidence admitted under that exception is not admissible in any other proceeding unless the evidence is admitted pursuant to the laws and rules of evidence applicable to that other proceeding.

[2001, c. 696, §29 (NEW) .]

2. **Findings.** A finding made at the conclusion of a preliminary protection hearing based on evidence that would otherwise be inadmissible hearsay admitted under section 4034, subsection 4 is not admissible in any other proceeding.

[2001, c. 696, §29 (NEW) .]

SECTION HISTORY
2001, c. 696, §29 (NEW).

§4035. HEARING ON JEOPARDY ORDER PETITION

1. **Hearing required.** The court shall hold a hearing prior to making a jeopardy order.

[1997, c. 715, Pt. A, §7 (AMD) .]

2. **Adjudication.** After hearing evidence, the court shall make a finding, by a preponderance of the evidence, as to whether the child is in circumstances of jeopardy to the child's health or welfare.

A. The court shall make a fresh determination of the question of jeopardy and may not give preclusive effect to the findings of fact made at the conclusion of the hearing under section 4034, subsection 4. [2001, c. 696, §30 (NEW).]

B. The court shall make findings of fact on the record upon which the jeopardy determination is made. [2001, c. 696, §30 (NEW).]

C. The court shall make a jeopardy determination with regard to each parent who has been properly served. [2001, c. 696, §30 (NEW).]

[2001, c. 696, §30 (AMD) .]

2-A. **Conviction or adjudication for certain sex offenses; presumption.** There is a rebuttable presumption:

A. That the person seeking custody or contact with the child would create a situation of jeopardy for the child if any contact were to be permitted and that contact is not in the best interest of the child if the court finds that the person:

(1) Has been convicted of an offense listed in Title 19-A, section 1653, subsection 6-A, paragraph A in which the victim was a minor at the time of the offense and the person was at least 5 years older than the minor at the time of the offense except that, if the offense was gross sexual assault under Title 17-A, section 253, subsection 1, paragraph B or C, or an offense in another jurisdiction that involves conduct that is substantially similar to that contained in Title 17-A, section 253, subsection 1, paragraph B or C, and the minor victim submitted as a result of compulsion, the presumption applies regardless of the ages of the person and the minor victim at the time of the offense; or

(2) Has been adjudicated in an action under Title 22, chapter 1071 of sexually abusing a person who was a minor at the time of the abuse.

The person seeking custody or contact with the child may produce evidence to rebut the presumption; and [2007, c. 513, §6 (AMD).]

B. That the parent or person responsible for the child would create a situation of jeopardy for the child if the parent or person allows, encourages or fails to prevent contact between the child and a person who:

(1) Has been convicted of an offense listed in Title 19-A, section 1653, subsection 6-A, paragraph A in which the victim was a minor at the time of the offense and the person was at least 5 years older than the minor at the time of the offense except that, if the offense was gross sexual assault under

Title 17-A, section 253, subsection 1, paragraph B or C and the minor victim submitted as a result of compulsion, the presumption applies regardless of the ages of the person and the minor victim at the time of the offense; or

(2) Has been adjudicated in an action under Title 22, chapter 1071 of sexually abusing a person who was a minor at the time of the abuse.

The parent or person responsible for the child may produce evidence to rebut the presumption. [2005, c. 366, §7 (NEW).]

[2007, c. 513, §6 (AMD) .]

3. **Grounds for disposition.** If the court determines that the child is in circumstances of jeopardy to the child's health or welfare, the court shall hear any relevant evidence regarding proposed dispositions, including written or oral reports, recommendations or case plans. The court shall then make a written order of any disposition under section 4036. If, after reasonable effort, the department has been unable to serve a parent by the time of the hearing under subsection 1, the court may order any disposition under section 4036 until such time as the parent is served and a jeopardy determination is made with regard to that parent. If possible, this dispositional phase must be conducted immediately after the adjudicatory phase. Written materials to be offered as evidence must be made available to each party's counsel and the guardian ad litem reasonably in advance of the dispositional phase.

[2001, c. 696, §31 (AMD) .]

4. **Final protection order.**

[1997, c. 715, Pt. A, §8 (RP) .]

4-A. **Jeopardy order.** The court shall issue a jeopardy order within 120 days of the filing of the child protection petition.

This time period does not apply if good cause is shown. Good cause does not include a scheduling problem.

[1997, c. 715, Pt. A, §9 (NEW) .]

SECTION HISTORY
1979, c. 733, §18 (NEW). 1983, c. 184, §5 (AMD). 1991, c. 176, §2 (AMD). 1995, c. 481, §2 (AMD). 1997, c. 475, §1 (AMD). 1997, c. 715, §§A6-9 (AMD). 2001, c. 696, §§30,31 (AMD). 2005, c. 366, §7 (AMD). 2007, c. 513, §6 (AMD).

§4036. DISPOSITION AND PRINCIPLES

1. **Disposition.** In a protection order, the court may order one or more of the following:

A. No change in custody; [1979, c. 733, §18 (NEW).]

B. Departmental supervision of the child and family in the child's home; [1979, c. 733, §18 (NEW).]

C. That the child, the custodians, the parents and other appropriate family members accept treatment or services to ameliorate the circumstances related to the jeopardy; [1979, c. 733, §18 (NEW).]

D. Necessary emergency medical treatment for the child when the custodians are unwilling or unable to consent; [1979, c. 733, §18 (NEW).]

E. Emancipation of the child, if the requirements of Title 15, section 3506-A are met; [1983, c. 480, Pt. B, §27 (AMD).]

F. Removal of the child from his custodian and granting custody to a noncustodial parent, other person or the department; [1979, c. 733, §18 (NEW).]

F-1. Removal of the perpetrator from the child's home, prohibiting direct or indirect contact with the child by the perpetrator and prohibiting other specific acts by the perpetrator which the court finds may threaten the child; [1985, c. 164, (NEW).]

F-2. Visitation between the child and a sibling pursuant to section 4068; [2005, c. 526, §1 (NEW).]

G. Payment by the parents of a reasonable amount of support for the child as determined or modified according to Title 19-A, chapter 63; [1995, c. 694, Pt. D, §42 (AMD); 1995, c. 694, Pt. E, §2 (AFF).]

G-1. [1997, c. 715, Pt. A, §10 (RP).]

G-2. If the court's jeopardy order includes a finding of an aggravating factor, the court may order the department to cease reunification, in which case a permanency planning hearing must commence within 30 days of the order to cease reunification. [1997, c. 715, Pt. A, §11 (NEW).]

H. Other specific conditions governing custody; or [1995, c. 405, §22 (AMD).]

I. The court may not order and the State may not pay for the defendant to attend a batterers' intervention program unless the program is certified under Title 19-A, section 4014. [1995, c. 694, Pt. D, §43 (AMD); 1995, c. 694, Pt. E, §2 (AFF).]

[2005, c. 526, §1 (AMD) .]

1-A. **Parental rights and responsibilities orders.** Upon request of a parent, the court may enter an order awarding parental rights and responsibilities pursuant to Title 19-A, section 1653 if the court determines that the order will protect the child from jeopardy and is in the child’s best interest as defined in Title 19-A, section 1653, subsection 3. The court shall ensure that proper notice was given that the child protective case may be disposed of through an order awarding parental rights and responsibilities upon request of a parent. If the court enters an order pursuant to this subsection:

A. The court shall direct the clerk to open a family matters case on behalf of the parties and require the case to be appropriately docketed without a separate initial filing by the parties. The court shall require the parties to complete the income affidavits, child support worksheets and supporting documentation as required in Title 19-A, chapter 63. The court shall enter the order awarding parental rights and responsibilities pursuant to Title 19-A, section 1653; [2013, c. 294, §1 (AMD).]

A-1. The order awarding parental rights and responsibilities may not include reference to or discussion of the child protective case, although the court may identify any jeopardy that remains as a finding of fact. Child protective case documents are confidential, and the court shall seal and keep confidential any documents from the child protective case that are made a part of the record of the family matters case opened under paragraph A; [2013, c. 294, §1 (NEW).]

B. The order awarding parental rights and responsibilities is subject to modification or termination in the same manner as other orders entered pursuant to Title 19-A, section 1653; [2013, c. 294, §1 (AMD).]

C. Any person who requests a modification or termination of the order awarding parental rights and responsibilities must serve the department with the motion or petition; [2013, c. 294, §1 (AMD).]

D. The department is not a party to proceedings to modify or terminate the order awarding parental rights and responsibilities unless otherwise ordered by the court; [2013, c. 294, §1 (AMD).]

D-1. The court may either:

(1) Immediately dismiss the child protection action; or

(2) Enter a provisional order awarding parental rights and responsibilities and, after the passage of a period set by the court not to exceed 6 months, the child protection action must be dismissed, with the order awarding parental rights and responsibilities becoming permanent, unless there is good cause shown in writing to continue the child protection action; and [2013, c. 294, §1 (NEW).]

E. [2013, c. 294, §1 (RP).]

F. When a provisional order awarding parental rights and responsibilities is entered under paragraph D-1, subparagraph (2), the court may terminate the appointments of the guardian ad litem and attorneys for parents and guardians. When the child protection action is dismissed under paragraph D-1, subparagraph (1) or (2), the court shall terminate the appointments of the guardian ad litem and attorneys for parents and guardians. After the appointments are terminated, the attorneys and guardian ad litem have no further responsibilities to their clients or the court. [2013, c. 294, §1 (AMD).]

[2013, c. 294, §1 (AMD) .]

2. **Principles.** In determining the disposition, the court shall apply the following principles in this priority:

A. Protect the child from jeopardy to his health or welfare; [1979, c. 733, §18 (NEW).]

B. Give custody to a parent if appropriate conditions can be applied; [1979, c. 733, §18 (NEW).]

C. Make disposition in the best interests of the child; and [1979, c. 733, §18 (NEW).]

D. Terminate department custody at the earliest possible time. [1979, c. 733, §18 (NEW).]

[1979, c. 733, §18 (NEW) .]

2-A. **Determination of parentage.** In a protection order or in a judicial review order, the court may determine the parentage of the child. The court's determination of the child's parentage must be made pursuant to Title 19-A, chapter 61 and has the same legal effect as a determination of parentage made pursuant to that chapter.

[2015, c. 296, Pt. C, §29 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

3. **Time of order.** The order may be for a specified period, with a review at the end of that period, or it may be for an indeterminate period, not beyond age 18.

[1979, c. 733, §18 (NEW) .]

4. **Disposition of child in custody of department.** The court may not order that a child who has been ordered into the custody of the department be placed with a parent. Nothing in this subsection prevents the department from placing a child in its custody in the home of a parent for a trial period.

[1985, c. 739, §10 (NEW) .]

5. **Notice of criminal penalties.** If an order is issued under this section that contains a provision subject to criminal penalties under section 4036-A, the order must indicate in a clear and conspicuous manner the potential consequences of violating the order.

[1993, c. 443, §1 (NEW) .]

SECTION HISTORY

1979, c. 733, §18 (NEW). 1983, c. 480, §B27 (AMD). 1985, c. 164, (AMD). 1985, c. 739, §§8-10 (AMD). 1989, c. 834, §B15 (AMD). 1993, c. 443, §1 (AMD). 1995, c. 405, §§21-23 (AMD). 1995, c. 694, §§D42,43 (AMD). 1995, c. 694, §E2 (AFF). 1997, c. 715, §§A10,11 (AMD). 2005, c. 526, §1 (AMD). 2007, c. 256, §1 (AMD). 2013, c. 294, §1 (AMD). 2015, c. 296, Pt. C, §29 (AMD). 2015, c. 296, Pt. D, §1 (AFF).

§4036-A. CRIMINAL PENALTY

1. **Definition.** For purposes of this section, "order" means an order entered in a case filed pursuant to this chapter.

[1993, c. 443, §2 (NEW) .]

2. **Crime committed.** When disposition under section 4036 includes a provision that a party named in a petition not have contact with a child or children named in the petition or a provision that a party named in the petition not enter the residence of a child or children named in the petition, and the party has prior actual notice of the order containing those provisions, violation of that provision is a Class D crime. The criminal sanctions in this subsection are in addition to and not in lieu of contempt powers of the court.

[1993, c. 443, §2 (NEW) .]

3. **Warrantless arrest.** Notwithstanding any statutory provision to the contrary, an arrest for criminal violation of an order may be without warrant upon probable cause whether or not the violation is committed in the presence of the law enforcement officer. The law enforcement officer may verify, if necessary, the existence of an order by telephone or radio communication with an agency with knowledge of the order.

[1993, c. 443, §2 (NEW) .]

SECTION HISTORY
1993, c. 443, §2 (NEW).

§4036-B. REMOVAL OF CHILD FROM HOME

1. **Application.** The provisions of this section apply in any case in which the court orders, or has ordered, the removal of a child from home.

[2003, c. 408, §1 (NEW) .]

2. **Welfare of child.** Before a court may order removal of a child from home, the court must specifically find that remaining in the home is contrary to the welfare of the child.

[2003, c. 408, §1 (NEW) .]

3. **Reasonable efforts to prevent removal.** The department shall make reasonable efforts to prevent removal of the child from home, unless the court finds the presence of an aggravating factor. In an order providing for removal of the child from home, or within 60 days of the date of removal of the child from home, the court shall make a finding:

A. Whether or not the department has made reasonable efforts to prevent the removal of the child from home; and [2003, c. 408, §1 (NEW).]

B. If the court finds that the department did not make reasonable efforts to prevent the removal of the child from home, whether or not there is an aggravating factor. [2003, c. 408, §1 (NEW).]

[2003, c. 408, §1 (NEW) .]

3-A. **Notification to relatives.** Except as required by family or domestic violence safety precautions, the department shall exercise due diligence to identify and provide notice, within 30 days after the removal of a child from the custody of a parent or custodian, to the following relatives: all grandparents; all parents of a sibling of the child who have legal custody of the sibling; and other adult relatives of the child, including any other adult relatives suggested by the parents. For the purposes of this subsection, "sibling" includes an individual who would have been considered a sibling of the child but for a termination or other disruption of parental rights, such as the death of a parent. Failure to comply with this provision does not affect service on a parent or custodian.

[2015, c. 381, §4 (AMD) .]

4. **Reasonable efforts to reunify.** The department shall make reasonable efforts to rehabilitate and reunify the family as provided in section 4041, subsection 1-A unless the court has ordered that the department need not commence or may cease reunification pursuant to section 4041, subsection 2. In the jeopardy order pursuant to section 4035 and in each judicial review order pursuant to section 4038, the court shall make a finding whether or not the department has made reasonable efforts to rehabilitate and reunify the family.

[2003, c. 408, §1 (NEW) .]

5. **Reasonable efforts to finalize permanency plan.** The department shall make reasonable efforts to finalize the permanency plan. In each order determining a permanency plan pursuant to section 4038-B, the court shall make a finding whether or not the department has made reasonable efforts to finalize the permanency plan.

[2005, c. 372, §3 (AMD) .]

6. **Requirements for findings.** A court order making any finding required by this section must:

A. Be in writing; [2003, c. 408, §1 (NEW).]

B. State that the finding was based on the specific facts and circumstances relating to the child; and [2003, c. 408, §1 (NEW).]

C. Explicitly document the basis for the finding. [2003, c. 408, §1 (NEW).]

[2003, c. 408, §1 (NEW) .]

SECTION HISTORY
2003, c. 408, §1 (NEW). 2005, c. 372, §3 (AMD). 2011, c. 402, §4 (AMD). 2015, c. 381, §4 (AMD).

§4037. AUTHORITY OF CUSTODIAN

When custody of the child is ordered to the department or other custodian under a preliminary or final protection order, the custodian has full custody of the child subject to the terms of the order and other applicable law. [2015, c. 187, §1 (NEW).]

1. **Adoption.** Custody does not include the right to initiate adoption proceedings without parental consent, except as provided under Title 18-A, section 9-302.

[2015, c. 187, §1 (NEW) .]

2. **Withhold or withdraw life-sustaining medical treatment.** Except as provided in paragraphs A and B, the custodian may not withhold or withdraw life-sustaining medical treatment.

A. The custodian may withhold or withdraw life-sustaining medical treatment if the parental rights of the parents of the child have been terminated pursuant to section 4055 and the custodian determines that withholding or withdrawing life-sustaining medical treatment is in the best interests of the child after considering the factors in paragraph C and the opinions of the child's treating physicians. [2015, c. 187, §1 (NEW).]

B. If the parental rights of one or more parent of the child have not been terminated, the custodian under a preliminary or final child protection order may withhold or withdraw life-sustaining medical treatment:

(1) If the parent or parents whose parental rights have not been terminated consent to the custodian having that authority and the custodian determines that withholding or withdrawing life-sustaining medical treatment is in the best interests of the child after considering the factors in paragraph C and the opinions of the child's treating physicians; or

(2) If any parent whose parental rights have not been terminated does not consent, after notice and hearing, the District Court finds by clear and convincing evidence that:

(a) All of the nonconsenting parents are unfit under one or more of the grounds for termination in section 4055, subsection 1, paragraph B, subparagraph (2), division (b); and

(b) Withholding or withdrawing life-sustaining medical treatment is in the best interests of the child. [2015, c. 187, §1 (NEW).]

C. Withholding or withdrawing life-sustaining medical treatment is in the best interests of the child if the child is in a persistent vegetative state or suffers from another irreversible medical condition that severely impairs mental and physical functioning, with poor long-term medical prognosis, and the child would experience additional pain and suffering if life-sustaining medical treatment were administered. [2015, c. 187, §1 (NEW).]

[2015, c. 187, §1 (NEW) .]

SECTION HISTORY
1979, c. 733, §18 (NEW). 1981, c. 369, §11 (AMD). 1993, c. 686, §10 (AMD). 1993, c. 686, §13 (AFF). 1995, c. 694, §D44 (AMD). 1995, c. 694, §E2 (AFF). 2015, c. 187, §1 (RPR).

§4037-A. EXTENDED CARE

1. **Extended care requirements.** A person who is 18, 19 or 20 years of age and who attained 18 years of age while in the care and custody of the State may continue to receive care and support if the person:

A. Is enrolled in secondary school or its equivalent or is enrolled in postsecondary or career and technical school; [2011, c. 402, §5 (NEW).]

B. Is participating in a program or activity that promotes employment or removes barriers to employment; [2011, c. 402, §5 (NEW).]

C. Is employed for at least 80 hours per month; or [2011, c. 402, §5 (NEW).]

D. Is found to be in special circumstances, including but not limited to being incapable of qualifying under paragraphs A to C due to a documented medical or behavioral health condition. [2011, c. 402, §5 (NEW).]

[2011, c. 402, §5 (NEW) .]

2. **Placement.** A person who qualifies for care and support under this section may be placed in a supervised setting in which the person lives independently, in a foster home or in a group home.

[2011, c. 402, §5 (NEW) .]

3. **Judicial review.** The District Court shall hold a judicial review for each person who qualifies for care and support under this section at least once every 12 months. The court shall hear evidence and shall consider the original reason for the extended care and support of the person and the agreement of extended care and support between the department and the person. The court shall, after hearing or by agreement, make written findings, based on a preponderance of the evidence, that determine:

A. The safety of the person in the person's placement; [2011, c. 402, §5 (NEW).]

B. The services needed to transition the person from extended care and support to independent living; and [2011, c. 402, §5 (NEW).]

C. The compliance of the parties to the agreement of extended care and support. [2011, c. 402, §5 (NEW).]

In a judicial review order, the court may order either the department or the person or both to comply with the agreement of extended care and support but may not order the department to pay for a specific placement.

[2011, c. 402, §5 (NEW) .]

4. **Termination; notice.** A person receiving care and support under this section or the department may terminate the agreement of extended care and support without approval by the court. The department shall notify the court of the termination of extended care and support within 30 days of the termination.

[2011, c. 402, §5 (NEW) .]

5. **Guardian ad litem; attorney.** The appointments of the guardian ad litem and attorneys for the parents are terminated when a person receiving care and support under this section attains 18 years of age, and a new guardian ad litem or attorney may not be appointed for or on behalf of the person or the parents.

[2011, c. 402, §5 (NEW) .]

SECTION HISTORY
2011, c. 402, §5 (NEW).

§4038. MANDATED REVIEW; REVIEW ON MOTION

1. **Mandated review.** If a court has made a jeopardy order, it shall review the case at least once every 6 months, unless the child has been emancipated or adopted.

[1997, c. 715, Pt. B, §7 (AMD) .]

1-A. **No mandated review.** Notwithstanding subsection 1, no subsequent judicial review is required unless petitioned for by any party or unless specifically ordered by the court:

A. When custody has been granted to a person other than a parent or the department; [2007, c. 284, §6 (AMD).]

B. When custody has been granted to a parent who did not have custody at the time the child protection petition was filed; or [2007, c. 284, §6 (AMD).]

C. [2003, c. 408, §4 (RP).]

D. [2003, c. 408, §5 (RP).]

E. When a permanency guardianship has been established pursuant to section 4038-C. [2007, c. 284, §6 (NEW).]

[2007, c. 284, §6 (AMD) .]

2. **Review on motion.** The court, the child's parent, custodian or guardian ad litem or a party to the proceeding, except a parent whose rights have been terminated under subchapter VI, may move for judicial review. The moving party shall have the burden of going forward.

[1985, c. 739, §12 (AMD) .]

3. **Notice of review.** Notice of the reviews must be given to all parties to the initial proceeding according to District Court Civil Rule 4. Notice may not be given to a parent whose rights have been terminated under subchapter VI. The department shall provide written notice of all reviews and hearings in advance of the proceeding to the foster parent, preadoptive parent and relative providing care. The notice must be dated and signed, must include a statement that the foster parent, preadoptive parent and relative providing care are entitled to notice of and an opportunity to be heard in any review or hearing held with respect to the child and must contain the following language:

> "The right to be heard includes only the right to testify and does not include the right to present other witnesses or evidence, to attend any other portion of the review or hearing or to have access to pleadings or records."

A copy of the notice must be filed with the court prior to the review or hearing.

[1997, c. 715, Pt. B, §8 (AMD) .]

3-A. **Prehearing conference.** The court may convene a prehearing conference to clarify the disputed issues and review the possibility of settlement.

[2001, c. 559, Pt. CC, §2 (NEW) .]

4. **Disposition.**

[1985, c. 739, §13 (RP) .]

5. **Hearing.** The court shall hear evidence and shall consider the original reason for the adjudication and disposition under sections 4035 and 4036, the events that have occurred since then and the efforts of the parties as set forth under section 4041. After hearing or by agreement, the court shall make written findings that determine:

A. The safety of the child in the child's placement; [2003, c. 408, §6 (NEW).]

B. The continuing necessity for and appropriateness of the child's placement; [2003, c. 408, §6 (NEW).]

C. The effect of a change in custody on the child; [2003, c. 408, §6 (NEW).]

D. The extent of the parties' compliance with the case plan and the extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care; [2003, c. 408, §6 (NEW).]

E. A likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship; and [2003, c. 408, §6 (NEW).]

F. If the child is 16 years of age or older, whether or not the child is receiving instruction to aid the child in independent living. [2003, c. 408, §6 (NEW).]

[2003, c. 408, §6 (AMD) .]

6. **Disposition.** The court may make any further order, based on a preponderance of evidence, that is authorized under section 4036.

A. [1989, c. 270, §13 (RP).]

B. [1989, c. 270, §13 (RP).]

C. [1989, c. 270, §13 (RP).]

[1989, c. 270, §13 (AMD) .]

7. **Review of child in custody of the department.**

[1997, c. 715, Pt. B, §9 (RP) .]

7-A. **Permanency planning hearing.**

[2005, c. 372, §4 (RP) .]

SECTION HISTORY
1979, c. 733, §18 (NEW). 1981, c. 369, §12 (AMD). 1983, c. 185, (RPR). 1985, c. 739, §§11-14 (AMD). 1987, c. 269, §§1,2 (AMD). 1989, c. 270, §§13,14 (AMD). 1991, c. 176, §3 (AMD). 1993, c. 198, §1 (AMD). 1997, c. 475, §§2-6 (AMD). 1997, c. 715, §§B7-10 (AMD). 2001, c. 559, §§CC2,3 (AMD). 2001, c. 696, §32 (AMD). 2003, c. 408, §§2-6 (AMD). 2005, c. 372, §4 (AMD). 2007, c. 284, §6 (AMD).

§4038-A. TRANSFER TO DISTRICT COURT

If a case is transferred to the District Court pursuant to Title 18-A, section 9-205, the court shall conduct a hearing and enter a dispositional order using the same standards as set forth in section 4036. The court after the hearing and entering of a dispositional order shall conduct reviews in accordance with section 4038 and permanency planning hearings in accordance with section 4038-B. [2005, c. 372, §5 (AMD).]

SECTION HISTORY
1993, c. 686, §11 (NEW). 1993, c. 686, §13 (AFF). 1995, c. 694, §D45 (AMD). 1995, c. 694, §E2 (AFF). 2005, c. 372, §5 (AMD).

§4038-B. PERMANENCY PLANS

1. **Mandated permanency planning hearing.** Unless subsequent judicial reviews are not required pursuant to section 4038, subsection 1-A, the District Court shall conduct a permanency planning hearing and shall determine a permanency plan within the earlier of:

A. Thirty days after a court order to cease reunification; and [2005, c. 372, §6 (NEW).]

B. Twelve months after the time a child is considered to have entered foster care. A child is considered to have entered foster care on the date of the first judicial finding that the child has been subjected to child abuse or neglect or on the 60th day after removal of the child from home, whichever occurs first. [2005, c. 372, §6 (NEW).]

[2005, c. 372, §6 (NEW) .]

2. **Subsequent permanency planning hearings.** Unless subsequent judicial reviews are not required pursuant to section 4038, subsection 1-A, the District Court shall conduct a permanency planning hearing within 12 months of the date of any prior permanency planning order.

[2005, c. 372, §6 (NEW) .]

3. **Permanency planning orders.** After each permanency planning hearing, the District Court shall adopt a permanency plan for a child that complies with subsection 4. The court shall enter the order within the time limitations contained in subsection 1 or 2, whichever is applicable to the permanency planning hearing.

[2005, c. 372, §6 (NEW) .]

4. **Contents of permanency plan.** A permanency plan for a child under this section must contain determinations on the following issues.

A. The permanency plan must determine whether and when, if applicable, the child will be:

(1) Returned to a parent. Before the court may enter an order returning the custody of the child to a parent, the parent must show that the parent has carried out the responsibilities set forth in section 4041, subsection 1-A, paragraph B; that to the court's satisfaction the parent has rectified and resolved the problems that caused the removal of the child from home and any subsequent problems that would interfere with the parent's ability to care for the child and protect the child from jeopardy; and that the parent can protect the child from jeopardy;

(2) Placed for adoption, in which case the department shall file a petition for termination of parental rights;

(3) Cared for by a permanency guardian, as provided in section 4038-C, or a guardian appointed by the Probate Court pursuant to Title 18-A, sections 5-206 and 5-207;

(4) Placed with a fit and willing relative; or

(5) Placed in another planned permanent living arrangement. The District Court may adopt another planned permanent living arrangement as the permanency plan for the child only after the department has documented to the court a compelling reason for determining that it would not be in the best interests of the child to be returned home, be referred for termination of parental rights or be placed for adoption, be cared for by a permanency guardian or be placed with a fit and willing relative. [2005, c. 372, §6 (NEW).]

B. In the case of a child placed outside the state in which the parents of the child live, the permanency plan must determine whether the out-of-state placement continues to be appropriate and in the best interests of the child. [2005, c. 372, §6 (NEW).]

C. In the case of a child who is 14 years of age or older, the permanency plan must determine the services needed to assist the child to make the transition from foster care to independent living. [2015, c. 381, §5 (AMD).]

D. The permanency plan must ensure that all in-state and out-of-state placements are considered to provide the child with all possible permanency options. [2009, c. 557, §2 (NEW).]

[2015, c. 381, §5 (AMD) .]

5. **Wishes of child.** The District Court shall consider the wishes of a child, in a manner appropriate to the age of the child, in making a determination under this section.

[2009, c. 557, §3 (AMD) .]

SECTION HISTORY
2005, c. 372, §6 (NEW). 2009, c. 557, §§2, 3 (AMD). 2015, c. 381, §5 (AMD).

§4038-C. PERMANENCY GUARDIAN

As part of the permanency plan, the District Court may appoint a person or persons as guardian of a minor, to be known as a permanency guardian. "Permanency guardian," when used in this section and in section 4038-D and Title 20-A, section 12572, means the person or persons appointed as the permanency guardian. [2005, c. 471, §3 (AMD).]

1. **Criteria.** The District Court may appoint a person to be a permanency guardian only if the court finds that the prospective permanency guardian:

A. Has the ability to provide a safe home for the child; [2005, c. 372, §6 (NEW).]

B. Has a close emotional bond with the child and that the child has a close emotional bond with the prospective permanency guardian; [2005, c. 372, §6 (NEW).]

C. Is willing and able to make an informed, long-term commitment to the child; [2011, c. 402, §6 (AMD).]

D. Has the skills to care for the child; and [2011, c. 402, §7 (AMD).]

E. Has submitted to having fingerprints taken for the purposes of a national criminal history record check. [2011, c. 402, §8 (NEW).]

[2011, c. 402, §§6-8 (AMD) .]

2. **Powers and duties of permanency guardian.** A permanency guardian has all of the powers and duties of a guardian of a minor pursuant to Title 18-A, section 5-209.

[2005, c. 372, §6 (NEW) .]

3. **Parental and relative contact.** A parent, grandparent or sibling of a child subject to a permanency guardianship or to a proceeding to establish a permanency guardianship may petition the court to determine rights of contact as provided in subsection 6. If the District Court determines that it is in the best interest of the child, it may order that the parent, grandparent or sibling of the child has a reasonable right of contact with the child and may specify the type, frequency, duration and conditions of that contact.

[2005, c. 372, §6 (NEW) .]

4. **Child support.** The parents shall pay the permanency guardian child support. Title 19-A, section 1652 and Title 19-A, chapter 63 govern the award of child support to the permanency guardian. The child support obligation may be enforced pursuant to Title 19-A, chapter 65 or 67.

If there is an existing child support order or obligation regarding the child, and if the District Court fails to make a child support order at the time of appointing a permanency guardian, the permanency guardian becomes the obligee under the existing support order or obligation. A copy of the order appointing the permanency guardian is sufficient proof of the permanency guardian's status as obligee.

[2005, c. 372, §6 (NEW) .]

5. **Jurisdiction over permanency guardian.** The District Court has exclusive jurisdiction to appoint or remove a permanency guardian and to establish any rights of contact between a child and a parent, grandparent or sibling.

[2005, c. 372, §6 (NEW) .]

6. **Proceedings to terminate permanency guardianship or to determine rights of contact.** Proceedings to terminate permanency guardianship or to determine rights of contact are governed by the following.

A. Any party to the child protective proceeding may petition to terminate a permanency guardianship and any parent, grandparent or sibling of the child may petition the court to establish rights of contact with the child, except that a person having once petitioned unsuccessfully to terminate a permanency guardianship or to establish rights of contact may not bring a new petition to terminate the permanency guardianship or to establish rights of contact within 12 months after the end of the previous proceeding, and then only if the petitioner alleges and proves that there has been a substantial change of circumstances regarding the child's welfare. [2005, c. 372, §6 (NEW).]

B. Notice of a petition under paragraph A must be given in the manner provided for by Rule 4 of the Maine Rules of Civil Procedure to all parties to the child protective case and to the permanency guardian. [2005, c. 372, §6 (NEW).]

C. The permanency guardianship may be terminated only if the petitioner proves by a preponderance of the evidence that the termination is in the best interest of the child. [2005, c. 372, §6 (NEW).]

[2005, c. 372, §6 (NEW) .]

7. **Effect on inheritance rights and public benefits.** The appointment of a permanency guardian does not affect the inheritance rights between a child and the child's parent or parents.

The appointment of a permanency guardian may not affect the child's entitlement to benefits due that child from any 3rd person, agency or state or the United States. Except as required by federal law or regulation, the permanency guardian's resources and income are not counted in determining eligibility for any public benefit to which the child may be entitled.

The permanency guardianship does not affect the rights and benefits that a Native American derives from descent from a member of a federally recognized Indian tribe.

[2005, c. 521, §1 (AMD) .]

8. **Resignation, death or incapacity of permanency guardian.** Resignation of a permanency guardian does not terminate the guardianship until it has been approved by the court. If a permanency guardian resigns, dies or becomes incapacitated, the District Court shall hold a judicial review and a permanency planning hearing at the earliest practicable time.

[2005, c. 372, §6 (NEW) .]

9. **Preference.** The District Court shall give preference for placement and permanency guardianship to a person nominated by a deceased permanency guardian in a valid will or by an incapacitated permanency guardian in a valid power of attorney, unless the District Court finds that the placement or permanency guardianship is not in the child's best interest.

[2005, c. 372, §6 (NEW) .]

10. **Limitation.** The District Court does not have authority to provide a guardianship subsidy for permanency guardianship under section 4038-D.

[2005, c. 683, Pt. A, §36 (AMD) .]

11. **Application to pending cases.** The District Court may appoint a permanency guardian in a proceeding pending on September 17, 2005 or in a proceeding commenced on or after September 17, 2005.

[2005, c. 521, §2 (NEW) .]

12. **Appointments terminate; later appointments.** Unless the District Court has scheduled a judicial review or orders otherwise, the court's appointments of the guardian ad litem and attorneys for parents and guardians terminate, and the attorneys and guardian ad litem have no further responsibilities to their clients or the court upon appointment of a permanency guardian pursuant to this section. If a party files a motion for judicial review when no judicial review is required pursuant to section 4038, subsection 1-A, or if a party files a petition pursuant to subsection 6 to terminate a permanency guardianship or determine rights of contact, the court shall appoint a guardian ad litem and attorneys for indigent parents and custodians, including permanency guardians, as required by section 4005.

[2007, c. 284, §7 (NEW) .]

13. **Resource family license.** The department shall issue a resource family license in accordance with standards adopted by the department to a resource family that meets the requirements and standards for permanency guardianship of children in foster care under subsection 1 and for a license fee established by the department.

[2011, c. 402, §9 (NEW) .]

SECTION HISTORY
2005, c. 372, §6 (NEW). 2005, c. 471, §3 (AMD). 2005, c. 521, §§1,2 (AMD). 2005, c. 683, §A36 (AMD). 2007, c. 284, §7 (AMD). 2011, c. 402, §§6-9 (AMD).

§4038-D. GUARDIANSHIP SUBSIDY

1. **Establishment of program; use of federal funds.** There is established in the department the Guardianship Subsidy Program, referred to in this section as "the program." For the purposes of this section, the department is authorized to use funds that are appropriated for child welfare services and funds provided under the United States Social Security Act, Titles IV-B and IV-E, or under any waiver that the department receives pursuant to those Titles.

[2005, c. 372, §6 (NEW) .]

2. **Eligibility for guardianship subsidy payments.** Subject to rules adopted to implement this section, the department may provide subsidies for a child who is placed in a permanency guardianship or in a similar status by a Native American tribe, when reasonable but unsuccessful efforts have been made to place the child without guardianship subsidies and if the child would not be placed in a permanency guardianship without the assistance of the program.

[2011, c. 402, §10 (AMD) .]

3. **Definition of "special needs child."**

[2011, c. 402, §11 (RP) .]

4. **Amount of guardianship subsidy.** The amount of a guardianship subsidy is determined according to this subsection.

A. The amount may vary depending upon the resources of the permanency guardian, the needs of the child and the availability of other resources. [2011, c. 402, §12 (AMD).]

B. The amount may not exceed the total cost of caring for the child if the child were to remain in the care or custody of the department, without regard to the source of the funds. [2005, c. 372, §6 (NEW).]

C. [2011, c. 402, §12 (RP).]

D. Subject to rules adopted by the department, expenses of up to $2,000 per child may be reimbursed. This reimbursement is for legal expenses required to complete the permanency guardianship, including attorney's fees and travel expenses. [2011, c. 402, §12 (AMD).]

[2011, c. 402, §12 (AMD) .]

5. **Duration of guardianship subsidy.** A guardianship subsidy may be provided for a period of time based on the needs of a child. The subsidy may continue until the termination of the permanency guardianship or until the permanency guardian is no longer caring for the child, at which time the guardianship subsidy ceases. If the child has need of educational benefits or has a physical, mental or emotional handicap, the guardianship subsidy may continue until the child has attained 21 years of age if the child, the parents and the department agree that the need for care and support exists.

[2011, c. 402, §13 (AMD) .]

6. **Administration of program.** Applications for the program may be submitted by a prospective permanency guardian. A written agreement between the permanency guardian entering into the program and the department must precede the order creating the permanency guardianship, except that an application may be filed subsequent to the creation of the permanency guardianship if there were facts relevant to the child's eligibility that were not presented at the time of placement or if the child was eligible for participation in the program at the time of placement and the permanency guardian was not apprised of the program.

[2005, c. 372, §6 (NEW) .]

7. **Annual review required.** If the subsidy continues for more than one year, the need for the subsidy must be reviewed annually. The subsidy continues regardless of the state in which the permanency guardian resides, or the state to which the permanency guardian moves, if the permanency guardian continues to be responsible for the child.

[2005, c. 372, §6 (NEW) .]

8. **Death of permanency guardian.**

[2011, c. 402, §14 (RP) .]

9. **Adoption of rules.** The department shall adopt rules for the program consistent with this section. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

[2005, c. 372, §6 (NEW) .]

10. **Permanency guardian's eligibility for public benefits.** Except as required by federal law or regulation, the guardianship subsidy may not be counted as resources or income in the determination of the permanency guardian's eligibility for any public benefit.

[2005, c. 521, §3 (AMD) .]

11. **Application to pending cases.** The department may provide a guardianship subsidy pursuant to this section to a child who is the subject of a child protection proceeding pending on September 17, 2005 or to a child who is the subject of a child protection proceeding commenced on or after September 17, 2005.

[2005, c. 521, §4 (NEW) .]

SECTION HISTORY

2005, c. 372, §6 (NEW). 2005, c. 521, §§3,4 (AMD). 2011, c. 402, §§10-14 (AMD).

§4038-E. ADOPTION FROM PERMANENCY GUARDIANSHIP

The department may petition the District Court to have a permanency guardian adopt the child in the permanency guardian's care and to change the child's name. [2011, c. 1, §34 (COR).]

1. **Contents of petition for adoption from permanency guardianship.** The petition for adoption from permanency guardianship must be sworn and must include at least the following:

A. The name, date and place of birth, if known, of the child and the child's current residence; [2011, c. 402, §15 (NEW).]

B. The child's proposed new name, if any; [2011, c. 402, §15 (NEW).]

C. The name and residence of the permanency guardian and the relationship to the child; [2011, c. 402, §15 (NEW).]

D. The name and residence, if known, of each of the child's parents; [2011, c. 402, §15 (NEW).]

E. The name and residence of the former guardian ad litem of the child in the related child protection proceeding; [2011, c. 402, §15 (NEW).]

F. The names and residences of all persons known to the department that affect custody, visitation or access to the child; [2011, c. 402, §15 (NEW).]

G. A summary statement of the facts that the petitioner believes constitute the basis for the request for the adoption from permanency guardianship, including a statement that the permanency guardian intends to establish a parent and child relationship and that the permanency guardian is a fit and proper person able to care and provide for the child's welfare; [2011, c. 402, §15 (NEW).]

H. A statement of the intent of the parents to consent to the adoption; [2011, c. 420, Pt. I, §1 (AMD); 2011, c. 420, Pt. I, §5 (AFF).]

I. A statement of the effects of a consent and adoption order; and [2011, c. 402, §15 (NEW).]

J. A statement that the parents are entitled to legal counsel in the adoption from permanency guardianship proceeding and that, if they want an attorney and are unable to afford one, they should contact the court as soon as possible to request appointed counsel. [2011, c. 420, Pt. I, §1 (AMD); 2011, c. 420, Pt. I, §5 (AFF).]

[2011, c. 420, Pt. I, §1 (AMD); 2011, c. 420, Pt. I, §5 (AFF) .]

2. **Accompanying documents and information.** The sworn petition must be accompanied by:

A. The birth certificate of the child; [2011, c. 402, §15 (NEW).]

B. A background check for each prospective adoptive parent, which must include:

(1) A screening of the permanency guardian for child abuse cases in the records of the department;

(2) The national criminal history record check for noncriminal justice purposes for each permanency guardian under subsection 7, paragraph A or updated check if the original was completed more than 2 years prior to the filing of the petition; and

(3) The state criminal history record check for noncriminal justice purposes for each permanency guardian under subsection 7, paragraph A or updated check if the original was completed more than 2 years prior to the filing of the petition; [2011, c. 402, §15 (NEW).]

C. The home study of the permanency guardian under subsection 7, paragraph B or an updated home study if the original was completed more than 2 years prior to the filing of the petition; and [2011, c. 402, §15 (NEW).]

D. The child's background information collected pursuant to subsection 7, paragraph B. [2011, c. 402, §15 (NEW).]

[2011, c. 402, §15 (NEW) .]

3. **Scheduling of case management conference.** On the filing of the petition, the court shall set a time and date for a case management conference.

[2011, c. 402, §15 (NEW) .]

4. **Venue.** A petition for adoption from permanency guardianship must be brought in the court that issued the final permanency guardianship appointment. The court, for the convenience of the parties or other good cause, may transfer the petition to another district or division.

[2011, c. 402, §15 (NEW) .]

5. **Guardian ad litem; attorneys.** The court shall appoint a guardian ad litem and attorneys for indigent parents and custodians, including the permanency guardians, in the same manner as guardians ad litem and attorneys are appointed under section 4005.

[2011, c. 402, §15 (NEW) .]

6. **Service.** The petition and the notice of the case management conference must be served on the parents and the guardian ad litem for the child at least 10 days prior to the scheduled case management conference date. Service must be in accordance with the Maine Rules of Civil Procedure or in any other manner ordered by the court.

[2011, c. 420, Pt. I, §2 (AMD); 2011, c. 420, Pt. I, §5 (AFF) .]

7. **Background checks for each permanency guardian seeking to adopt the child.** The department may, pursuant to rules adopted by the department, at any time before the filing of the petition for adoption from permanency guardianship, conduct background checks of each permanency guardian of the child and a home study.

A. The department may, pursuant to rules adopted pursuant to Title 18-A, section 9-304, subsection (a-2), request a background check for each permanency guardian. The background check must include criminal history record information obtained from the Maine Criminal Justice Information System and the Federal Bureau of Investigation.

(1) The criminal history record information obtained from the Maine Criminal Justice Information System must include a record of public criminal history record information as defined in Title 16, section 703, subsection 8.

(2) The criminal history record information obtained from the Federal Bureau of Investigation must include other state and national criminal history record information.

(3) Each permanency guardian of the child shall submit to having fingerprints taken. The State Police, upon receipt of the fingerprint card, may charge the department for the expenses incurred in processing state and national criminal history record checks. The State Police shall take or cause to be taken the applicant's fingerprints and shall forward the fingerprints to the State Bureau of Identification so that the bureau can conduct state and national criminal history record checks. Except for the portion of the payment, if any, that constitutes the processing fee charged by the

Federal Bureau of Investigation, all money received by the State Police for purposes of this paragraph must be paid over to the Treasurer of State. The money must be applied to the expenses of administration incurred by the Department of Public Safety.

(4) The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of the criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal history record check may inspect and review the criminal history record information pursuant to Title 16, section 709.

(5) State and federal criminal history record information may be used by the department for the purpose of screening each permanency guardian in determining whether the adoption is in the best interests of the child.

(6) Information obtained pursuant to this paragraph is confidential. The results of background checks received by the department are for official use only and may not be disseminated outside the department except to a court considering an adoption petition under this section. [2013, c. 267, Pt. B, §20 (AMD).]

B. The home study must include an investigation of the conditions and antecedents of the child to determine whether the child is a proper subject for adoption and whether the proposed home is suitable for the child. [2011, c. 402, §15 (NEW).]

[2013, c. 267, Pt. B, §20 (AMD) .]

8. **Consent.** Before an adoption is granted, written consent to the adoption must be given by:

A. The child, if the child is 12 years of age or older; [2011, c. 402, §15 (NEW).]

B. The child's parents; and [2011, c. 420, Pt. I, §3 (AMD); 2011, c. 420, Pt. I, §5 (AFF).]

C. The permanency guardian who has legal custody of the child. [2011, c. 402, §15 (NEW).]

The consents to adoption must be written and voluntarily and knowingly executed before a judge. The judge shall explain the effects of the consent to adoption. Before the adoption is granted, the court shall ensure that each permanency guardian is informed of the existence of the adoption registry and the services available under Title 22, section 2706-A.

[2011, c. 420, Pt. I, §3 (AMD); 2011, c. 420, Pt. I, §5 (AFF) .]

9. **Dismissal.** If the parents do not consent, the court shall dismiss the adoption petition and conduct a judicial review hearing consistent with section 4038-C, subsection 12.

[2011, c. 402, §15 (NEW) .]

10. **Hearing on petition for adoption from permanency guardianship.** The court shall hold a hearing prior to granting the petition for adoption from permanency guardianship. The department, as the petitioner, has the burden of proof.

A. The judge may interview the child. If the judge chooses to interview the child and the child is 12 years of age or older, the judge shall interview the child outside of the presence of a permanency guardian in order to determine the child's perspective about the adoption and other relevant issues. [2011, c. 402, §15 (NEW).]

B. The court shall grant an order of adoption if:

(1) All necessary consents have been duly executed;

(2) The permanency guardian is a suitable adopting parent and desires to establish a parent and child relationship with the child; and

(3) The adoption is in the best interest of the child. [2011, c. 402, §15 (NEW).]

C. If the judge is satisfied by a preponderance of the evidence with the identity and relations of the parties, the ability of the permanency guardian to bring up and educate the child properly and the fitness and propriety of the adoption and that the adoption is in the best interest of the child, the judge shall grant the adoption setting forth the facts and ordering that from that date the child is the child of the permanency guardian and must be accorded that status set forth in subsection 12 and that the child's name is changed, without requiring public notice of that change.

After the adoption has been granted, the department shall file a certificate of adoption with the State Registrar of Vital Statistics on a form prescribed and furnished by the state registrar.

The department shall notify the biological parents whose parental rights have been terminated and grandparents who were granted reasonable rights of visitation or access pursuant to section 4005-E or Title 19-A, section 1803. [2011, c. 402, §15 (NEW).]

[2011, c. 402, §15 (NEW) .]

11. **Effect of consent to adoption by the parent.** An order granting the adoption has the following effect.

A. An order granting the adoption of the child by the permanency guardian divests the consenting parent and child of all legal rights, powers, privileges, immunities, duties and obligations to each other as parent and child, except the inheritance rights between the child and the parent. [2011, c. 420, Pt. I, §4 (AMD); 2011, c. 420, Pt. I, §5 (AFF).]

B. An adoption order may not disentitle a child to benefits due the child from any 3rd person, agency or state or the United States and may not affect the rights and benefits that a Native American derives from descent from a member of a federally recognized Indian tribe. [2011, c. 420, Pt. I, §4 (AMD); 2011, c. 420, Pt. I, §5 (AFF).]

[2011, c. 420, Pt. I, §4 (AMD); 2011, c. 420, Pt. I, §5 (AFF) .]

12. **Rights of adopted persons.** Except as otherwise provided by law, an adopted person has all the same rights, including inheritance rights, that a child born to the adoptive parent would have. An adoptee also retains the right to inherit from the adoptee's biological parents if the adoption order so provides.

[2011, c. 402, §15 (NEW) .]

SECTION HISTORY
RR 2011, c. 1, §34 (COR). 2011, c. 402, §15 (NEW). 2011, c. 420, Pt. I, §§1-4 (AMD). 2011, c. 420, Pt. I, §5 (AFF). 2013, c. 267, Pt. B, §20 (AMD).

§4039. ENFORCEMENT OF CUSTODY ORDERS

When the court has ordered a change in the custody of a child and a person not entitled to custody refuses to relinquish physical custody to the custodian, then, at the request of the department or custodian, a law enforcement officer may take any necessary and reasonable action to obtain physical custody of the child for the rightful custodian. Necessary and reasonable action may include entering public or private property with a warrant based on probable cause to believe that the child is there. [1979, c. 733, §18 (NEW).]

SECTION HISTORY
1979, c. 733, §18 (NEW).

Subchapter 5: FAMILY REUNIFICATION

§4041. DEPARTMENTAL RESPONSIBILITIES

1. **Rehabilitation and reunification.**

[2001, c. 559, Pt. CC, §4 (RP) .]

1-A. **Rehabilitation and reunification.** A child is considered to have entered foster care on the date of the first judicial finding that the child has been subjected to child abuse or neglect or on the 60th day after the child is removed from the home, whichever occurs first. When a child is considered to have entered foster care, the responsibility for reunification and rehabilitation of the family must be shared as follows.

A. The department shall:

(1) Develop a rehabilitation and reunification plan as provided in this subparagraph.

(a) In developing the rehabilitation and reunification plan, the department shall make good faith efforts to seek the participation of the parent. Information that must be included in developing the plan includes the problems that present a risk of harm to the child, the services needed to address those problems, provisions to ensure the safety of the child while the parent engages in services, a means to measure the extent to which progress has been made, and visitation that protects the child's physical and emotional well-being. With this information, the department shall prepare a written rehabilitation and reunification plan.

(b) The department shall circulate the plan to the parties at least 10 days before a scheduled court hearing and shall present the plan to the court for filing at that hearing.

(c) The rehabilitation and reunification plan must include the following:

(i) The reasons for the removal of the child from home;

(ii) The changes that are necessary to eliminate jeopardy to the child while in the care of a parent;

(iii) Rehabilitation services that will be provided and must be completed satisfactorily prior to the child's returning home;

(iv) Services that must be provided or made available to assist the parent in rehabilitating and reunifying with the child, as appropriate to the child and family, including, but not limited to, reasonable transportation for the parent for visits and services, child care, housing assistance, assistance with transportation to and from required services and other services that support reunification;

(v) A schedule of and conditions for visits between the child and the parent designed to provide the parent and child time together in settings that provide as positive a parent-child interaction as can practicably be achieved while ensuring the emotional and physical well-being of the child when visits are not detrimental to the child's best interests;

(vi) Any use of kinship support, including, but not limited to, placement, supervision of visitation, in-home support or respite care;

(vii) A reasonable time schedule for proposed reunification, reasonably calculated to meet the child's needs; and

(viii) A statement of the financial responsibilities of the parent and the department during the reunification process;

(2) Provide the parent with prompt written notice of the following, unless that notice would be detrimental to the best interests of the child:

(a) The child's residence and, when practicable, at least 7 days' advance written notice of a planned change of residence; and

(b) Any serious injuries, major medical care received or hospitalization of the child;

(3) Make good faith efforts to cooperate with the parent in the pursuit of the plan;

(4) Periodically review with the parent the progress of the plan and make any appropriate changes in that plan. If the parties disagree about the proposed changes in the plan, any party may seek an informal conference with all other parties in an effort to resolve the disagreement, prior to initiating court action. If the parties are unable to agree after an informal conference, the parties may have access to the court's case management system. This subparagraph may not be construed to limit the court's authority to manage and control any cases within the court;

(5) Petition for judicial review and return of custody of the child to the parent at the earliest appropriate time; and

(6) Petition for termination of parental rights at the earliest possible time that it is determined that family reunification efforts will be discontinued pursuant to subsection 2 and that termination is in the best interests of the child. [2001, c. 559, Pt. CC, §5 (NEW).]

B. The responsibilities of the parent include, as appropriate to the child and family, that the parent:

(1) Rectify and resolve problems that prevent the return of the child to the home;

(2) Cooperate with the department in the development of the plan, as described in paragraph A;

(3) Take part in a reasonable rehabilitation and reunification plan. Use of rehabilitation and other services by a parent may not be used to constitute an admission by the parent;

(4) Maintain meaningful contact with the child pursuant to the plan. When a parent has moved from the area where the child has been placed, the parent shall make arrangements to visit the child at or near the child's placement. If a significant practical barrier to parental contact with the child arises, any party aware of the barrier shall notify the other parties and all parties shall make efforts to overcome the barrier to contact;

(5) Seek and utilize appropriate services to assist in rehabilitating and reunifying with the child;

(6) Pay reasonable sums toward the support of the child within the limits of the parent's ability to pay;

(7) Maintain contact with the department, including prompt written notification to the department of any change of address; and

(8) Make good faith efforts to cooperate with the department in developing and pursuing the plan. [2001, c. 559, Pt. CC, §5 (NEW).]

C. Unless excused for good cause shown, at any hearing held under section 4034, subsection 4 or within 10 days of the filing of the petition if a hearing under section 4034, subsection 4 is not held, the department shall present to the court for review a preliminary rehabilitation and reunification plan, a plan to avoid removal of the child from home or decision not to commence reunification.

(1) A preliminary plan must be developed with the custodial parent and the department caseworker if the parent is willing to engage in the development of the plan.

(2) The preliminary plan must include the following: a statement of the problems causing risk to the child identified by the department and by the parent; preliminary identification by the parent and by the department of services needed; a description of the visitation plan or explanation of why visits are not scheduled; the names, addresses and telephone numbers of any relatives or family friends known to the department and parent to be available as resources for rehabilitation and reunification; and the department's preliminary assessment of any kinship placements.

(3) Prior to review by the court, the department shall provide a copy of the preliminary plan to counsel for the parents, or to the parents if they do not have counsel, and to the guardian ad litem.

(4) The court may review the preliminary plan in a hearing that does not allow testimonial evidence with all parties and counsel present or may hold a summary hearing at which the court may limit testimony to the testimony of the caseworker, parent, guardian ad litem, person to whom trial placement was given, foster parents, preadoptive parents or relatives providing care and may admit evidence, including reports and records, that would otherwise be inadmissible as hearsay evidence.

(5) The preliminary plan remains in effect until the court enters a jeopardy order under section 4035. A party may file an amended plan at any time before the jeopardy order is entered with the written agreement of all parties. [2001, c. 559, Pt. CC, §5 (NEW).]

D. The department may make reasonable efforts to place a child for adoption or with a legal guardian concurrently with reunification efforts if potential adoptive parents have expressed a willingness to support the rehabilitation and reunification plan. [2001, c. 559, Pt. CC, §5 (NEW).]

[2001, c. 559, Pt. CC, §5 (NEW) .]

2. Determination of need to commence or discontinue rehabilitation and reunification efforts. The following provisions determine when rehabilitation and reunification efforts are not necessary or may be discontinued.

A. [1997, c. 715, Pt. B, §11 (RP).]

A-1. [2001, c. 696, §33 (RP).]

A-2. The court may order that the department need not commence or may cease reunification efforts only if the court finds at least one of the following:

(1) The existence of an aggravating factor; or

(2) That continuation of reunification efforts is inconsistent with the permanency plan for the child.

(a) When 2 placements with the same parent have failed and the child is returned to the custody of the department, the court shall make a finding that continuation of reunification efforts is inconsistent with the permanency plan for the child and order the department to cease reunification unless the parent demonstrates that reunification should be continued and the court determines reunification efforts to be in the best interests of the child.

(b) If the permanency plan provides for a relative or other person to have custody of the child and the court has ordered custody of the child to that relative or other person, the court shall make a finding that continuation of reunification efforts is inconsistent with the permanency plan for the child and order the department to cease reunification unless the parent demonstrates that reunification should be continued and the court determines reunification efforts to be in the best interests of the child. [2001, c. 696, §34 (NEW).]

B. [1997, c. 715, Pt. B, §11 (RP).]

B-1. When the department discontinues efforts to return the child to a parent, it shall give written notice of this decision to that parent at the parent's last known address. This notice must include the specific reasons for the department's decision, the specific efforts the department has made in working with the parent and child and a statement of the parent's rights under section 4038. The department shall seek an order authorizing it to discontinue reunification efforts. Within 10 days of sending written notice of the decision to discontinue reunification efforts, the department shall file a motion for approval of discontinuance of reunification efforts with supporting affidavits. If the parents file a responsive pleading within 21 days, the court shall conduct a summary proceeding in accordance with the provisions of section 4034, subsection 4. If no responsive pleading is filed, the court may hold a summary hearing in accordance with the provisions of section 4034, subsection 4 or may decide the matter without a hearing. [1997, c. 715, Pt. B, §11 (NEW).]

C. If the department discontinues efforts to return the child to a parent but does not seek termination of parental rights, then subsection 1-A, paragraph A, subparagraph (1), division (c), subdivision (v) and subsection 1-A, paragraph A, subparagraph (2) still apply. [2005, c. 397, Pt. B, §5 (AMD).]

[2005, c. 397, Pt. B, §5 (AMD) .]

3. **Notice to guardian ad litem.** The department shall notify the guardian ad litem, as described in section 4005, of any substantial change in circumstances that may have an impact on the best interests of the child. A substantial change in circumstances includes but is not limited to any change in the child's residence.

[1991, c. 356, (AMD) .]

SECTION HISTORY
1979, c. 733, §18 (NEW). 1983, c. 772, §§5,6 (AMD). 1983, c. 862, §71 (AMD). 1985, c. 739, §15 (AMD). 1989, c. 759, (AMD). 1991, c. 161, (AMD). 1991, c. 356, (AMD). 1995, c. 694, §D46 (AMD). 1995, c. 694, §E2 (AFF). 1997, c. 715, §B11 (AMD). 2001, c. 559, §§CC4,5 (AMD). 2001, c. 696, §§33,34 (AMD). 2005, c. 397, §B5 (AMD).

Subchapter 6: TERMINATION OF PARENTAL RIGHTS

§4050. PURPOSE

Recognizing that instability and impermanency are contrary to the welfare of children, it is the intent of the Legislature that this subchapter:

1. **Termination of parental rights.** Allow for the termination of parental rights at the earliest possible time after rehabilitation and reunification efforts have been discontinued and termination is in the best interest of the child;

[1983, c. 772, §7 (NEW) .]

2. **Return to family.** Eliminate the need for children to wait unreasonable periods of time for their parents to correct the conditions which prevent their return to the family;

[1983, c. 772, §7 (NEW) .]

3. **Adoption.** Promote the adoption of children into stable families rather than allowing children to remain in the impermanency of foster care; and

[1983, c. 772, §7 (NEW) .]

4. **Protect interests of child.** Be liberally construed to serve and protect the best interests of the child.

[1983, c. 772, §7 (NEW) .]

SECTION HISTORY
1983, c. 772, §7 (NEW).

§4051. VENUE

A petition for termination of parental rights must be brought in the court that issued the final protection order. The court, for the convenience of the parties or other good cause, may transfer the petition to another district or division. A petition for termination of parental rights may also be brought in a Probate Court as part of an adoption proceeding as provided in Title 18-A, article IX, when a child protective proceeding has not been initiated. [1997, c. 2, §48 (COR).]

SECTION HISTORY
1979, c. 733, §18 (NEW). 1981, c. 369, §13 (AMD). RR 1997, c. 2, §48 (COR).

§4052. TERMINATION PETITION; PETITIONERS; TIME FILED; CONTENTS

1. **Petitioner.** A termination petition may be brought by the custodian of the child or by the department.

[1997, c. 715, Pt. B, §12 (AMD) .]

2. **Time filed.**

[1997, c. 715, Pt. B, §13 (RP) .]

2-A. **Department as petitioner or as party.** The department shall file a termination petition or seek to be joined as a party to any pending petition:

A. When a child has been in foster care for 15 of the most recent 22 months. The department must file the petition before the end of the child's 15th month in foster care. In calculating when to file a termination petition:

(1) The time the child has been in foster care begins when the child is considered to have entered foster care as specified in section 4038-B, subsection 1, paragraph B;

(2) When a child experiences multiple exits from and entries into foster care during the 22-month period, all periods in foster care must be accumulated; and

(3) The time in foster care does not include trial home visits or times during which the child is a runaway.

This paragraph does not apply if the department is required to undertake reunification efforts and the department has not provided to the family of the child such services as the court determines to be necessary for the safe return of the child to the child's home consistent with the time period in the case plan; [2005, c. 372, §7 (AMD).]

B. Within 60 days of a court order that includes a finding of an aggravating factor and an order to cease reunification; or [2003, c. 408, §7 (AMD).]

C. Within 60 days of a court finding that the child has been abandoned. [2003, c. 408, §7 (NEW).]

The department is not required to file a termination petition if the department has chosen to have the child cared for by a relative or the department has documented to the court a compelling reason for determining that filing such a petition would not be in the best interests of the child.

[2005, c. 372, §7 (AMD) .]

3. **Contents of petition.** A termination petition shall be sworn and shall include at least the following:

A. The name, date and place of birth and municipal residence, if known, of the child; [1979, c. 733, §18 (NEW).]

B. The name and address of the petitioner and the nature of his relationship to the child; [1979, c. 733, §18 (NEW).]

C. The name and municipal residence, if known, of each of the child's parents; [1979, c. 733, §18 (NEW).]

D. The names and address of the guardian ad litem of the child in the related child protection proceeding or adoption proceeding; [1981, c. 369, §14 (AMD).]

E. A summary statement of the facts which the petitioner believes constitute the basis for the request for termination; [1979, c. 733, §18 (NEW).]

F. An allegation which is sufficient for termination; [1979, c. 733, §18 (NEW).]

G. A statement of the effects of a termination order; and [1979, c. 733, §18 (NEW).]

H. A statement that the parents are entitled to legal counsel in the termination proceedings and that, if they want an attorney and are unable to afford one, they should contact the court as soon as possible to request appointed counsel. [1979, c. 733, §18 (NEW).]

[1981, c. 369, §14 (AMD) .]

4. **Hearing date.** On the filing of a petition, the court shall set a time and date for a hearing.

[1979, c. 733, §18 (NEW) .]

SECTION HISTORY
1979, c. 733, §18 (NEW). 1981, c. 369, §14 (AMD). 1983, c. 249, §1 (AMD). 1995, c. 694, §D47 (AMD). 1995, c. 694, §E2 (AFF). 1997, c. 475, §§7,8 (AMD). 1997, c. 475, §11 (AFF). 1997, c. 715, §§B12-14 (AMD). 2003, c. 408, §7 (AMD). 2005, c. 372, §7 (AMD).

§4053. SERVICE AND NOTICE

The petition and the notice of hearing must be served on the parents and the guardian ad litem for the child at least 10 days prior to the hearing date. Service must be made in accordance with the District Court Civil Rules. The department shall provide written notice of all reviews and hearings in advance of the proceeding to foster parents, preadoptive parents and relatives providing care. The notice must be dated and signed, must include a statement that foster parents, preadoptive parents and relatives providing care are entitled to notice of and an opportunity to be heard in any review or hearing held with respect to the child and must contain the following language:

> "The right to be heard includes only the right to testify and does not include the right to present other witnesses or evidence, to attend any other portion of the review or hearing or to have access to pleadings or records."

[1997, c. 715, Pt. B, §15 (AMD).]

A copy of the notice must be filed with the court prior to the review or hearing. The department shall mail a copy of the petition to all attorneys of record when the petition is filed in court. [1997, c. 715, Pt. B, §15 (NEW).]

SECTION HISTORY
1979, c. 733, §18 (NEW). 1997, c. 715, §B15 (AMD).

§4054. HEARING ON TERMINATION PETITION

The court shall hold a hearing prior to making a termination order. [1979, c. 733, §18 (NEW).]

SECTION HISTORY
1979, c. 733, §18 (NEW).

§4055. GROUNDS FOR TERMINATION

1. **Grounds.** The court may order termination of parental rights if:

A. One of the following conditions has been met:

(1) Custody has been removed from the parent under:

(a) Section 4035 or 4038;

(b) Title 19-A, section 1502 or 1653;

(c) Section 3792 prior to the effective date of this chapter; or

(d) Title 15, section 3314, subsection 1, paragraph C-1; or

(2) The petition has been filed as part of an adoption proceeding in Title 18-A, article IX; and [2001, c. 696, §35 (AMD).]

B. Either:

(1) The parent consents to the termination. Consent shall be written and voluntarily and knowingly executed in court before a judge. The judge shall explain the effects of a termination order; or

(2) The court finds, based on clear and convincing evidence, that:

(a) Termination is in the best interest of the child; and

(b) Either:

(i) The parent is unwilling or unable to protect the child from jeopardy and these circumstances are unlikely to change within a time which is reasonably calculated to meet the child's needs;

(ii) The parent has been unwilling or unable to take responsibility for the child within a time which is reasonably calculated to meet the child's needs;

(iii) The child has been abandoned; or

(iv) The parent has failed to make a good faith effort to rehabilitate and reunify with the child pursuant to section 4041. [1983, c. 772, §8 (AMD).]

[2001, c. 696, §35 (AMD) .]

1-A. **Rebuttable presumption.** The court may presume that the parent is unwilling or unable to protect the child from jeopardy and these circumstances are unlikely to change within a time which is reasonably calculated to meet the child's needs if:

A. The parent has acted toward a child in a manner that is heinous or abhorrent to society or has failed to protect a child in a manner that is heinous or abhorrent to society, without regard to the intent of the parent; [1995, c. 481, §3 (AMD).]

B. The victim of any of the following crimes was a child for whom the parent was responsible or the victim was a child who was a member of a household lived in or frequented by the parent and the parent has been convicted of:

(1) Murder;

(2) Felony murder;

(3) Manslaughter;

(4) Aiding or soliciting suicide;

(5) Aggravated assault;

(6) Rape;

(7) Gross sexual misconduct or gross sexual assault;

(8) Sexual abuse of minors;

(9) Incest;

(10) Kidnapping;

(11) Promotion of prostitution, sexual exploitation of a minor, sex trafficking or aggravated sex trafficking; or

(12) A comparable crime in another jurisdiction; [2015, c. 360, §4 (AMD).]

C. The child has been placed in the legal custody or care of the department, the parent has a chronic substance abuse problem, and the parent's prognosis indicates that the child will not be able to return to the custody of the parent within a reasonable period of time, considering the child's age and the need for a permanent home. The fact that a parent has been unable to provide safe care of a child for a period of 9 months due to substance abuse constitutes a chronic substance abuse problem; [1997, c. 475, §9 (AMD).]

D. The child has been placed in the legal custody or care of the department, the court has previously terminated parental rights to another child who is a member of the same family and the parent continues to lack the ability or willingness to show the court that the parent has sought services that would rehabilitate the parent or the parent can not show evidence that an additional period of services would result in reunification in a time reasonably calculated to meet the needs of the child and the child's need for a permanent home; or [1995, c. 481, §4 (NEW).]

E. The child has been placed in the legal custody or care of the department for at least 9 months, and the parents have been offered or received services to correct the situation but have refused or have made no significant effort to correct the situation. [1997, c. 475, §9 (AMD).]

[2015, c. 360, §4 (AMD) .]

1-B. **Conception by sexual assault as grounds for termination.** The court may order termination of parental rights if the court finds, based on clear and convincing evidence, that the child was conceived as a result of an act by the parent of sexual assault or a comparable crime in another jurisdiction. For purposes of this subsection, "sexual assault" has the same meaning as in Title 17-A, section 253, 254 or 556. A guilty plea or conviction for sexual assault is considered clear and convincing evidence for purposes of this subsection.

[2015, c. 427, §2 (NEW) .]

2. **Primary considerations.** In deciding to terminate parental rights, the court shall consider the best interest of the child, the needs of the child, including the child's age, the child's attachments to relevant persons, periods of attachments and separation, the child's ability to integrate into a substitute placement or back into the parent's home and the child's physical and emotional needs.

[1997, c. 475, §10 (AMD) .]

3. **Wishes of child.** The court shall consider the wishes of a child, in a manner appropriate to the age of the child, in making an order under this section.

[2009, c. 557, §4 (AMD) .]

SECTION HISTORY
1979, c. 733, §18 (NEW). 1981, c. 369, §§15,16 (AMD). 1983, c. 249, §2 (AMD). 1983, c. 772, §§8,9 (AMD). 1985, c. 739, §16 (AMD). 1993, c. 198, §2 (AMD). 1995, c. 481, §§3-5 (AMD). 1995, c. 694, §D48 (AMD). 1995, c. 694, §E2 (AFF). 1997, c. 475, §§9,10 (AMD). 1997, c. 715, §A12 (AMD). 2001, c. 696, §35 (AMD). 2009, c. 557, §4 (AMD). 2015, c. 360, §4 (AMD). 2015, c. 427, §2 (AMD).

§4056. EFFECTS OF TERMINATION ORDER

1. **Parent and child divested of rights.** An order terminating parental rights divests the parent and child of all legal rights, powers, privileges, immunities, duties and obligations to each other as parent and child, except the inheritance rights between the child and parent.

[2009, c. 2, §57 (COR) .]

2. **Only one parent affected.** The termination of one parent's rights shall not affect the rights of the other parent.

[1979, c. 733, §18 (NEW) .]

3. **Parent not entitled to participate in adoption proceedings.** A parent whose rights have been terminated shall not be entitled to notice of the child's adoption proceedings, nor shall he have any right to object to the adoption or participate in the proceedings.

[1979, c. 733, §18 (NEW) .]

4. **Child not disentitled to benefit.** No order terminating parental rights may disentitle a child to benefits due him from any 3rd person, agency, state or the United States; nor may it affect the rights and benefits that a native American derives from his descent from a member of a federally-recognized Indian tribe.

[1979, c. 733, §18 (NEW) .]

5. **Financial support.** If, prior to the termination of parental rights, the parent was convicted of a crime against the child, the court may include in the termination order the requirement that the parent whose rights are terminated make a lump sum payment to assist in the future financial support of the child.

[2003, c. 216, §1 (NEW) .]

SECTION HISTORY
1979, c. 733, §18 (NEW). 2003, c. 216, §1 (AMD). RR 2009, c. 2, §57 (COR).

§4057. TERMINATION ORDERS OF OTHER STATES

If parental rights have been terminated by judicial order in another state, the order, unless against the public policy of this State, shall be accorded full faith and credit. [1979, c. 733, §18 (NEW).]

SECTION HISTORY

1979, c. 733, §18 (NEW).

§4058. REVIEW

The provision in this chapter dealing with family rehabilitation and reunification must be reviewed in accordance with Title 3, chapter 35. [2005, c. 397, Pt. B, §6 (AMD).]

SECTION HISTORY
1985, c. 739, §17 (NEW). 2005, c. 397, §B6 (AMD).

§4059. REINSTATEMENT OF PARENTAL RIGHTS

The department may petition the District Court to reinstate the parental rights of a parent whose parental rights have been previously terminated by an order of the District Court. [2011, c. 402, §16 (NEW).]

1. **Contents of petition for reinstatement of parental rights.** The petition for reinstatement of parental rights must be sworn and must include at least the following:

A. The name, date and place of birth, if known, of the child and the child's current residence; [2011, c. 402, §16 (NEW).]

B. The name and residence of the parent whose rights were terminated; [2011, c. 402, §16 (NEW).]

C. The name and residence of the former guardian ad litem of the child in the related child protection proceeding; [2011, c. 402, §16 (NEW).]

D. The names and residences of all persons known to the department that affect custody, visitation or access to the child; [2011, c. 402, §16 (NEW).]

E. A summary of the reasons for the termination of parental rights; [2011, c. 402, §16 (NEW).]

F. A summary statement of the facts that the petitioner believes constitute a substantial change in circumstances of the parent that demonstrate the parent has the capacity and willingness to provide for the health and safety of the child; [2011, c. 402, §16 (NEW).]

G. A statement of the intent of the parent whose rights were terminated to consent to the reinstatement of parental rights; and [2011, c. 402, §16 (NEW).]

H. A statement of the intent or willingness of the child as to the reinstatement of parental rights. [2011, c. 402, §16 (NEW).]

[2011, c. 402, §16 (NEW) .]

2. **Permanency plan.** The sworn petition must be accompanied by the permanency plan that provides for the health and safety of the child, outlines the transition services to the family and outlines the conditions and supervision required by the department for placing the child in the home on a trial basis.

[2011, c. 402, §16 (NEW) .]

3. **Scheduling of case management conference.** On the filing of the petition, the court shall set a time and date for a case management conference under subsection 7.

[2011, c. 402, §16 (NEW) .]

4. **Withdrawal of petition.** The department may withdraw the petition without leave of the court at any time prior to the final hearing.

[2011, c. 402, §16 (NEW) .]

5. **Guardian ad litem.** The court shall appoint a guardian ad litem for the child.

[2011, c. 402, §16 (NEW) .]

6. **Service.** The petition and the notice of the case management conference under subsection 7 must be served on the parent whose rights were terminated and the guardian ad litem for the child at least 10 days prior to the scheduled case management conference date. Service must be in accordance with the Maine Rules of Civil Procedure or in any other manner ordered by the court.

[2011, c. 402, §16 (NEW) .]

7. **Case management conference.** Upon the filing of a petition for reinstatement of parental rights, the court shall hold a case management conference to review the permanency plan filed by the department to provide for transition services to the family. The permanency plan must outline the conditions and supervision required by the department for placing the child in the home on a trial basis.

[2011, c. 402, §16 (NEW) .]

8. **Reinstatement of parental rights.** Parental rights may be reinstated as follows.

A. The court shall hold a hearing prior to the reinstatement of parental rights. [2011, c. 402, §16 (NEW).]

B. The department has the burden of proof. [2011, c. 402, §16 (NEW).]

C. The court may order reinstatement of parental rights if the court finds, by clear and convincing evidence, that:

(1) The child has been in the custody of the department for at least 12 months after the issuance of the order terminating parental rights;

(2) The child has lived for at least 3 months in the home of the parent after the petition for reinstatement has been filed;

(3) The parent consents to the reinstatement of parental rights. Consent must be written and voluntarily and knowingly executed in court before a judge. The judge shall explain the effects of reinstatement of parental rights;

(4) If the child is 12 years of age or older, the child consents to the reinstatement of parental rights; and

(5) Reinstatement of parental rights is in the best interest of the child. [2011, c. 402, §16 (NEW).]

D. In determining whether to reinstate parental rights, the court shall consider the age and maturity of the child, the child's ability to express a preference, the child's ability to integrate back into the home of the parent whose rights were terminated, the ability of the parent whose rights were terminated to meet the child's physical and emotional needs, the extent that the parent whose rights were terminated has remedied the circumstances that resulted in the termination of parental rights and the likelihood of future risk to the child. [2011, c. 402, §16 (NEW).]

E. The court shall enter its findings in a written order that further states that from the date of the order of reinstatement of parental rights, the child is the child of the parent whose rights were terminated and must be accorded all the same rights as existed prior to the order terminating parental rights, including inheritance rights. The order must further state that all legal rights, powers, privileges, immunities, duties and obligations to each other as parent and child are reinstated. [2011, c. 402, §16 (NEW).]

F. The reinstatement of one parent's rights does not affect the rights of the other parent. [2011, c. 402, §16 (NEW).]

[2011, c. 402, §16 (NEW) .]

SECTION HISTORY
2011, c. 402, §16 (NEW).

Subchapter 7: CARE OF CHILD IN CUSTODY

§4061. EXPENSES; REIMBURSEMENT

1. **Department.** The department shall care for a child ordered into its custody in licensed or approved family foster homes, in other residential child care facilities or in other living arrangements as appropriate to meet the child's individual needs.

[1983, c. 354, §6 (AMD) .]

2. **Reimbursement.** The department may obtain reimbursement for child care expenses from the child's parents according to a support order or agreement.

[1979, c. 733, §18 (NEW) .]

3. **Other custodian.** When a child is ordered into the custody of a custodian other than the department, that custodian shall support the child, subject to a support order or agreement.

[1979, c. 733, §18 (NEW) .]

SECTION HISTORY
1979, c. 733, §18 (NEW). 1983, c. 354, §6 (AMD).

§4062. PAYMENTS

1. **Payments by department.** The department shall provide payments to facilities caring for children to meet the costs of clothing, board and care, within the limits of available funds. The department may establish, by rule, different categories of facilities, levels of need and care and flat-rate or reimbursement methods to distribute these funds. The department may provide child care and travel expense payments to foster and adoptive parents and trainers participating in foster and adoptive parent training programs and volunteers participating in the administrative case review program.

Notwithstanding section 4061, subsection 3, any federally recognized Indian tribe in this State or any Indian foster family home is eligible for benefits and reimbursement under any state or federally funded program administered by the State for the benefit of Maine children, including, but not limited to, children within the jurisdiction of the Passamaquoddy Tribe or Penobscot Indian Nation under the Indian Child Welfare Act, 25 United States Code, Section 1901, et seq.

[1999, c. 392, §1 (AMD) .]

2. **Unexpended balance.** An unexpended balance of funds for these purposes shall not be transferred to another account and shall not lapse.

[1979, c. 733, §18 (NEW) .]

3. **Priority of payments.** The department shall ensure that payments for foster care made under this subchapter have the same priority as payments for temporary assistance for needy families pursuant to section 3769, subsection 1.

[1997, c. 530, Pt. A, §31 (AMD) .]

4. **Kinship preference.** In the residential placement of a child, the department shall consider giving preference to an adult relative over a nonrelated caregiver when determining placement for a child, as long as the related caregiver meets all relevant state child protection standards.

[1999, c. 382, §1 (NEW) .]

SECTION HISTORY
1979, c. 733, §18 (NEW). 1985, c. 521, (AMD). 1991, c. 747, §4 (AMD). 1997, c. 530, §A31 (AMD). 1999, c. 382, §1 (AMD). 1999, c. 392, §1 (AMD).

§4063. RELIGIOUS FAITH OF PLACEMENTS; PARENTS' REQUEST

If the parents of a child in the custody of the department request in writing that the child be placed in a family of the same general religious faith, for foster care or adoption, the department shall do so when a suitable family of that faith can be found. [1979, c. 733, §18 (NEW).]

SECTION HISTORY
1979, c. 733, §18 (NEW).

§4063-A. MEDICAL AND PSYCHOLOGICAL EXAMINATION

1. **Physical examination required.** The department shall ensure that a child ordered into its custody receives an appointment for a medical examination by a licensed physician or nurse practitioner within 10 working days after the department's custody of the child commences.

[1991, c. 194, (NEW) .]

2. **Psychological assessment.** If the physician or nurse practitioner who performs a physical examination pursuant to subsection 1 determines that a psychological assessment of the child is appropriate, the department shall ensure that an appointment is obtained for such an assessment within 30 days of the physical examination.

[1991, c. 194, (NEW) .]

SECTION HISTORY
1991, c. 194, (NEW).

§4063-B. ESTABLISHMENT OF EARLY COUNSELING

Whenever a child is ordered into the custody of the department under this chapter and the child is not expected to be returned to the home within 21 days, the department shall obtain counseling for the child as soon as possible, unless the department finds that counseling is not indicated. [1991, c. 882, §2 (NEW); 1991, c. 882, §4 (AFF).]

SECTION HISTORY
1991, c. 882, §2 (NEW). 1991, c. 882, §4 (AFF).

§4064. LONG-TERM FOSTER CARE

(REPEALED)

SECTION HISTORY
1979, c. 733, §18 (NEW). 1997, c. 39, §1 (AMD). 2007, c. 46, §1 (RP).

§4065. DEPARTMENT'S RESPONSIBILITY AFTER DEATH OF COMMITTED CHILD

If a child in the custody of the department dies, the department shall arrange and pay for a decent burial for the child. If administration of the deceased child's estate is not commenced, within 60 days after the date of death, by an heir or a creditor, then the department may petition the Probate Court to appoint an administrator and settle the estate of the deceased child pursuant to Title 18-A. [1981, c. 470, Pt. A, §102 (AMD).]

SECTION HISTORY
1979, c. 733, §18 (NEW). 1981, c. 470, §A102 (AMD).

§4066. ANNUAL REPORT

The department shall submit a report to the joint standing committee of the Legislature having jurisdiction over health and human services matters by January 1st each year covering the operations of the Office of Child and Family Services and the experience of the department with foster care and adoptions of children in the care and custody of the department, including but not limited to the following topics: [1997, c. 322, §1 (NEW); 2013, c. 368, Pt. CCCC, §7 (REV).]

1. **Types of reports.** A listing of the types of reports on the operations of the Office of Child and Family Services that are available to the public, including a notice on how the public can request those reports;

[1997, c. 322, §1 (NEW); 2013, c. 368, Pt. CCCC, §7 (REV) .]

2. **Listing of services.** A listing of services provided to children and their families and foster families and any services needed but not provided by the department, and a listing of problems experienced by children and their families and foster families;

[1997, c. 322, §1 (NEW) .]

3. **Custody.** The number of children in the care and custody of the department, the average and median lengths of their custody and the number who were previously in the custody of the department;

[1997, c. 322, §1 (NEW) .]

4. **Reunification efforts.** The number of children in the care and custody of the department in the process of reunification efforts, and the number in which parental rights have been terminated or are in the process of termination;

[1997, c. 322, §1 (NEW) .]

5. **Adoption.** The number of children in the care and custody of the department available for adoption and the number of children adopted, identifying special needs and nonspecial needs; the number receiving adoption assistance; and the number adopted by their foster parents;

[1997, c. 322, §1 (NEW) .]

6. **Out-of-state placement.** The number of children in the care and custody of the department placed out-of-state for hospitalization and residential care and the costs for each; and

[1997, c. 322, §1 (NEW) .]

7. **Analysis.** An analysis of any major initiatives planned by the department to improve the functioning of the Office of Child and Family Services and the delivery of services to children in the care and custody of the department and their families and foster families.

[1997, c. 322, §1 (NEW); 2013, c. 368, Pt. CCCC, §7 (REV) .]

SECTION HISTORY
1997, c. 322, §1 (NEW). 2013, c. 368, Pt. CCCC, §7 (REV).

§4067. PERMISSION FOR PARTICIPATION IN SCHOOL ACTIVITIES

The department shall develop and disseminate a standard form to be used by school administrative units to authorize participation by children in the custody of the department in school athletics, field trips and other extracurricular activities. This form must be signed once each year by a representative of the department following the enrollment of the child in a school and forwarded to the school administrative unit attended by the child. This form provides the necessary legal permission for the child to participate in such activities. A child in the custody of the department must secure the signature of a caretaker on permission slips for specific activities as do other students in order to ensure notice to the caretaker of the child's participation in those activities. [2005, c. 309, §1 (NEW).]

SECTION HISTORY
2005, c. 309, §1 (NEW).

§4068. SIBLING VISITATION

1. **Visitation.** If the court determines that it is reasonable, practicable and in the best interests of the children involved, the court shall order the custodian of the child who is the subject of the child protection proceeding and any party who is the custodian of a sibling of the child to make the children available for visitation with each other. The court may order a schedule and conditions pursuant to which the visits are to occur.

[2005, c. 526, §2 (NEW) .]

2. **Siblings separated through adoption.** The department shall make reasonable efforts to establish agreements with prospective adoptive parents that provide for reasonable contact between an adoptive child and the child's siblings when the department believes that the contact will be in the children's best interests.

[2005, c. 526, §2 (NEW) .]

3. **Request of child.** In a child protection proceeding, a child may request visitation rights pursuant to subsection 1 with a sibling from whom the child has been separated as a result of the child protection proceeding.

[2005, c. 526, §2 (NEW) .]

SECTION HISTORY
2005, c. 526, §2 (NEW).

Subchapter 8: MEDICAL TREATMENT ORDER

§4071. MEDICAL TREATMENT ORDER

1. **Petitioner.** The department, a physician or a chief medical administrator of a hospital may petition for a medical treatment order.

[1979, c. 733, §18 (NEW) .]

2. **Contents of petition.** A petition shall be sworn and shall include at least the following:

A. Name, date of birth and municipal residence, if known, of the child; [1979, c. 733, §18 (NEW).]

B. The name and address of the petitioner and his professional position; [1979, c. 733, §18 (NEW).]

C. Name and municipal residence, if known, of each parent and custodian; [1979, c. 733, §18 (NEW).]

D. A summary of the medical diagnosis and treatment alternatives; [1979, c. 733, §18 (NEW).]

E. A request for the court to order specific treatment; and [1979, c. 733, §18 (NEW).]

F. A statement that attempts to notify and secure consent from the custodians have been unsuccessful, either because they cannot be located or they have refused consent. [1979, c. 733, §18 (NEW).]

[1979, c. 733, §18 (NEW) .]

3. **Notice to parents and custodians.** The petitioner shall, by any reasonable means, attempt to notify the parents and custodians of his intent to request the order and of the time and place he will make the request, unless the petitioner believes that the child would suffer increased serious injury during the time needed to notify them.

[1979, c. 733, §18 (NEW) .]

4. **Order.** On the basis of the petition or other evidence, the court may order medical treatment for the child if the custodians are unable or unwilling to consent to it, and the treatment is necessary to treat or prevent an immediate risk of serious injury. The order shall include a notice to the parents and custodians of their right to counsel, as required under section 4032, subsection 2, paragraph G, and notice of the date and time of the hearing.

[1979, c. 733, §18 (NEW) .]

5. **Service of order.** If a hearing has not been held prior to issuing the order, a copy of the order and petition shall be served on the parents and custodians by:

A. In-hand delivery by the judge or court clerk to any parent, custodian or their counsel who is present when the order is issued; [1979, c. 733, §18 (NEW).]

B. Service in accordance with the District Court Civil Rules. Notwithstanding the civil rules, service by publication of an order and petition shall be complete 5 days after a single publication; or [1979, c. 733, §18 (NEW).]

C. Another manner ordered by the court. [1979, c. 733, §18 (NEW).]

[1979, c. 733, §18 (NEW) .]

6. **Hearing.** If a hearing has not been held prior to issuing the order, then it shall be held within 10 days of its issuance, unless all parties agree to a later date. If, after the hearing, the court finds, by a preponderance of the evidence, that the medical treatment ordered is necessary to treat or prevent the immediate risk of serious injury to the child, then it may continue the order.

[1979, c. 733, §18 (NEW) .]

SECTION HISTORY
1979, c. 733, §18 (NEW).

Subchapter 9: HOSPITAL BASED SUSPECTED CHILD ABUSE AND NEGLECT COMMITTEES

§4081. PURPOSE DEFINITIONS

(REPEALED)

SECTION HISTORY
1985, c. 441, §3 (NEW). 1985, c. 500, (NEW). 1987, c. 402, §A144 (RP). 1987, c. 402, §A143 (RPR). MRSA T. 22, §4085 (RP).

§4082. DEFINITIONS MAINE CHILDREN'S TRUST FUND

(REPEALED)

SECTION HISTORY
1985, c. 441, §3 (NEW). 1985, c. 500, (NEW). 1987, c. 402, §A144 (RP). 1987, c. 402, §A143 (RPR). MRSA T. 22, §4085 (RP).

§4083. HOSPITAL BASED SUSPECTED CHILD ABUSE AND NEGLECT COMMITTEES BOARD; ESTABLISHMENT

(REPEALED)

SECTION HISTORY
1985, c. 441, §3 (NEW). 1985, c. 500, (NEW). 1987, c. 402, §A144 (RP). 1987, c. 402, §A143 (RPR). MRSA T. 22, §4085 (RP).

§4084. REPORT DUTIES

(REPEALED)

SECTION HISTORY
1985, c. 441, §3 (NEW). 1985, c. 500, (NEW). 1985, c. 667, §1 (RPR). 1985, c. 785, §B93 (AMD). 1987, c. 402, §A144 (RP). 1987, c. 402, §A143 (RPR). MRSA T. 22, §4085 (RP).

§4084-A. REPORT

(REPEALED)

SECTION HISTORY
1985, c. 667, §2 (NEW). 1987, c. 402, §A143 (RP).

§4085. DISBURSEMENT OF FUND MONEY

(REPEALED)

SECTION HISTORY
1985, c. 441, §3 (NEW). 1985, c. 500, (NEW). 1985, c. 667, §3 (AMD). 1987, c. 366, (AMD). 1987, c. 402, §A144 (RP). 1987, c. 402, §A143 (RPR). 1987, c. 769, §A78 (AMD). MRSA T. 22, §4085 (RP).

§4086. REVIEW

(REPEALED)

SECTION HISTORY
1985, c. 441, §3 (NEW). 1987, c. 402, §A144 (RP).

Subchapter 10: CHILD WELFARE SERVICES OMBUDSMAN

§5001. CHILD WELFARE SERVICES OMBUDSMAN

(REPEALED)

SECTION HISTORY
1987, c. 511, §A4 (NEW). 1989, c. 400, §§6,14 (RP). 1989, c. 410, §23 (AMD). 1995, c. 462, §A45 (AMD).

Subchapter 10-A: OMBUDSMAN SERVICES

§4087. CHILD WELFARE SERVICES OMBUDSMAN

(REPEALED)

SECTION HISTORY
1989, c. 400, §§7,14 (NEW). 2001, c. 439, §X4 (RP).

§4087-A. OMBUDSMAN PROGRAM

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

A. "Ombudsman" means the director of the program and persons employed or volunteering to perform the work of the program. [2001, c. 439, Pt. X, §5 (NEW).]

B. "Program" means the ombudsman program established under this section. [2001, c. 439, Pt. X, §5 (NEW).]

[2001, c. 439, Pt. X, §5 (NEW) .]

2. **Program established.** The ombudsman program is established as an independent program within the Executive Department to provide ombudsman services to the children and families of the State regarding child welfare services provided by the Department of Health and Human Services. The program shall

consider and promote the best interests of the child involved, answer inquiries and investigate, advise and work toward resolution of complaints of infringement of the rights of the child and family involved. The program must be staffed, under contract, by an attorney or a master's level social worker who must have experience in child development and advocacy, and support staff as determined to be necessary. The program shall function through the staff of the program and volunteers recruited and trained to assist in the duties of the program.

[2001, c. 439, Pt. X, §5 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

3. **Contracted services.** The program shall operate by contract with a nonprofit organization that the Executive Department determines to be free of potential conflict of interest and best able to provide the services on a statewide basis. The ombudsman may not be actively involved in state-level political party activities or publicly endorse, solicit funds for or make contributions to political parties on the state level or candidates for statewide elective office. The ombudsman may not be a candidate for or hold any statewide elective or appointive public office.

[2001, c. 439, Pt. X, §5 (NEW) .]

4. **Services.** The program shall provide services directly or under contract. The first priority in the work of the program and any contract for ombudsman services must be case-specific advocacy services. In performing services under this section, the program, as it determines to be appropriate, may create and maintain records and case-specific reports. Any work on systems improvements or lobbying must be adjunctive to case-specific activities. The program may:

A. Provide information to the public about the services of the program through a comprehensive outreach program. The ombudsman shall provide information through a toll-free telephone number or numbers; [2001, c. 439, Pt. X, §5 (NEW).]

B. Answer inquiries, investigate and work toward resolution of complaints regarding the performance and services of the department and participate in conferences, meetings and studies that may improve the performance of the department; [2001, c. 439, Pt. X, §5 (NEW).]

C. Provide services to persons to assist them in protecting their rights; [2001, c. 439, Pt. X, §5 (NEW).]

D. Inform persons of the means of obtaining services from the department; [2001, c. 439, Pt. X, §5 (NEW).]

E. Provide information and referral services; [2001, c. 439, Pt. X, §5 (NEW).]

F. Analyze and provide opinions and recommendations to agencies, the Governor and the Legislature on state programs, rules, policies and laws; [2001, c. 439, Pt. X, §5 (NEW).]

G. Determine what types of complaints and inquiries will be accepted for action by the program and adopt policies and procedures regarding communication with persons making inquiries or complaints and the department; [2001, c. 439, Pt. X, §5 (NEW).]

H. Apply for and utilize grants, gifts and funds for the purpose of performing the duties of the program; and [2001, c. 439, Pt. X, §5 (NEW).]

I. Collect and analyze records and data relevant to the duties and activities of the program and make reports as required by law or determined to be appropriate. [2001, c. 439, Pt. X, §5 (NEW).]

[2005, c. 410, §1 (AMD) .]

4-A. **Information for parents in child protective cases.** The program, in consultation with appropriate interested parties, shall provide information about child protection laws and procedures to parents whose children are the subject of child protective investigations and cases under this chapter. The providing of the

information under this subsection does not constitute representation of parents. Parents may seek and receive information regardless of whether they are represented by legal counsel. The information must be provided free of charge to parents.

The program shall report annually to the joint standing committee of the Legislature having jurisdiction over judiciary matters, starting February 1, 2003, on the provision of information required by this subsection.

This subsection does not create new rights or obligations concerning the provision of legal advice or representation of parents. Failure to provide information under this subsection does not create a cause of action or have any effect on a child protective proceeding.

[2001, c. 696, §36 (NEW) .]

5. **Access to persons, files and records.** As necessary for the duties of the program, the ombudsman has access to the files and records of the department, without fee, and to the personnel of the department for the purposes of investigation of an inquiry or complaint. The ombudsman may also enter the premises of the department for the purposes of investigation of an inquiry or complaint without prior notice. The program shall maintain the confidentiality of all information or records obtained under this subsection.

[2001, c. 439, Pt. X, §5 (NEW) .]

6. **Confidentiality of records.** Information held by or records or case-specific reports maintained by the program are confidential. Disclosure may be made as allowed or required in accordance with the provisions of section 4008, subsections 2 and 3. Unlawful dissemination is subject to the provisions of section 4008, subsection 4.

[2005, c. 410, §2 (RPR) .]

7. **Liability.** Any person who in good faith submits a complaint or inquiry to the program pursuant to this section is immune from any civil or criminal liability. For the purpose of any civil or criminal proceedings, there is a rebuttable presumption that any person acting pursuant to this section did so in good faith. The ombudsman and employees and volunteers in the program are employees of the State for the purposes of the Maine Tort Claims Act.

[2001, c. 439, Pt. X, §5 (NEW) .]

8. **Penalties.** A person who intentionally obstructs or hinders the lawful performance of the ombudsman's duties commits a Class E crime. A person who penalizes or imposes a restriction on a person who makes a complaint or inquiry to the ombudsman as a result of that complaint or inquiry commits a Class E crime. The Attorney General shall enforce this subsection under Title 5, section 191.

[2001, c. 439, Pt. X, §5 (NEW) .]

9. **Information.** Beginning January 1, 2002, information about the services of the program and any applicable grievance and appeal procedures must be given to all children and families receiving child welfare services from the department and from all persons and entities contracting with the department for the provision of child welfare services.

[2001, c. 439, Pt. X, §5 (NEW) .]

10. **Report.** The program shall report to the Governor, the department and the Legislature before January 1st each year on the activities and services of the program, priorities among types of inquiries and complaints that may have been set by the program, waiting lists for services, the provision of outreach services and recommendations for changes in policy, rule or law to improve the provision of services.

[2001, c. 439, Pt. X, §5 (NEW) .]

11. **Oversight.** The joint standing committee of the Legislature having jurisdiction over health and human services matters shall review the operations of the program and may make recommendations to the Governor regarding the contract for services under this section. The committee may submit legislation that it determines necessary to amend or repeal this section.

[2001, c. 439, Pt. X, §5 (NEW) .]

SECTION HISTORY
2001, c. 439, §X5 (NEW). 2001, c. 696, §36 (AMD). 2003, c. 20, §EEE1 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 410, §§1,2 (AMD).

Subchapter 11: OUT-OF-HOME ABUSE AND NEGLECT INVESTIGATING TEAM

§5005. OUT-OF-HOME ABUSE AND NEGLECT INVESTIGATING TEAM

(REPEALED)

SECTION HISTORY
1987, c. 511, §B2 (NEW). 1987, c. 744, §9 (AMD). 1989, c. 400, §§8,14 (RP).

Subchapter 11-A: OUT-OF-HOME ABUSE AND NEGLECT INVESTIGATING TEAM

§4088. OUT-OF-HOME ABUSE AND NEGLECT INVESTIGATING TEAM

(REPEALED)

SECTION HISTORY
1989, c. 400, §§9,14 (NEW). 1989, c. 700, §§A90,91 (AMD). 1991, c. 824, §A46 (AMD). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 265, §§1-4 (AMD). 2001, c. 354, §3 (AMD). RR 2003, c. 2, §79 (COR). 2003, c. 399, §§1-4 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 279, §14 (AMD). 2007, c. 539, Pt. N, §§33-38 (AMD). 2013, c. 368, Pt. CCCC, §3 (AMD). 2015, c. 283, §2 (RP).

Subchapter 12: CHILD WELFARE ADVISORY COMMITTEE

§4089. CHILD WELFARE ADVISORY COMMITTEE

(REPEALED)

SECTION HISTORY
1989, c. 400, §§10,14 (NEW). 1989, c. 819, §6 (AMD). 2001, c. 352, §12 (RP).

Subchapter 13: HOSPITAL-BASED SUSPECTED CHILD ABUSE AND NEGLECT COMMITTEES

§4091. PURPOSE

The purpose of this subchapter is to encourage the implementation of statewide standards to be developed by the Department of Health and Human Services and participating hospitals for the identification and management of suspected child abuse and neglect cases presented at hospitals by providing financial support for the establishment of hospital-based suspected child abuse and neglect committees. [1989, c. 483, Pt. A, §34 (NEW); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY
1989, c. 483, §A34 (NEW). 2003, c. 689, §B6 (REV).

§4092. DEFINITIONS

As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings. [1989, c. 483, Pt. A, §34 (NEW).]

1. **Case plan prescription.** "Case plan prescription" means a plan developed by the family support team.

[1989, c. 483, Pt. A, §34 (NEW) .]

1-A. **Council.**

[1995, c. 233, Pt. B, §2 (RP) .]

2. **Family support team.** "Family support team" means a specialized team of professionals evaluating children who are suspected victims of child abuse and neglect as defined in section 4002, subsection 1. Evaluations shall include a family diagnosis and recommendations for treatment and follow-up.

[1989, c. 483, Pt. A, §34 (NEW) .]

3. **Protocols.** "Protocols" means procedures developed for the interaction of the suspected child abuse and neglect committee and family support team.

[1989, c. 483, Pt. A, §34 (NEW) .]

4. **Suspected child abuse and neglect committee.** "Suspected child abuse and neglect committee" means a committee representing public and private community agencies, hospital departments and the department which are directly involved in providing services to suspected victims of child abuse and the victims' families.

[1989, c. 483, Pt. A, §34 (NEW) .]

SECTION HISTORY
1989, c. 483, §A34 (NEW). 1989, c. 892, §2 (AMD). 1995, c. 233, §B2 (AMD).

§4093. HOSPITAL-BASED SUSPECTED CHILD ABUSE AND NEGLECT COMMITTEES

Each hospital may establish a suspected child abuse and neglect committee and family support team under this subchapter. The committee shall meet regularly to provide the ongoing development and monitoring of the specialized family support team and the approval of protocols. These hospitals shall serve as a resource to other institutions desiring to form such a program. [1989, c. 483, Pt. A, §34 (NEW).]

The family support team shall be coordinated by a team manager who shall be hired by the participating hospital. The team shall be available to evaluate children who are the suspected victims of abuse and neglect. The department shall contract for the services of the family support team manager. [1989, c. 483, Pt. A, §34 (NEW).]

The family support team shall provide a multidisciplinary approach for suspected child abuse cases that are initially identified in hospital emergency rooms, inpatient pediatric departments and ambulatory clinics. The child protective staff of the Office of Child and Family Services shall participate on the teams. The team shall report immediately to the department as required in section 4011-A. [2013, c. 368, Pt. CCCC, §4 (AMD).]

The team shall review the nature, extent and severity of abuse or neglect and the needs of the child and other family members. The team shall develop a case plan prescription for the treatment, management and follow-up of the child abuse victims and their families, and shall forward these recommendations to the department. [1989, c. 483, Pt. A, §34 (NEW).]

SECTION HISTORY
1989, c. 483, §A34 (NEW). 2001, c. 345, §6 (AMD). 2013, c. 368, Pt. CCCC, §4 (AMD).

§4094. MAINE SUSPECTED CHILD ABUSE AND NEGLECT COUNCIL

(REPEALED)

SECTION HISTORY
1989, c. 892, §3 (NEW). 1995, c. 233, §B3 (RP).

Subchapter 14: HEADING: PL 1999, C. 778, §2 (NEW)

§4095. DEFINITIONS

(REALLOCATED TO TITLE 22, SECTION 4100)
(REPEALED)

SECTION HISTORY
RR 1999, c. 2, §26 (RAL). 1999, c. 778, §2 (NEW). 1999, c. 783, §6 (NEW). MRSA T. 22, §4099 (RP).

§4096. YOUTH IN NEED OF SERVICES PILOT PROGRAM

(REPEALED)

SECTION HISTORY
1999, c. 778, §2 (NEW). MRSA T. 22, §4099 (RP).

§4097. PRELIMINARY ASSESSMENT; SAFETY PLAN; OTHER SERVICES

(REPEALED)

SECTION HISTORY
1999, c. 778, §2 (NEW). MRSA T. 22, §4099 (RP).

§4098. YOUTH IN NEED OF SERVICES OVERSIGHT COMMITTEE

(REPEALED)

SECTION HISTORY
1999, c. 778, §2 (NEW). MRSA T. 22, §4099 (RP).

§4099. REPEAL

(REPEALED)

SECTION HISTORY
1999, c. 778, §2 (NEW). 2001, c. 445, §1 (AMD). MRSA T. 22, §4099 (RP).

Subchapter 15: YOUTH IN NEED OF SERVICES PROGRAM

§4099-A. DEFINITIONS

(REPEALED)

SECTION HISTORY
2003, c. 451, §P3 (NEW). 2003, c. 561, §§1,2 (AMD). 2007, c. 240, Pt. SS, §1 (AMD). 2009, c. 155, §1 (RP).

§4099-B. HOMELESS YOUTH PROGRAM

(REPEALED)

SECTION HISTORY
2003, c. 451, §P3 (NEW). 2007, c. 240, Pt. SS, §2 (AMD). 2009, c. 155, §1 (RP).

§4099-C. PRELIMINARY ASSESSMENT; SAFETY PLAN; OTHER SERVICES

(REPEALED)

SECTION HISTORY
2003, c. 451, §P3 (NEW). 2003, c. 561, §§3-5 (AMD). 2009, c. 155, §1 (RP).

Subchapter 16: MAINE RUNAWAY AND HOMELESS YOUTH

§4099-D. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [2009, c. 155, §2 (NEW).]

1. **Homeless youth.** "Homeless youth" means a person 21 years of age or younger who is unaccompanied by a parent or guardian and is without shelter where appropriate care and supervision are available, whose parent or legal guardian is unable or unwilling to provide shelter and care or who lacks a fixed, regular and adequate nighttime residence. "Homeless youth" does not include a person incarcerated or otherwise detained under federal or state law.

[2009, c. 155, §2 (NEW) .]

2. **Fixed, regular and adequate nighttime residence.** "Fixed, regular and adequate nighttime residence" means a dwelling at which a person resides on a regular basis that adequately provides safe shelter. "Fixed, regular and adequate nighttime residence" does not include a publicly or privately operated institutional shelter designed to provide temporary living accommodations; transitional housing; a temporary placement with a peer, friend or family member who has not offered a permanent residence, residential lease or temporary lodging for more than 30 days; or a public or private place not designed for, nor ordinarily used as, a regular sleeping accommodation for human beings.

[2009, c. 155, §2 (NEW) .]

3. **Runaway.** "Runaway" means an unmarried child under 18 years of age who is absent from the home of a parent or guardian or other lawful placement without the consent of the parent, guardian or lawful custodian.

[2009, c. 155, §2 (NEW) .]

SECTION HISTORY
2009, c. 155, §2 (NEW).

§4099-E. COMPREHENSIVE PROGRAM FOR HOMELESS YOUTH

The department shall establish and support a comprehensive program for homeless youth in the State by contracting with organizations and agencies licensed by the department that provide street outreach, shelter and transitional living services for homeless youth. The department shall by rule establish licensure requirements and shall establish performance-based contracts with organizations and agencies to provide the following programs and services: [2009, c. 155, §2 (NEW).]

1. **Street and community outreach and drop-in programs.** Youth drop-in centers to provide walk-in access to crisis intervention and ongoing supportive services, including one-to-one case management services on a self-referral basis and street and community outreach programs to locate, contact and provide information, referrals and services to homeless youth, youth at risk of homelessness and runaways. Information, referrals and services provided may include, but are not limited to family reunification services; conflict resolution or mediation counseling; assistance in obtaining temporary emergency shelter; case management aimed at obtaining food, clothing, medical care or mental health counseling; counseling regarding violence, prostitution, substance abuse, sexually transmitted diseases, HIV and pregnancy; referrals to other agencies that provide support services to homeless youth, youth at risk of homelessness and runaways; assistance with education, employment and independent living skills; aftercare services; and specialized services for highly vulnerable runaways and homeless youth, including teen parents, sexually exploited youth and youth with mental illness or developmental disabilities;

[2009, c. 155, §2 (NEW) .]

2. **Emergency shelter program.** Emergency shelter programs to provide homeless youth and runaways with referrals and walk-in access to short-term residential care on an emergency basis. The program must provide homeless youth and runaways with safe, dignified, voluntary housing, including private shower facilities, beds and at least one meal each day, and assist a runaway with reunification with family or a legal guardian when required or appropriate. The services provided at emergency shelters may include, but are not limited to, family reunification services or referral to safe, dignified housing; individual, family and group counseling; assistance obtaining clothing; access to medical and dental care and mental health counseling; education and employment services; recreational activities; case management, advocacy and referral services; independent living skills training; and aftercare, follow-up services and transportation; and

[2009, c. 155, §2 (NEW) .]

3. **Transitional living programs.** Transitional living programs to help homeless youth find and maintain safe, dignified housing. The program may also provide rental assistance and related supportive services or may refer youth to other organizations or agencies that provide such services. Services provided may include, but are not limited to, provision of safe, dignified housing; educational assessment and referrals to educational programs; career planning, employment, job skills training and independent living skills training; job placement; budgeting and money management; assistance in securing housing appropriate

to needs and income; counseling regarding violence, prostitution, substance abuse, sexually transmitted diseases and pregnancy; referral for medical services or chemical dependency treatment; parenting skills; self-sufficiency support services or life skills training; and aftercare and follow-up services.

[2009, c. 155, §2 (NEW) .]

SECTION HISTORY
2009, c. 155, §2 (NEW).

§4099-F. DATA COLLECTION

The department shall collect data from its licensed organizations and agencies to ensure that appropriate and high-quality services are being delivered to homeless youth, youth at risk of homelessness and runaways and shall use the data to monitor the success of the contracts and programs as well as changes in the rates of homelessness among youth in the State. [2009, c. 155, §2 (NEW).]

SECTION HISTORY
2009, c. 155, §2 (NEW).

§4099-G. RULES

The department shall adopt rules as may be necessary for the effective administration of the comprehensive program under section 4099-E. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 155, §2 (NEW).]

SECTION HISTORY
2009, c. 155, §2 (NEW).

§4099-H. EMERGENCY SHELTER FAMILY HOMES FOR YOUTH

This section applies to emergency shelter family homes for youths in order to provide the youths with voluntary, safe, emergency housing with individuals or families in locations as close as reasonably possible to the home communities of the youths. [2011, c. 385, §1 (NEW).]

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

A. "Emergency shelter family home" means a home that provides community-based emergency shelter with an individual or a family that is operated 24 hours a day under the auspices of an emergency shelter licensed by the department in accordance with rules adopted by the department under sections 7801 and 8102. [2011, c. 385, §1 (NEW).]

B. "Youth" means a child 12 to 20 years of age. [2011, c. 385, §1 (NEW).]

[2011, c. 1, §35 (COR) .]

2. **Placement.** A licensed emergency shelter may place in an emergency shelter family home operated by the shelter a youth who was referred to the shelter by the Department of Corrections if the shelter has obtained the agreement of the parent or legal guardian of the youth.

[2011, c. 385, §1 (NEW) .]

3. **Requirements.** A licensed emergency shelter that operates an emergency shelter family home must be licensed as a child placing agency by the department under rules adopted pursuant to sections 7801 and 8202 and must operate the home under a contract with the Department of Corrections and in accordance

with an agreement between the department and the Department of Corrections. An emergency shelter family home may be, but is not required to be, licensed as a children's home by the department under rules adopted pursuant to sections 7801 and 8202.

[2011, c. 385, §1 (NEW) .]

SECTION HISTORY
RR 2011, c. 1, §35 (COR). 2011, c. 385, §1 (NEW).

Chapter 1081: MAINE CHILDREN'S TRUST FUND

Chapter 1082: QUALITY CHILD CARE

§4100. QUALITY CHILD CARE SITE

(REALLOCATED FROM TITLE 22, SECTION 4095)

1. **Definition.** As used in this chapter, unless the context otherwise indicates, "quality child care site" means a child care site that meets minimum licensing standards and:

A. Is accredited by an independent, nationally recognized program approved by the Department of Health and Human Services, Office of Head Start and Child Care; [1999, c. 2, §26 (RAL); 2003, c. 689, Pt. B, §6 (REV).]

B. Utilizes recognized quality indicators for child care services approved by the Department of Health and Human Services, Office of Head Start and Child Care; and [1999, c. 2, §26 (RAL); 2003, c. 689, Pt. B, §6 (REV).]

C. Includes provisions for parent and client input, a review of the provider's policies and procedures, a review of the provider's program records and an on-site program review. [1999, c. 2, §26 (RAL).]

For large, multifunction agencies, only those portions of the child care sites that have been reviewed by the accrediting body may be considered quality child care sites.

[1999, c. 2, §26 (RAL); 2003, c. 689, Pt. B, §6 (REV) .]

2. **List of sites.** The department shall develop and maintain a list of quality child care sites in the State.

[1999, c. 2, §26 (RAL) .]

SECTION HISTORY
RR 1999, c. 2, §26 (RAL). 2003, c. 689, §B6 (REV).

Part 4: INTERSTATE COMPACTS

Chapter 1151: INTERSTATE COMPACT ON WELFARE SERVICES

Subchapter 1: COMPACT

§4101. POLICY, PURPOSE AND SCOPE -- ARTICLE I

(REPEALED)

SECTION HISTORY

1981, c. 703, §A29 (RP).

§4102. DEFINITIONS -- ARTICLE II

(REPEALED)

SECTION HISTORY
1981, c. 703, §A29 (RP).

§4103. PROVISION OF SERVICE -- ARTICLE III

(REPEALED)

SECTION HISTORY
1981, c. 703, §A29 (RP).

§4104. SUPPLEMENTARY AGREEMENTS -- ARTICLE IV

(REPEALED)

SECTION HISTORY
1981, c. 703, §A29 (RP).

§4105. COMPACT ADMINISTRATOR -- ARTICLE V

(REPEALED)

SECTION HISTORY
1981, c. 703, §A29 (RP).

§4106. ENACTMENT AND WITHDRAWAL -- ARTICLE VI

(REPEALED)

SECTION HISTORY
1981, c. 703, §A29 (RP).

§4107. CONSTRUCTION -- ARTICLE VII

(REPEALED)

SECTION HISTORY
1981, c. 703, §A29 (RP).

Subchapter 2: ADMINISTRATIVE PROVISIONS

§4141. RATIFICATION OF COMPACT

(REPEALED)

SECTION HISTORY
1981, c. 703, §A29 (RP).

§4142. ADMINISTRATOR

(REPEALED)

SECTION HISTORY

1981, c. 703, §A29 (RP).

§4143. DUTIES

(REPEALED)

SECTION HISTORY
1981, c. 703, §A29 (RP).

§4144. WITHDRAWAL

(REPEALED)

SECTION HISTORY
1981, c. 703, §A29 (RP).

Chapter 1152: NEW ENGLAND WELFARE COMPACT

Subchapter 1: COMPACT

§4151. POLICY, PURPOSE AND SCOPE -- ARTICLE I

(REPEALED)

SECTION HISTORY
1965, c. 214, (NEW). 1971, c. 294, (RP).

§4152. WELFARE SERVICE DEFINED -- ARTICLE II

(REPEALED)

SECTION HISTORY
1965, c. 214, (NEW). 1971, c. 294, (RP).

§4153. PROVISION OF SERVICE -- ARTICLE III

(REPEALED)

SECTION HISTORY
1965, c. 214, (NEW). 1971, c. 294, (RP).

§4154. EXCEPTIONS AND LIMITATIONS -- ARTICLE IV

(REPEALED)

SECTION HISTORY
1965, c. 214, (NEW). 1971, c. 294, (RP).

§4155. COMPACT ADMINISTRATOR -- ARTICLE V

(REPEALED)

SECTION HISTORY
1965, c. 214, (NEW). 1971, c. 294, (RP).

§4156. ENACTMENT AND WITHDRAWAL -- ARTICLE VI

(REPEALED)

SECTION HISTORY
1965, c. 214, (NEW). 1971, c. 294, (RP).

§4157. CONSTRUCTION -- ARTICLE VII

(REPEALED)

SECTION HISTORY
1965, c. 214, (NEW). 1971, c. 294, (RP).

Subchapter 2: ADMINISTRATIVE PROVISIONS

§4161. COMPACT

(REPEALED)

SECTION HISTORY
1965, c. 214, (NEW). 1971, c. 294, (RP).

Chapter 1152-A: ADOPTION ASSISTANCE COMPACT

§4171. FINDINGS AND PURPOSES

1. **Findings.** The Legislature finds that:

A. Finding adoptive families for children for whom state assistance is desirable, pursuant to the Adoption Assistance Program established in Title 18-A, article IX, Part 4, and assuring the protection of the interests of the children affected during the entire assistance period, require special measures when the adoptive parents move to other states or are residents of another state; and [1995, c. 694, Pt. D, §49 (AMD); 1995, c. 694, Pt. E, §2 (AFF).]

B. Provision of medical and other necessary services for children with state assistance encounters special difficulties when the provision of services takes place in other states. [1983, c. 721, (NEW).]

[1995, c. 694, Pt. D, §49 (AMD); 1995, c. 694, Pt. E, §2 (AFF) .]

2. **Purposes.** The purposes of this chapter are to:

A. Authorize the department to enter into interstate agreements with agencies of other states for the protection of children on behalf of whom adoption assistance is being provided by the department; and [1983, c. 721, (NEW).]

B. Provide procedures for interstate children's adoption assistance payments, including medical payments. [1983, c. 721, (NEW).]

[1983, c. 721, (NEW) .]

SECTION HISTORY
1983, c. 721, (NEW). 1995, c. 694, §D49 (AMD). 1995, c. 694, §E2 (AFF).

§4172. COMPACTS AUTHORIZED; DEFINITIONS

1. **Authorization.** The department may develop, participate in the development of, negotiate and enter into one or more interstate compacts on behalf of this State with other states to implement one or more of the purposes set forth in this chapter. When so entered into, and for so long as it shall remain in force, such a compact shall have the force and effect of law.

[1983, c. 721, (NEW) .]

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

A. "Adoption assistance state" means the State that is signatory to an adoption assistance agreement in a particular case. [1983, c. 721, (NEW).]

B. "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands or a territory or possession of or administered by the United States. [1983, c. 721, (NEW).]

C. "Residence state" means the State of which the child is a resident by virtue of the residence of the adoptive parents. [1983, c. 721, (NEW).]

[1983, c. 721, (NEW) .]

SECTION HISTORY
1983, c. 721, (NEW).

§4173. CONTENTS OF COMPACTS

1. **Content.** A compact entered into pursuant to the authority conferred by this chapter shall have the following content:

A. A provision making it available for joinder by all states; [1983, c. 721, (NEW).]

B. A provision or provisions for withdrawal from the compact upon written notice to the parties, but with a period of one year between the date of the notice and the effective date of the withdrawal; [1983, c. 721, (NEW).]

C. A requirement that the protection afforded by or pursuant to the compact continue in force for the duration of the adoption assistance and be applicable to all children and their adoptive parents who, on the effective date of the withdrawal, are receiving adoption assistance from a party state other than the one in which they are resident and have their principal place of abode; [1983, c. 721, (NEW).]

D. A requirement that each instance of adoption assistance to which the compact applies be covered by an adoption assistance agreement in writing between the adoptive parents and the state child welfare agency of the State which undertakes to provide the adoption assistance and that any such agreement be expressly for the benefit of the adopted child and enforceable by the adoptive parents and the state agency providing the adoption assistance; and [1983, c. 721, (NEW).]

E. Such other provisions as may be appropriate to implement the proper administration of the compact. [1983, c. 721, (NEW).]

[1983, c. 721, (NEW) .]

SECTION HISTORY
1983, c. 721, (NEW).

§4174. OPTIONAL CONTENTS OF COMPACTS

1. **Optional content.** A compact entered into pursuant to the authority conferred by this chapter may contain provisions in addition to those required pursuant to section 4173, as follows:

A. Provisions establishing procedures and entitlements to medical, developmental, child care or other social services for the child in accordance with applicable laws, even though the child and the adoptive parents are in a state other than the one responsible for or providing the services or the funds to defray part or all of the costs thereof; and [1983, c. 721, (NEW).]

B. Such other provisions as may be appropriate or incidental to the proper administration of the compact. [1983, c. 721, (NEW).]

[1983, c. 721, (NEW) .]

SECTION HISTORY
1983, c. 721, (NEW).

§4175. MEDICAL ASSISTANCE

1. **Medical assistance identification.** A child with special needs resident in this State who is the subject of an adoption assistance agreement with another state shall be entitled to receive a medical assistance identification from this State, upon the filing in the department of a certified copy of the adoption assistance agreement obtained from the adoption assistance state. In accordance with regulations of the department, the adoptive parents shall be required at least annually to show that the agreement is still in force or has been renewed.

[1983, c. 721, (NEW) .]

2. **Processing and payment of claims.** The department shall consider the holder of a medical assistance identification pursuant to this section as any other holder of a medical assistance identification under the laws of this State and shall process and make payment on claims on account of that holder in the same manner and pursuant to the same conditions and procedures as for other recipients of medical assistance.

[1983, c. 721, (NEW) .]

3. **Coverage; benefits.** The department shall provide coverage and benefits for a child who is in another state and who is covered by an adoption assistance agreement made by the department for the coverage or benefits, if any, not provided by the residence state. The adoptive parents acting for the child may submit evidence of payment for services or benefit amounts not payable in the residence state and shall be reimbursed. There shall be no reimbursement for services or benefit amounts covered under any insurance or other 3rd party medical contract or arrangement held by the child or the adoptive parents. The department shall make regulations implementing this subsection. The additional coverage and benefit amounts provided pursuant to this subsection shall be for services to the cost of which there is no federal contribution, or which, if federally aided, are not provided by the residence state. Among other things, the regulations shall include procedures to be followed in obtaining prior approvals for services in those instances where required for the assistance.

[1983, c. 721, (NEW) .]

4. **False claims.** The submission of any claim for payment or reimbursement for services or benefits, pursuant to this section or the making of any statement in connection therewith, which claim or statement the maker knows or should know to be false, misleading or fraudulent shall be punishable as perjury and subject to the provisions of the Maine Criminal Code and other applicable laws.

[1983, c. 721, (NEW) .]

5. **Application.** The provisions of this section shall apply only to medical assistance for children under adoption assistance agreements from states that have entered into a compact with this State under which the other state provides medical assistance to children with special needs under adoption assistance agreements made by this State. All other children entitled to medical assistance, pursuant to adoption assistance agreements entered into by this State, shall be eligible to receive it in accordance with the laws and procedures applicable thereto.

[1983, c. 721, (NEW) .]

SECTION HISTORY
1983, c. 721, (NEW).

§4176. FEDERAL PARTICIPATION

1. **Federal payments and aid.** Consistent with federal law, the department, in connection with the administration of this chapter and any compact pursuant to this chapter, shall include in any state plan made pursuant to the Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272, Titles IV-E and XIX of the United States Social Security Act, and any other applicable federal laws, the provision of adoption assistance and medical assistance for which the Federal Government pays some or all of the cost. The department shall apply for and administer all relevant federal aid, in accordance with law.

[1983, c. 721, (NEW) .]

SECTION HISTORY
1983, c. 721, (NEW).

Chapter 1153: INTERSTATE COMPACT ON PLACEMENT OF CHILDREN

Subchapter 1: COMPACT

§4191. PURPOSE AND POLICY -- ARTICLE I

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

Appropriate jurisdictional arrangements for the care of children will be promoted.

§4192. DEFINITIONS -- ARTICLE II

As used in this compact:

1. **Child.** "Child" means a person who, by reason of minority being under 18 years of age, is legally subject to parental, guardianship or similar control.

[1971, c. 598, §39 (AMD) .]

2. **Placement.** "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

3. **Receiving state.** "Receiving state" means the state to which a child is sent, brought or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

4. **Sending agency.** "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings or causes to be sent or brought any child to another party state.

SECTION HISTORY
1969, c. 433, §49 (AMD). 1971, c. 598, §39 (AMD).

§4193. CONDITIONS FOR PLACEMENT -- ARTICLE III

No sending agency shall send, bring or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring or place the child in the receiving state. The notice shall contain the name, date and place of birth of the child, the identity and address or addresses of the parents or legal guardian, the name and address of the person, agency or institution to or with which the sending agency proposes to send, bring or place the child and a full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

Any public officer or agency in a receiving state which is in receipt of a notice pursuant to this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

The child shall not be sent, brought or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

§4194. PENALTY FOR ILLEGAL PLACEMENT -- ARTICLE IV

The sending, bringing or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subject to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit or other legal authorization held by the sending agency which empowers or allows it to place or care for children.

§4195. RETENTION OF JURISDICTION -- ARTICLE V

The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in the first paragraph.

§4196. INSTITUTIONAL CARE OF DELINQUENT CHILDREN -- ARTICLE VI

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

1. **Facilities.** Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

2. **Best interest of child.** Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

§4197. COMPACT ADMINISTRATOR -- ARTICLE VII

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

§4198. LIMITATIONS -- ARTICLE VIII

This compact shall not apply to:

1. **Non-agencies.** The sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or non-agency guardian in the receiving state.

2. **Other compacts or agreements.** Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

§4199. ENACTMENT AND WITHDRAWAL -- ARTICLE IX

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until 2 years after the effective date of such statute

and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

§4200. CONSTRUCTION AND SEVERABILITY -- ARTICLE X

This compact shall be liberally construed to effectuate the purposes thereof. This compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Subchapter 2: ADMINISTRATIVE PROVISIONS

§4241. RATIFICATION OF COMPACT

The Interstate Compact on the Placement of Children is enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as set forth in this chapter.

§4242. FINANCIAL RESPONSIBILITY

Financial responsibility for any child placed pursuant to the Interstate Compact on the Placement of Children shall be determined in accordance with Article V thereof in the first instance. In the event of partial or complete default of performance thereunder the Department of Health and Human Services or the private agency supervising the child shall assume financial responsibility. [1975, c. 293, §4 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY
1975, c. 293, §4 (AMD). 2003, c. 689, §B6 (REV).

§4243. APPROPRIATE PUBLIC AUTHORITIES

The "appropriate public authorities" as used in Article III of the Interstate Compact on the Placement of Children shall, with reference to this State, mean the Department of Health and Human Services and said department shall receive and act with reference to notices required by said Article III. [1975, c. 293, §4 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY
1975, c. 293, §4 (AMD). 2003, c. 689, §B6 (REV).

§4244. APPROPRIATE AUTHORITY IN THE RECEIVING STATE

As used in the first paragraph of Article V of the Interstate Compact on the Placement of Children, the phrase "appropriate authority in the receiving state" with reference to this State shall mean the Department of Health and Human Services. [1975, c. 293, §4 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY
1975, c. 293, §4 (AMD). 2003, c. 689, §B6 (REV).

§4245. AUTHORITY TO ENTER INTO AGREEMENTS

The officers and agencies of this State and its subdivisions having authority to place children are empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to the 2nd paragraph of Article V of the Interstate Compact on the Placement of Children. Any such agreement which contains a financial commitment or imposes a financial obligation on this State or subdivision or agency thereof shall not be binding unless it has the approval in writing of the Commissioner of Health and Human Services in the case of the State and of the chief local fiscal officer in the case of a subdivision of the State. [1975, c. 293, §4 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY
1975, c. 293, §4 (AMD). 2003, c. 689, §B7 (REV).

§4246. JURISDICTION

Any court having jurisdiction to place delinquent children may place such a child in an institution of or in another state pursuant to Article VI of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Article V.

§4247. EXECUTIVE HEAD

As used in Article VII of the Interstate Compact on the Placement of Children, the term "executive head" means the Governor. The Governor is authorized to appoint a compact administrator in accordance with the terms of said Article VII.

Chapter 1154: INTERSTATE COMPACT FOR THE PLACEMENT OF CHILDREN

§4251. PURPOSE - ARTICLE 1

The purpose of this Interstate Compact for the Placement of Children is to: [2007, c. 255, §6 (NEW).]

1. **Process.** Provide a process through which children subject to this compact are placed in safe and suitable homes in a timely manner;

[2007, c. 255, §6 (NEW) .]

2. **Ongoing supervision.** Facilitate ongoing supervision of a placement, the delivery of services and communication between the states;

[2007, c. 255, §6 (NEW) .]

3. **Operating procedures.** Provide operating procedures that will ensure that children are placed in safe and suitable homes in a timely manner;

[2007, c. 255, §6 (NEW) .]

4. **Rules.** Provide for the adoption and enforcement of administrative rules implementing the provisions of this compact and regulating the covered activities of the member states;

[2007, c. 255, §6 (NEW) .]

5. **Data collection.** Provide for uniform data collection and information sharing between member states under this compact;

[2007, c. 255, §6 (NEW) .]

6. **Coordination.** Promote coordination between this compact, the Interstate Compact for Juveniles, the Interstate Compact on Adoption and Medical Assistance and other compacts affecting the placement of and which provide services to children otherwise subject to this compact;

[2007, c. 255, §6 (NEW) .]

7. **Jurisdiction.** Provide for a state's continuing legal jurisdiction and responsibility for placement and care of a child that it would have had if the placement were intrastate; and

[2007, c. 255, §6 (NEW) .]

8. **Cases involving Indian children.** Provide for the adoption of guidelines, in collaboration with Indian tribes, for interstate cases involving Indian children as is or may be permitted by federal law.

[2007, c. 255, §6 (NEW) .]

SECTION HISTORY
2007, c. 255, §6 (NEW).

§4252. DEFINITIONS - ARTICLE 2

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2007, c. 255, §6 (NEW).]

1. **Approved placement.** "Approved placement" means the receiving state has determined after an assessment that the placement is both safe and suitable for the child and is in compliance with the applicable laws of the receiving state governing the placement of children in the receiving state.

[2007, c. 255, §6 (NEW) .]

2. **Assessment.** "Assessment" means an evaluation of a prospective placement to determine whether the placement meets the individualized needs of the child, including but not limited to the child's safety and stability, health and well-being and mental, emotional and physical development.

[2007, c. 255, §6 (NEW) .]

3. **Child.** "Child" means an individual who has not attained 18 years of age.

[2007, c. 255, §6 (NEW) .]

4. **Default.** "Default" means the failure of a member state to perform the obligations or responsibilities imposed upon it by this chapter or the bylaws or rules of the interstate commission.

[2007, c. 255, §6 (NEW) .]

5. **Indian tribe.** "Indian tribe" means any Indian tribe, band, nation or other organized group or community of Indians recognized as eligible for services provided to Indians by the United States Secretary of the Interior because of their status as Indians, including any Alaska native village as defined in Section 3(c) of the Alaska Native Claims Settlement Act, 43 United States Code, Section 1602(c).

[2007, c. 255, §6 (NEW) .]

6. **Interstate Commission for the Placement of Children; interstate commission.** "Interstate Commission for the Placement of Children" or "interstate commission" means the commission that is created under section 4258.

[2007, c. 255, §6 (NEW) .]

7. **Jurisdiction.** "Jurisdiction" means the power and authority of a court to hear and decide matters.

[2007, c. 255, §6 (NEW) .]

8. **Member state.** "Member state" means a state that has enacted this compact.

[2007, c. 255, §6 (NEW) .]

9. **Noncustodial parent.** "Noncustodial parent" means a person who, at the time of the commencement of court proceedings in the sending state, does not have sole legal custody of the child or has joint legal custody of the child and who is not the subject of allegations or findings of child abuse or neglect.

[2007, c. 255, §6 (NEW) .]

10. **Nonmember state.** "Nonmember state" means a state that has not enacted this compact.

[2007, c. 255, §6 (NEW) .]

11. **Notice of residential placement.** "Notice of residential placement" means information regarding a placement into a residential facility provided to the receiving state, including, but not limited to, the name, date and place of birth of the child, the identity and address of the parent or legal guardian, evidence of authority to make the placement and the name and address of the facility in which the child will be placed. "Notice of residential placement" includes information regarding a discharge and any unauthorized absence from the facility.

[2007, c. 255, §6 (NEW) .]

12. **Placement.** "Placement" means the act by a public or private child placing agency intended to arrange for the care or custody of a child in another state.

[2007, c. 255, §6 (NEW) .]

13. **Private child placing agency.** "Private child placing agency" means any private corporation, agency, foundation, institution or charitable organization or any private person or attorney that facilitates, causes or is involved in the placement of a child from one state to another and that is not an instrumentality of the state or acting under color of state law.

[2007, c. 255, §6 (NEW) .]

14. **Provisional placement.** "Provisional placement" means that the receiving state has determined that the proposed placement is safe and suitable and, to the extent allowable, the receiving state has temporarily waived its standards or requirements otherwise applicable to prospective foster or adoptive parents so as to not delay the placement. Completion of the receiving state requirements regarding training for prospective foster or adoptive parents may not delay an otherwise safe and suitable placement.

[2007, c. 255, §6 (NEW) .]

15. **Public child placing agency.** "Public child placing agency" means any government child welfare agency or child protection agency or a private entity under contract with such an agency, regardless of whether it acts on behalf of a state, county, municipality or other governmental unit and that facilitates, causes or is involved in the placement of a child from one state to another.

[2007, c. 255, §6 (NEW) .]

16. **Receiving state.** "Receiving state" means the state to which a child is sent, brought or caused to be sent or brought.

[2007, c. 255, §6 (NEW) .]

17. **Relative.** "Relative" means someone who is related to the child as a parent, stepparent, sibling by half or whole blood or by adoption, grandparent, aunt, uncle or first cousin or a nonrelative with such significant ties to the child that the nonrelative may be regarded as a relative as determined by the court in the sending state.

[2007, c. 255, §6 (NEW) .]

18. **Residential facility.** "Residential facility" means a facility providing a level of care that is sufficient to substitute for parental responsibility or foster care and is beyond what is needed for assessment or treatment of an acute condition. "Residential facilities" does not include institutions primarily educational in character, hospitals or other medical facilities.

[2007, c. 255, §6 (NEW) .]

19. **Rule.** "Rule" means a written directive, mandate, standard or principle issued by the interstate commission adopted pursuant to section 4261 that is of general applicability and that implements, interprets or prescribes a policy or provision of this chapter. "Rule" has the force and effect of statutory law in a member state and includes the amendment, repeal or suspension of an existing rule.

[2007, c. 255, §6 (NEW) .]

20. **Sending state.** "Sending state" means the state from which the placement of a child is initiated.

[2007, c. 255, §6 (NEW) .]

21. **Service member's permanent duty station.** "Service member's permanent duty station" means the military installation where an active duty member of the Armed Forces of the United States is currently assigned and is physically located under competent orders that do not specify the duty as temporary.

[2007, c. 255, §6 (NEW) .]

22. **Service member's state of legal residence.** "Service member's state of legal residence" means the state in which the active duty member of the Armed Forces of the United States is considered a resident for tax and voting purposes.

[2007, c. 255, §6 (NEW) .]

23. **State.** "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Northern Mariana Islands and any other territory of the United States.

[2007, c. 255, §6 (NEW) .]

24. **State court.** "State court" means a judicial body of a state that is vested by law with responsibility for adjudicating cases involving abuse, neglect, deprivation, delinquency or status offenses of individuals who have not attained 18 years of age.

[2007, c. 255, §6 (NEW) .]

25. **Supervision.** "Supervision" means monitoring provided by the receiving state once a child has been placed in a receiving state pursuant to this chapter.

[2007, c. 255, §6 (NEW) .]

SECTION HISTORY
2007, c. 255, §6 (NEW).

§4253. APPLICABILITY - ARTICLE 3

1. **Applicability.** Except as otherwise provided in subsection 2, this chapter applies to:

A. The interstate placement of a child subject to ongoing court jurisdiction in the sending state, due to allegations or findings that the child has been abused, neglected or deprived as defined by the laws of the sending state, as long as the placement of the child into a residential facility only requires notice of residential placement to the receiving state prior to placement; [2007, c. 255, §6 (NEW).]

B. The interstate placement of a child adjudicated delinquent or unmanageable based on the laws of the sending state and subject to ongoing court jurisdiction of the sending state if:

(1) The child is being placed in a residential facility in another member state and is not covered under another compact; or

(2) The child is being placed in another member state and the determination of safety and suitability of the placement and services required is not provided through another compact; and [2007, c. 255, §6 (NEW).]

C. The interstate placement of any child by a public child placing agency or private child placing agency as a preliminary step to a possible adoption. [2007, c. 255, §6 (NEW).]

[2007, c. 255, §6 (NEW) .]

2. **Exceptions.** The provisions of this chapter do not apply to:

A. The interstate placement of a child with a nonrelative in a receiving state by a parent with the legal authority to make such a placement as long as the placement is not intended to effectuate an adoption; [2007, c. 255, §6 (NEW).]

B. The interstate placement of a child by one relative with the lawful authority to make such a placement directly with a relative in a receiving state; [2007, c. 255, §6 (NEW).]

C. The placement of a child, not subject to subsection 1, into a residential facility by the child's parent; [2007, c. 255, §6 (NEW).]

D. The placement of a child with a noncustodial parent if:

(1) The noncustodial parent proves to the satisfaction of a court in the sending state a substantial relationship with the child;

(2) The court in the sending state makes a written finding that placement with the noncustodial parent is in the best interests of the child; and

(3) The court in the sending state dismisses its jurisdiction over the child's case; [2007, c. 255, §6 (NEW).]

E. A child entering the United States from a foreign country for the purpose of adoption or leaving the United States to go to a foreign country for the purpose of adoption in that country; [2007, c. 255, §6 (NEW).]

F. A case in which a citizen child living overseas with that child's family, at least one of whom is in the Armed Forces of the United States, and who is stationed overseas, is removed and placed in a state; and [2007, c. 255, §6 (NEW).]

G. The sending of a child by a public child placing agency or a private child placing agency for a visit as defined by the rules of the interstate commission. [2007, c. 255, §6 (NEW).]

[2007, c. 255, §6 (NEW) .]

3. **Placement of child.** For purposes of determining the applicability of this chapter to the placement of a child with a family member in the Armed Forces of the United States, the public child placing agency or private child placing agency may choose the state of the service member's permanent duty station or the service member's declared legal residence.

[2007, c. 255, §6 (NEW) .]

4. **Prohibit concurrent application.** Nothing in this chapter may be construed to prohibit the concurrent application of the provisions of this chapter with other applicable interstate compacts including the Interstate Compact for Juveniles and the Interstate Compact on Adoption and Medical Assistance. The interstate commission may in cooperation with other interstate compact commissions having responsibility for the interstate movement, placement or transfer of children adopt like rules to ensure the coordination of services, timely placement of children and the reduction of unnecessary or duplicative administrative or procedural requirements.

[2007, c. 255, §6 (NEW) .]

SECTION HISTORY
2007, c. 255, §6 (NEW).

§4254. JURISDICTION - ARTICLE 4

1. **Retain jurisdiction.** The sending state shall retain jurisdiction over a child with respect to all matters of custody and disposition of the child that it would have had if the child had remained in the sending state. Such jurisdiction also includes the power to order the return of the child to the sending state.

[2007, c. 255, §6 (NEW) .]

2. **Issue of child protection; custody.** When an issue of child protection or custody is brought before a court in the receiving state, such court shall confer with the court of the sending state to determine the most appropriate forum for adjudication.

[2007, c. 255, §6 (NEW) .]

3. **Authority to terminate.** In accordance with its own laws, the court in the sending state has authority to terminate its jurisdiction if:

A. The child is reunited with the parent in the receiving state who is the subject of allegations or findings of abuse or neglect, but only with the concurrence of the public child placing agency in the receiving state; [2007, c. 255, §6 (NEW).]

B. The child is adopted; [2007, c. 255, §6 (NEW).]

C. The child reaches the age of majority under the laws of the sending state; [2007, c. 255, §6 (NEW).]

D. The child achieves legal independence pursuant to the laws of the sending state; [2007, c. 255, §6 (NEW).]

E. A guardianship is created by a court in the receiving state with the concurrence of the court in the sending state; [2007, c. 255, §6 (NEW).]

F. An Indian tribe has petitioned for and received jurisdiction from the court in the sending state; or [2007, c. 255, §6 (NEW).]

G. The public child placing agency of the sending state requests termination and has obtained the concurrence of the public child placing agency in the receiving state. [2007, c. 255, §6 (NEW).]

[2007, c. 255, §6 (NEW) .]

4. **Court terminates jurisdiction.** When a sending state court terminates its jurisdiction, the receiving state child placing agency must be notified.

[2007, c. 255, §6 (NEW) .]

5. **Claim of jurisdiction.** Nothing in this section defeats a claim of jurisdiction by a receiving state court sufficient to deal with an act of truancy, delinquency, crime or behavior involving a child as defined by the laws of the receiving state committed by the child in the receiving state that would be a violation of its laws.

[2007, c. 255, §6 (NEW) .]

6. **Emergency jurisdiction.** Nothing in this section limits the receiving state's ability to take emergency jurisdiction for the protection of the child.

[2007, c. 255, §6 (NEW) .]

SECTION HISTORY
2007, c. 255, §6 (NEW).

§4255. ASSESSMENTS - ARTICLE 5

1. **Request for assessment.** Prior to sending, bringing or causing a child to be sent or brought into a receiving state, the public child placing agency shall provide a written request for assessment to the receiving state.

[2007, c. 255, §6 (NEW) .]

2. **Sent; brought into receiving state.** Prior to the sending, bringing or causing a child to be sent or brought into a receiving state, the private child placing agency shall:

A. Provide evidence that the applicable laws of the sending state have been complied with; [2007, c. 255, §6 (NEW).]

B. Certify that the consent or relinquishment is in compliance with applicable law of the birth parent's state of residence or, where permitted, the laws of the state of where the finalization of the adoption will occur; [2007, c. 255, §6 (NEW).]

C. Request through the public child placing agency in the sending state an assessment to be conducted in the receiving state; and [2007, c. 255, §6 (NEW).]

D. Upon completion of the assessment, obtain the approval of the public child placing agency in the receiving state. [2007, c. 255, §6 (NEW).]

[2007, c. 255, §6 (NEW) .]

3. **Procedures for assessment.** The procedures for making and requesting an assessment must contain all information and be in such form as provided for in the rules of the interstate commission.

[2007, c. 255, §6 (NEW) .]

4. **Proposed placement.** Upon receipt of a request from the public child welfare agency of the sending state, the receiving state shall initiate an assessment of the proposed placement to determine its safety and suitability. If the proposed placement is a placement with a relative, the public child placing agency of the sending state may request a determination of whether the placement qualifies as a provisional placement.

[2007, c. 255, §6 (NEW) .]

5. **Supporting information.** The public child placing agency in the receiving state may request from the public child placing agency or the private child placing agency in the sending state, and is entitled to receive, supporting or additional information necessary to complete the assessment.

[2007, c. 255, §6 (NEW) .]

6. **Completion of assessment.** The public child placing agency in the receiving state shall complete or arrange for the completion of the assessment within the time frames established by the rules of the interstate commission.

[2007, c. 255, §6 (NEW) .]

7. **Uniform standards.** The interstate commission may develop uniform standards for the assessment of the safety and suitability of interstate placements.

[2007, c. 255, §6 (NEW) .]

SECTION HISTORY
2007, c. 255, §6 (NEW).

§4256. PLACEMENT AUTHORITY - ARTICLE 6

1. **Approval for placement.** Except as provided in subsection 3, a child subject to this chapter may not be placed into a receiving state until approval for such placement is obtained.

[2007, c. 255, §6 (NEW) .]

2. **Written documentation.** If the public child placing agency in the receiving state does not approve the proposed placement, then the child may not be placed. The receiving state shall provide written documentation of any such determination in accordance with the rules adopted by the interstate commission. Such determination is not subject to judicial review in the sending state.

[2007, c. 255, §6 (NEW) .]

3. **Placement not approved.** If the proposed placement is not approved, any interested party has standing to seek an administrative review of the receiving state's determination.

A. The administrative review and any further judicial review associated with the determination must be conducted in the receiving state pursuant to its applicable administrative procedures. [2007, c. 255, §6 (NEW).]

B. If a determination not to approve the placement of the child in the receiving state is overturned upon review, the placement is considered approved, as long as all administrative or judicial remedies have been exhausted or the time for such remedies has passed. [2007, c. 255, §6 (NEW).]

[2007, c. 255, §6 (NEW) .]

SECTION HISTORY
2007, c. 255, §6 (NEW).

§4257. STATE RESPONSIBILITY - ARTICLE 7

1. **Financial responsibility.** For the interstate placement of a child made by a public child placing agency or state court:

A. The public child placing agency in the sending state has financial responsibility for:

(1) The ongoing support and maintenance for the child during the period of the placement, unless otherwise provided for in the receiving state; and

(2) As determined by the public child placing agency in the sending state, services for the child beyond the public services for which the child is eligible in the receiving state; and [2007, c. 255, §6 (NEW).]

B. The receiving state only has financial responsibility for:

(1) Any assessment conducted by the receiving state; and

(2) Supervision conducted by the receiving state at the level necessary to support the placement as agreed upon by the public child placing agencies of the receiving and sending states. [2007, c. 255, §6 (NEW).]

Nothing in this subsection prohibits public child placing agencies in the sending state from entering into agreements with licensed agencies or persons in the receiving state to conduct assessments and provide supervision.

[2007, c. 255, §6 (NEW) .]

2. **Private child placing agency; responsibilities.** For the placement of a child by a private child placing agency preliminary to a possible adoption, the private child placing agency is:

A. Legally responsible for the child during the period of placement as provided for in the law of the sending state until the finalization of the adoption; and [2007, c. 255, §6 (NEW).]

B. Financially responsible for the child absent a contractual agreement to the contrary. [2007, c. 255, §6 (NEW).]

[2007, c. 255, §6 (NEW) .]

3. **Assessment or supervision conducted.** A private child placing agency is responsible for any assessment conducted in the receiving state and any supervision conducted by the receiving state at the level required by the laws of the receiving state or the rules of the interstate commission.

[2007, c. 255, §6 (NEW) .]

4. **Timely assessment.** The public child placing agency in the receiving state shall provide timely assessments, as provided for in the rules of the interstate commission.

[2007, c. 255, §6 (NEW) .]

5. **Supervision; services.** The public child placing agency in the receiving state shall provide or arrange for the provision of supervision and services for the child, including timely reports, during the period of the placement.

[2007, c. 255, §6 (NEW) .]

6. **Contract with licensed agency.** Nothing in this chapter may be construed as to limit the authority of the public child placing agency in the receiving state from contracting with a licensed agency or person in the receiving state for an assessment or the provision of supervision or services for the child or otherwise authorizing the provision of supervision or services by a licensed agency during the period of placement.

[2007, c. 255, §6 (NEW) .]

7. **Advisory council.** Each member state shall provide for coordination among its branches of government concerning the state's participation in, and compliance with, the compact and interstate commission activities through the creation of an advisory council or use of an existing body or board.

[2007, c. 255, §6 (NEW) .]

8. **Central state compact office.** Each member state shall establish a central state compact office, which is responsible for state compliance with the compact and the rules of the interstate commission.

[2007, c. 255, §6 (NEW) .]

9. **Oversee compliance.** The public child placing agency in the sending state shall oversee compliance with the provisions of the federal Indian Child Welfare Act of 1978, 25 United States Code, Section 1901 et seq. for placements subject to the provisions of this compact, prior to placement.

[2007, c. 255, §6 (NEW) .]

10. **Limited agreements.** With the consent of the interstate commission, states may enter into limited agreements that facilitate the timely assessment and provision of services and supervision of placements under this compact.

[2007, c. 255, §6 (NEW) .]

SECTION HISTORY
2007, c. 255, §6 (NEW).

§4258. INTERSTATE COMMISSION FOR THE PLACEMENT OF CHILDREN - ARTICLE 8

The Interstate Commission for the Placement of Children is established. The activity of the interstate commission is the formation of public policy, which is a discretionary state function. The interstate commission: [2007, c. 255, §6 (NEW).]

1. **Joint commission.** Is a joint commission of the member states and has the responsibilities, powers and duties set forth in this section and such additional powers as may be conferred upon it by subsequent concurrent action of the respective legislatures of the member states;

[2007, c. 255, §6 (NEW) .]

2. **Commissioner.** Consists of one commissioner from each member state who is appointed by the executive head of the state human services administration with ultimate responsibility for the child welfare program. The appointed commissioner has the legal authority to vote on policy-related matters governed by this compact binding the state.

A. Each member state represented at a meeting of the interstate commission is entitled to one vote. [2007, c. 255, §6 (NEW).]

B. A majority of the member states constitutes a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission. [2007, c. 255, §6 (NEW).]

C. A representative may not delegate a vote to another member state. [2007, c. 255, §6 (NEW).]

D. A representative may delegate voting authority to another person from that representative's state for a specified meeting; [2007, c. 255, §6 (NEW).]

[2007, c. 255, §6 (NEW) .]

3. **Members.** In addition to the commissioners of each member state, includes persons who are members of interested organizations as defined in the bylaws or rules of the interstate commission. Such members are ex officio and are not entitled to vote on any matter before the interstate commission; and

[2007, c. 255, §6 (NEW) .]

4. **Executive committee.** Shall establish an executive committee that has the authority to administer the day-to-day operations and administration of the interstate commission. The executive committee does not have the power to engage in rulemaking.

[2007, c. 255, §6 (NEW) .]

SECTION HISTORY
2007, c. 255, §6 (NEW).

§4259. POWERS AND DUTIES OF INTERSTATE COMMISSION - ARTICLE 9

The interstate commission has the following powers: [2007, c. 255, §6 (NEW).]

1. **Rules.** To adopt rules and take all necessary actions to effect the goals, purposes and obligations as enumerated in this compact;

[2007, c. 255, §6 (NEW) .]

2. **Dispute resolution.** To provide for dispute resolution among member states;

[2007, c. 255, §6 (NEW) .]

3. **Advisory opinions.** To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact and its bylaws, rules or actions;

[2007, c. 255, §6 (NEW) .]

4. **Enforce compliance.** To enforce compliance with this compact or the bylaws or rules of the interstate commission pursuant to section 4262;

[2007, c. 255, §6 (NEW) .]

5. **Collect data.** To collect standardized data concerning the interstate placement of children subject to this compact as directed through its rules, which must specify the data to be collected, the means of collection and data exchange and reporting requirements;

[2007, c. 255, §6 (NEW) .]

6. **Maintain offices.** To establish and maintain offices as may be necessary for the transacting of its business;

[2007, c. 255, §6 (NEW) .]

7. **Purchase insurance.** To purchase and maintain insurance and bonds;

[2007, c. 255, §6 (NEW) .]

8. **Personnel.** To hire or contract for services of personnel or consultants as necessary to carry out its functions under the compact and establish personnel qualification policies and rates of compensation;

[2007, c. 255, §6 (NEW) .]

9. **Establish committees.** To establish and appoint committees and officers, including, but not limited to, an executive committee, as required by section 4260;

[2007, c. 255, §6 (NEW) .]

10. **Accept money; supplies; services.** To accept any and all donations and grants of money, equipment, supplies, materials and services and to receive, utilize and dispose of donations, money, equipment, supplies, materials and services;

[2007, c. 255, §6 (NEW) .]

11. **Property.** To lease, purchase, accept contributions or donations of or otherwise to own, hold, improve or use any property, real, personal or mixed;

[2007, c. 255, §6 (NEW) .]

12. **Dispose of property.** To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed;

[2007, c. 255, §6 (NEW) .]

13. **Budget.** To establish a budget and make expenditures;

[2007, c. 255, §6 (NEW) .]

14. **Seal; bylaws.** To adopt a seal and bylaws governing the management and operation of the interstate commission;

[2007, c. 255, §6 (NEW) .]

15. **Report.** To report annually to the legislatures, governors, the judiciaries and state advisory councils of the member states concerning the activities of the interstate commission during the preceding year. Such reports must also include any recommendations that may have been adopted by the interstate commission;

[2007, c. 255, §6 (NEW) .]

16. **Education; training; public awareness.** To coordinate and provide education, training and public awareness regarding the interstate movement of children for officials involved in such activity;

[2007, c. 255, §6 (NEW) .]

17. **Books; records.** To maintain books and records in accordance with the bylaws of the interstate commission; and

[2007, c. 255, §6 (NEW) .]

18. **Achieve purposes of compact.** To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

[2007, c. 255, §6 (NEW) .]

SECTION HISTORY
2007, c. 255, §6 (NEW).

§4260. ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION - ARTICLE 10

1. **Bylaws.** The interstate commission shall adopt bylaws.

A. Within 12 months after the first interstate commission meeting, the interstate commission shall adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact. [2007, c. 255, §6 (NEW).]

B. The interstate commission's bylaws and rules must establish conditions and procedures under which the interstate commission makes its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. [2007, c. 255, §6 (NEW).]

[2007, c. 255, §6 (NEW) .]

2. **Meetings.** The following provisions govern interstate commission meetings.

A. The interstate commission shall meet at least once each calendar year. The chair may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings. [2007, c. 255, §6 (NEW).]

B. Public notice must be given by the interstate commission of all meetings and all meetings are open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission and its committees may close a meeting, or portion of a meeting, when it determines by 2/3 vote that an open meeting would be likely to:

(1) Relate solely to the interstate commission's internal personnel practices and procedures;

(2) Disclose matters specifically exempted from disclosure by federal law;

(3) Disclose financial or commercial information that is privileged, proprietary or confidential in nature;

(4) Involve accusing a person of a crime or formally censuring a person;

(5) Disclose information of a personal nature when disclosure would constitute a clearly unwarranted invasion of personal privacy or physically endanger one or more persons;

(6) Disclose investigative records compiled for law enforcement purposes; or

(7) Specifically relate to the interstate commission's participation in a civil action or other legal proceeding. [2007, c. 255, §6 (NEW).]

C. For a meeting, or portion of a meeting, closed pursuant to paragraph B, the interstate commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exemption provision. The interstate commission shall keep minutes that must fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons for taking the actions, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action must be identified in the minutes. All minutes and documents of a closed meeting must remain under seal, subject to release by a majority vote of the interstate commission or by court order. [2007, c. 255, §6 (NEW).]

D. The bylaws may provide for meetings of the interstate commission to be conducted by telecommunication or other electronic communication. [2007, c. 255, §6 (NEW).]

[2007, c. 255, §6 (NEW) .]

3. **Officers and staff.** The following provisions govern officers and staff.

A. The interstate commission may, through its executive committee, appoint or retain a staff director for such period, upon such terms and conditions and for such compensation as the interstate commission may determine appropriate. The staff director serves as secretary to the interstate commission, but does not have a vote. The staff director may hire and supervise such other staff as may be authorized by the interstate commission. [2007, c. 255, §6 (NEW).]

B. The interstate commission shall elect, from among its members, a chair and a vice chair of the executive committee and other necessary officers, each of whom must have such authority and duties as may be specified in the bylaws. [2007, c. 255, §6 (NEW).]

[2007, c. 255, §6 (NEW) .]

4. **Qualified immunity, defense and indemnification.** The following provisions govern qualified immunity, defense and indemnification.

A. The interstate commission's staff director and its employees are immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of interstate commission employment, duties or responsibilities except that the person is not protected from suit or liability for damage, loss, injury or liability caused by a criminal act or the intentional or willful and wanton misconduct of the person.

(1) The liability of the interstate commission's staff director and employees or interstate commission representatives acting within the scope of their employment or duties for acts, errors or omissions occurring inside their state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees and agents. The interstate commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subparagraph is construed to protect a person from suit or liability for damage, loss, injury or liability caused by a criminal act or the intentional or willful and wanton misconduct of the person.

(2) The interstate commission shall defend the staff director and its employees and, subject to the approval of the Attorney General or other appropriate legal counsel of the member state, shall defend the commissioner of a member state in a civil action seeking to impose liability arising out of an actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities as long as the actual or alleged act, error or omission did not result from intentional or willful and wanton misconduct on the part of a person.

(3) To the extent not covered by the state involved, member state or the interstate commission, the representatives or employees of the interstate commission must be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against the persons arising out of an actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities, as long as the actual or alleged act, error or omission did not result from intentional or willful and wanton misconduct on the part of the persons. [2007, c. 255, §6 (NEW).]

[2007, c. 255, §6 (NEW) .]

SECTION HISTORY
2007, c. 255, §6 (NEW).

§4261. RULE-MAKING FUNCTIONS OF THE INTERSTATE COMMISSION - ARTICLE 11

1. **Rules.** The interstate commission shall adopt and publish rules in order to effectively and efficiently achieve the purposes of this chapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 255, §6 (NEW) .]

2. **Rule-making criteria.** Rulemaking must occur pursuant to the criteria set forth in this section and the bylaws and rules adopted pursuant to this section. Rulemaking must substantially conform to the principles of the "Model State Administrative Procedures Act," 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000), or the other administrative procedure acts as the interstate commission determines appropriate consistent with due process requirements under the United States Constitution as now or hereafter interpreted by the United States Supreme Court. All rules and amendments become binding as of the date specified, as published with the final version of the rule as approved by the interstate commission.

[2007, c. 255, §6 (NEW) .]

3. **Adopting rule.** When adopting a rule, the interstate commission shall, at a minimum:

A. Publish the proposed rule's entire text stating the reason for that proposed rule; [2007, c. 255, §6 (NEW).]

B. Allow and invite all persons to submit written data, facts, opinions and arguments, which information must be added to the record and be made publicly available; and [2007, c. 255, §6 (NEW).]

C. Adopt a final rule and its effective date, if appropriate, based on input from state or local officials or interested parties. [2007, c. 255, §6 (NEW).]

[2007, c. 255, §6 (NEW) .]

4. **Effect of law.** Rules adopted by the interstate commission have the force and effect of statutory law and supersede any state law, rule or regulation to the extent of any conflict.

[2007, c. 255, §6 (NEW) .]

5. **Judicial review.** Not later than 60 days after a rule is adopted, an interested person may file a petition in the United States District Court for the District of Columbia or in the federal district court where the interstate commission's principal office is located for judicial review of the rule. If the court finds that the interstate commission's action is not supported by substantial evidence in the rule-making record, the court shall hold the rule unlawful and set it aside.

[2007, c. 255, §6 (NEW) .]

6. **Reject rule.** If a majority of the legislatures of the member states rejects a rule, those states may by enactment of a statute or resolution in the same manner used to adopt the compact cause that the rule has no further force and effect in any member state.

[2007, c. 255, §6 (NEW) .]

7. **Existing rules.** The existing rules governing the operation of the Interstate Compact on the Placement of Children superseded by this chapter are void no less than 12 but no more than 24 months after the first meeting of the interstate commission created under this chapter, as determined by the members during the first meeting.

[2007, c. 255, §6 (NEW) .]

8. **Scope of rules.** Within the first 12 months of operation, the interstate commission shall adopt rules addressing the following:

A. Transition rules; [2007, c. 255, §6 (NEW).]

B. Forms and procedures; [2007, c. 255, §6 (NEW).]

C. Time lines; [2007, c. 255, §6 (NEW).]

D. Data collection and reporting; [2007, c. 255, §6 (NEW).]

E. Rulemaking; [2007, c. 255, §6 (NEW).]

F. Visitation; [2007, c. 255, §6 (NEW).]

G. Progress reports and supervision; [2007, c. 255, §6 (NEW).]

H. Sharing of information and confidentiality; [2007, c. 255, §6 (NEW).]

I. Financing of the interstate commission; [2007, c. 255, §6 (NEW).]

J. Mediation, arbitration and dispute resolution; [2007, c. 255, §6 (NEW).]

K. Education, training and technical assistance; [2007, c. 255, §6 (NEW).]

L. Enforcement; and [2007, c. 255, §6 (NEW).]

M. Coordination with other interstate compacts. [2007, c. 255, §6 (NEW).]

[2007, c. 255, §6 (NEW) .]

9. **Emergency.** Upon determination by a majority of the members of the interstate commission that an emergency exists:

A. The interstate commission may adopt an emergency rule only if it is required to:

(1) Protect a child covered by this chapter from an imminent threat to health, safety and well-being;

(2) Prevent loss of federal or state funds; or

(3) Meet a deadline for the adoption of an administrative rule required by federal law; [2007, c. 255, §6 (NEW).]

B. An emergency rule becomes effective immediately upon adoption, as long as the usual rule-making procedures provided under this section are retroactively applied to the rule as soon as reasonably possible but no later than 90 days after the effective date of the emergency rule; and [2007, c. 255, §6 (NEW).]

C. An emergency rule must be adopted as provided for in the rules of the interstate commission. [2007, c. 255, §6 (NEW).]

[2007, c. 255, §6 (NEW) .]

SECTION HISTORY
2007, c. 255, §6 (NEW).

§4262. OVERSIGHT; DISPUTE RESOLUTION; ENFORCEMENT - ARTICLE 12

1. **Oversight.** The interstate commission shall oversee the administration and operation of the compact.

A. The executive, legislative and judicial branches of state government in each member state shall enforce this compact and the rules of the interstate commission and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The compact and its rules supersede state law, rules or regulations to the extent of any conflict. [2007, c. 255, §6 (NEW).]

B. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact. [2007, c. 255, §6 (NEW).]

C. The interstate commission is entitled to receive service of process in any action in which the validity of a compact provision or rule is the issue for which a judicial determination has been sought and has standing to intervene in any proceedings. Failure to provide service of process to the interstate

commission renders any judgment, order or other determination, however so captioned or classified, void as to the interstate commission, this chapter and bylaws or rules of the interstate commission. [2007, c. 255, §6 (NEW).]

[2007, c. 255, §6 (NEW) .]

2. **Dispute resolution.** The interstate commission has the authority to resolve disputes.

A. The interstate commission shall attempt, upon the request of a member state, to resolve disputes that are subject to the compact and that may arise among member states and between member and nonmember states. [2007, c. 255, §6 (NEW).]

B. The interstate commission shall adopt a rule providing for both mediation and binding dispute resolution for disputes among compacting states. The costs of the mediation or dispute resolution are the responsibility of the parties to the dispute. [2007, c. 255, §6 (NEW).]

[2007, c. 255, §6 (NEW) .]

3. **Enforcement.** If the interstate commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the interstate commission's bylaws or rules, the interstate commission may:

A. Provide remedial training and specific technical assistance; [2007, c. 255, §6 (NEW).]

B. Provide written notice to the defaulting state and other member states of the nature of the default and the means of curing the default. The interstate commission shall specify the conditions by which the defaulting state must cure its default; [2007, c. 255, §6 (NEW).]

C. By majority vote of the members, initiate against a defaulting member state legal action in the United States District Court for the District of Columbia or, at the discretion of the interstate commission, in the federal district court where the interstate commission has its principal office, to enforce compliance with the provisions of the compact or the interstate commisson's bylaws or rules. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party must be awarded all costs of the litigation including reasonable attorney's fees; or [2007, c. 255, §6 (NEW).]

D. Avail itself of any other remedies available under state law or the regulation of official or professional conduct. [2007, c. 255, §6 (NEW).]

[2007, c. 255, §6 (NEW) .]

SECTION HISTORY
2007, c. 255, §6 (NEW).

§4263. FINANCING OF THE INTERSTATE COMMISSION - ARTICLE 13

1. **Expenses.** The interstate commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization and ongoing activities.

[2007, c. 255, §6 (NEW) .]

2. **Annual assessment.** The interstate commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the interstate commission and its staff, which must be in a total amount sufficient to cover the interstate commission's annual budget as approved by its members each year. The aggregate annual assessment amount must be allocated based upon a formula to be determined by the interstate commission, which shall adopt a rule binding upon all member states.

[2007, c. 255, §6 (NEW) .]

3. **Obligations.** The interstate commission may not incur obligations of any kind prior to securing the funds adequate to meet the same, nor may the interstate commission pledge the credit of any of the member states, except by and with the authority of the member state.

[2007, c. 255, §6 (NEW) .]

4. **Accounts of receipts and disbursements.** The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission are subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the interstate commission must be audited yearly by a certified or licensed public accountant, and the report of the audit must be included in and become part of the annual report of the interstate commission.

[2007, c. 255, §6 (NEW) .]

SECTION HISTORY
2007, c. 255, §6 (NEW).

§4264. MEMBER STATES; EFFECTIVE DATE AND AMENDMENT - ARTICLE 14

1. **Member.** Any state is eligible to become a member state.

[2007, c. 255, §6 (NEW) .]

2. **Effective.** The compact becomes effective and binding upon legislative enactment of the compact into law by no fewer than 35 states. The effective date is the later of July 1, 2007 or upon enactment of the compact into law by the 35th state. Thereafter the compact becomes effective and binding as to any other member state upon enactment of the compact into law by that state. The executive heads of the state human services administrations with ultimate responsibility for the child welfare program of nonmember states or their designees are invited to participate in the activities of the interstate commission on a nonvoting basis prior to adoption of the compact by all states.

[2007, c. 255, §6 (NEW) .]

3. **Amendments.** The interstate commission may propose amendments to the compact for enactment by the member states. An amendment does not become effective and binding on the member states unless and until it is enacted into law by unanimous consent of the member states.

[2007, c. 255, §6 (NEW) .]

SECTION HISTORY
2007, c. 255, §6 (NEW).

§4265. WITHDRAWAL AND DISSOLUTION - ARTICLE 15

1. **Withdrawal.** Once effective, the compact continues in force and remains binding upon each member state, except that a member state may withdraw from the compact by specifically repealing the statute that enacted the compact into law. The effective date of withdrawal is the effective date of the repeal of the statute. The withdrawing state shall immediately notify the chair of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall then notify the other member states of the withdrawing state's intent to withdraw. The withdrawing state is

responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal. Reinstatement following withdrawal of a member state occurs upon the withdrawing state's reenacting the compact or upon a later date as determined by the members of the interstate commission.

[2007, c. 255, §6 (NEW) .]

2. **Dissolution of compact.** This compact dissolves upon the effective date of the withdrawal or default of the member state that reduces the membership in the compact to one member state. Upon the dissolution of this compact, the compact becomes void and has no further force, and the business and affairs of the interstate commission are concluded and surplus funds must be distributed in accordance with the bylaws.

[2007, c. 255, §6 (NEW) .]

SECTION HISTORY
2007, c. 255, §6 (NEW).

§4266. SEVERABILITY AND CONSTRUCTION - ARTICLE 16

1. **Enforceable.** The provisions of this chapter are severable, and if any phrase, clause, sentence or provision is determined unenforceable, the remaining provisions of the compact are enforceable.

[2007, c. 255, §6 (NEW) .]

2. **Provisions liberally construed.** The provisions of this chapter may be liberally construed to effectuate its purposes.

[2007, c. 255, §6 (NEW) .]

3. **Concurrent applicability.** Nothing in this chapter may be construed to prohibit the concurrent applicability of other interstate compacts of which the states are members.

[2007, c. 255, §6 (NEW) .]

SECTION HISTORY
2007, c. 255, §6 (NEW).

§4267. BINDING EFFECT OF COMPACT AND OTHER LAWS - ARTICLE 17

1. **Other laws.** Nothing in this compact prevents the enforcement of any other law of a member state that is not inconsistent with this compact. All member states' laws conflicting with this compact or its rules are superseded to the extent of the conflict.

[2007, c. 255, §6 (NEW) .]

2. **Binding effect of compact.** All lawful actions of the interstate commission, including all rules and bylaws adopted by the interstate commission, are binding upon the member states.

A. All agreements between the interstate commission and the member states are binding in accordance with their terms. [2007, c. 255, §6 (NEW).]

B. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, the provision is ineffective to the extent of the conflict with the constitutional provision in question in that member state. [2007, c. 255, §6 (NEW).]

[2007, c. 255, §6 (NEW) .]

SECTION HISTORY
2007, c. 255, §6 (NEW).

§4268. INDIAN TRIBES - ARTICLE 18

Notwithstanding any other provision in this compact, the interstate commission may adopt guidelines to permit Indian tribes to utilize the compact to achieve any of the purposes of the compact as specified in section 4251. The interstate commission shall make reasonable efforts to consult with Indian tribes in adopting guidelines to reflect the diverse circumstances of the various Indian tribes. [2007, c. 255, §6 (NEW).]

SECTION HISTORY
2007, c. 255, §6 (NEW).

§4269. ADMINISTRATIVE PROVISIONS - ARTICLE 19

For purposes of the State's administration of this compact: [2007, c. 255, §6 (NEW).]

1. **Agency.** This State's "government child welfare agency or child protection agency," "public child placing agency" and "central state compact office" is the Department of Health and Human Services, Office of Child and Family Services;

[2007, c. 255, §6 (NEW) .]

2. **State court.** This State's "state court" is the District Court;

[2007, c. 255, §6 (NEW) .]

3. **Ongoing court jurisdiction.** A child is "subject to ongoing court jurisdiction" in this State pursuant to section 4253, subsection 1, paragraph A if the child is the subject of a child protection proceeding pursuant to chapter 1071, until the proceeding is dismissed or becomes subject to judicial reviews pursuant to section 4038 only upon motion or petition of a party;

[2007, c. 255, §6 (NEW) .]

4. **Adjudicated delinquent.** A child is "adjudicated delinquent or unmanageable" in this State if the child has been adjudicated of a juvenile crime pursuant to Title 15, section 3310;

[2007, c. 255, §6 (NEW) .]

5. **Administrative procedures.** This State's "applicable administrative procedures" are the procedures in Title 5, chapter 375, subchapter 4, as modified by any rules adopted by the department pursuant to Title 5, chapter 375, subchapter 2. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A;

[2007, c. 255, §6 (NEW) .]

6. **Existing body.** This State's District Court's Child Protection Advisory Committee is the "existing body or board" pursuant to section 4257, subsection 7 that has responsibility to provide for coordination among this State's branches of government concerning the State's participation in and compliance with the compact and interstate commission activities; and

[2007, c. 255, §6 (NEW) .]

7. **Executive head.** This State's "executive head of the state human services administration with ultimate responsibility for the child welfare program" is the commissioner.

[2007, c. 255, §6 (NEW) .]

SECTION HISTORY
2007, c. 255, §6 (NEW).

Part 5: MUNICIPAL SUPPORT OF THE POOR

Chapter 1161: MUNICIPAL GENERAL ASSISTANCE

§4301. DEFINITIONS

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [1983, c. 577, §1 (NEW).]

1. **Basic necessities.** "Basic necessities" means food, clothing, shelter, fuel, electricity, nonelective medical services as recommended by a physician, nonprescription drugs, telephone where it is necessary for medical reasons and any other commodity or service determined essential by the overseer in accordance with the municipality's ordinance and this chapter. "Basic necessities" do not include security deposits for rental property, except for emergency purposes. For the purposes of this subsection, "emergency purposes" means any situation in which no other permanent lodging is available unless a security deposit is paid.

[1991, c. 9, Pt. U, §1 (AMD) .]

1-A. **Direct costs.** "Direct costs" means the total value of general assistance benefits paid out by a municipality that is in compliance with this chapter and the municipality's general assistance ordinance.

[1991, c. 9, Pt. U, §2 (NEW) .]

2. **Dwelling unit.** "Dwelling unit" means a building or part thereof used for separate living quarters for one or more persons living as a single housekeeping unit.

[1983, c. 577, §1 (NEW) .]

3. **Eligible person.** "Eligible person" means a person who is qualified to receive general assistance from a municipality according to standards of eligibility determined by the municipal officers whether or not that person has applied for general assistance. "Eligible person" does not include a person who is a fugitive from justice as defined in Title 15, section 201, subsection 4. Beginning July 1, 2015, in accordance with 8 United States Code, Section 1621(d), "eligible person" means a person who is lawfully present in the United States or who is pursuing a lawful process to apply for immigration relief, except that assistance for such a person may not exceed 24 months.

[2015, c. 324, §1 (AMD) .]

4. **Emergency.** "Emergency" means any life threatening situation or a situation beyond the control of the individual which, if not alleviated immediately, could reasonably be expected to pose a threat to the health or safety of a person.

[1983, c. 577, §1 (NEW) .]

5. **General assistance program.** "General assistance program" means a service administered by a municipality for the immediate aid of persons who are unable to provide the basic necessities essential to maintain themselves or their families. A general assistance program provides a specific amount and type of aid for defined needs during a limited period of time and is not intended to be a continuing "grant-in-aid" or "categorical" welfare program. This definition shall not in any way lessen the responsibility of each municipality to provide general assistance to a person each time that the person has need and is found to be otherwise eligible to receive general assistance.

[1983, c. 577, §1 (NEW) .]

6. **Household.** "Household" means an individual or a group of individuals who share a dwelling unit. When an applicant shares a dwelling unit with one or more individuals, even when a landlord-tenant relationship may exist between individuals residing in the dwelling unit, eligible applicants may receive assistance for no more than their pro rata share of the actual costs of the shared basic needs of that household according to the maximum levels of assistance established in the municipal ordinance. The pro rata share is calculated by dividing the maximum level of assistance available to the entire household by the total number of household members. The income of household members not legally liable for supporting the household is considered available to the applicant only when there is a pooling of income.

[2013, c. 368, Pt. OO, §5 (AMD) .]

7. **Income.** "Income" means any form of income in cash or in kind received by the household, including net remuneration for services performed, cash received on either secured or unsecured credit, any payments received as an annuity, retirement or disability benefits, veterans' pensions, workers' compensation, unemployment benefits, benefits under any state or federal categorical assistance program, supplemental security income, social security and any other payments from governmental sources, unless specifically prohibited by any law or regulation, court ordered support payments, income from pension or trust funds, household income from any other source, including relatives or unrelated household members and any benefit received pursuant to Title 36, chapter 907, Title 36, section 5219-II and Title 36, section 5219-KK, unless used for basic necessities as defined in section 4301, subsection 1.

The following items are not available within the meaning of this subsection and subsection 10:

A. Real or personal income-producing property, tools of trade, governmental entitlement specifically treated as exempt assets by state or federal law; [1991, c. 9, Pt. U, §3 (AMD).]

B. Actual work-related expenses, whether itemized or by standard deduction, such as taxes, retirement fund contributions, union dues, transportation costs to and from work, special equipment costs and child care expenses; or [1983, c. 577, §1 (NEW).]

C. Earned income of children below the age of 18 years who are full-time students and who are not working full time. [1991, c. 9, Pt. U, §3 (AMD).]

In determining need, the period of time used as a basis for the calculation is the 30-day period commencing on the date of the application. This prospective calculation does not disqualify an applicant who has exhausted income to purchase basic necessities if that income does not exceed the income standards established by the municipality. Notwithstanding this prospective calculation, if any applicant or recipient receives a lump sum payment prior or subsequent to applying for assistance, that payment must be prorated over future months. The period of proration is determined by disregarding any portion of the lump sum payment that the applicant or recipient has spent to purchase basic necessities, including but not limited to: all basic necessities provided by general assistance; reasonable payment of funeral or burial expenses for a family member; reasonable

travel costs related to the illness or death of a family member; repair or replacement of essentials lost due to fire, flood or other natural disaster; repair or purchase of a motor vehicle essential for employment, education, training or other day-to-day living necessities; repayments of loans or credit, the proceeds of which can be verified as having been spent on basic necessities; and payment of bills earmarked for the purpose for which the lump sum is paid. All income received by the household between the receipt of the lump sum payment and the application for assistance is added to the remainder of the lump sum. The period of proration is then determined by dividing the remainder of the lump sum payment by the verified actual monthly amounts for all of the household's basic necessities. That dividend represents the period of proration determined by the administrator to commence on the date of receipt of the lump sum payment. The prorated sum for each month must be considered available to the household for 12 months from the date of application or during the period of proration, whichever is less.

[2013, c. 551, §1 (AMD) .]

8. **Just cause.** "Just cause" means a valid, verifiable reason that hinders an individual in complying with one or more conditions of eligibility.

[1983, c. 577, §1 (NEW) .]

8-A. **Lump sum payment.** "Lump sum payment" means a one-time or typically nonrecurring sum of money issued to an applicant or recipient. Lump sum payment includes, but is not limited to, retroactive or settlement portions of social security benefits, workers' compensation payments, unemployment benefits, disability income, veterans' benefits, severance pay benefits, or money received from inheritances, lottery winnings, personal injury awards, property damage claims or divorce settlements. A lump sum payment includes only the amount of money available to the applicant after payment of required deductions has been made from the gross lump sum payment. A lump sum payment does not include conversion of a nonliquid resource to a liquid resource if the liquid resource has been used or is intended to be used to replace the converted resource or for other necessary expenses.

[2001, c. 571, §2 (AMD) .]

9. **Municipality of responsibility.** "Municipality of responsibility" means the municipality which is liable for the support of any eligible person at the time of application.

[1983, c. 577, §1 (NEW) .]

10. **Need.** "Need" means the condition whereby a person's income, money, property, credit, assets or other resources available to provide basic necessities for the individual and the individual's family are less than the maximum levels of assistance established by the municipality.

[1985, c. 489, §§2, 14 (AMD) .]

11. **Net general assistance costs.** "Net general assistance costs" means those direct costs incurred by a municipality in providing assistance to eligible persons according to standards established by the municipal officers and does not include the administrative expenses of the general assistance program.

[1983, c. 577, §1 (NEW) .]

12. **Overseer.** "Overseer" means an official designated by a municipality to administer a general assistance program. The municipal officers shall serve as a board of overseers if no other persons are appointed or elected.

[1983, c. 577, §1 (NEW) .]

12-A. **Pooling of income.** "Pooling of income" means the financial relationship among household members who are not legally liable for mutual support in which there occurs any comingling of funds or sharing of income or expenses. Municipalities may by ordinance establish as a rebuttable presumption that persons sharing the same dwelling unit are pooling their income. Applicants who are requesting that the determination of eligibility be calculated as though one or more household members are not pooling their income have the burden of rebutting the presumption of pooling income.

[1991, c. 622, Pt. M, §22 (NEW) .]

13. **Real estate.** "Real estate" means any land, buildings, homes, mobile homes and any other things affixed to that land.

[1983, c. 577, §1 (NEW) .]

SECTION HISTORY
1983, c. 577, §1 (NEW). 1985, c. 489, §§1,2,14 (AMD). 1989, c. 322, §1 (AMD). 1989, c. 840, §§1-3 (AMD). 1991, c. 9, §§U1-3 (AMD). 1991, c. 622, §§M20-22 (AMD). 1993, c. 410, §AAA1 (AMD). 2001, c. 571, §§1,2 (AMD). 2003, c. 510, §C6 (AMD). 2013, c. 368, Pt. OO, §§4-6 (AMD). 2013, c. 551, §1 (AMD). 2015, c. 324, §1 (AMD).

§4302. DELEGATION OF DUTIES; OATH; BOND

Overseers may authorize some person whom they shall designate to perform such of the duties imposed upon them by this chapter as they may determine. The overseers may designate more than one person to perform those duties. Before entering upon the performance of those duties, the person or persons so designated shall be sworn and shall give bond to the town for the faithful performance of those duties, in such sum and with such sureties as the overseers order. [1983, c. 577, §1 (NEW).]

SECTION HISTORY
1983, c. 577, §1 (NEW).

§4303. PROSECUTION AND DEFENSE OF TOWNS

For all purposes provided for in this chapter, the overseers or any person appointed by them in writing may prosecute and defend a town. [1983, c. 577, §1 (NEW).]

SECTION HISTORY
1983, c. 577, §1 (NEW).

§4304. GENERAL ASSISTANCE OFFICES

1. **Local office.** There must be in each municipality a general assistance office or designated place where any person may apply for general assistance at regular, reasonable times designated by the municipal officers. Notice must be posted of these times, the name of the overseer available to take applications in an emergency at all other times, the fact that the municipality must issue a written decision on all applications within 24 hours and the department's toll-free telephone number for reporting alleged violations in accordance with section 4321.

[1991, c. 209, §1 (AMD) .]

2. **District office.** In situations where in the judgment of a municipality the number of applicants does not justify the establishment of a local office or designated place, or where for other reasons a local office or designated place is not necessary, 2 or more municipalities, by a vote of their respective legislative bodies, may establish a district office for the administration of general assistance and make agreements as to the payment of expenses and any other matters relevant to the operation of the office.

Any district office established pursuant to this subsection shall be located so as to be accessible by a toll-free telephone call from any part of every municipality it is designated to serve.

Every district general assistance officer shall be available for the taking of applications at least 35 hours each week and shall make provision for designated personnel to be available to take applications in an emergency 24 hours a day.

[1983, c. 577, §1 (NEW) .]

3. **Emergencies.** In any case when an applicant is unable, due to illness, disability, lack of transportation, lack of child care or other good cause, to apply in person for assistance or unable to appoint a duly authorized representative, the overseer shall accept an application by telephone subject to verification by mail and a visit to the applicant's home with the consent of the applicant. Municipalities may arrange with emergency shelters for the homeless to presume eligible for municipal assistance persons to whom the emergency shelter provides shelter services.

[1989, c. 322, §2 (AMD) .]

SECTION HISTORY
1983, c. 577, §1 (NEW). 1989, c. 322, §2 (AMD). 1989, c. 699, (AMD). 1991, c. 209, §1 (AMD).

§4305. MUNICIPAL ORDINANCE REQUIRED

1. **Program required; ordinance.** A general assistance program shall be operated by each municipality and shall be administered in accordance with an ordinance enacted, after notice and hearing, by the municipal officers of each municipality.

[1983, c. 577, §1 (NEW) .]

2. **Availability of ordinance.** The ordinance and a copy of this chapter must be available in the town office and be easily accessible to any member of the public. Notice to that effect must be posted. A copy of this chapter must be distributed by the department to each municipality.

[1991, c. 209, §2 (AMD) .]

3. **Standards of eligibility.** Municipalities may establish standards of eligibility, in addition to need, as provided in this chapter. Each ordinance shall establish standards which shall:

A. Govern the determination of eligibility of persons applying for relief and the amount of assistance to be provided to eligible persons; [1983, c. 577, §1 (NEW).]

B. Provide that all individuals wishing to make application for relief shall have the opportunity to do so; and [1983, c. 577, §1 (NEW).]

C. Provide that relief shall be furnished or denied to all eligible applicants within 24 hours of the date of submission of an application. [1983, c. 577, §1 (NEW).]

[1983, c. 577, §1 (NEW) .]

3-A. **Maximum levels of assistance.** Municipalities may establish maximum levels of assistance by ordinance. The maximum levels of assistance must set reasonable and adequate standards sufficient to maintain health and decency. A maximum level of assistance established by municipal ordinance is subject to a review by the department, upon complaint, to ensure compliance with this chapter.

[1993, c. 410, Pt. AAA, §2 (AMD) .]

3-B. **Temporary maximum levels.** Notwithstanding subsection 3-A, municipalities shall establish an aggregate maximum level of assistance that is 110% of the applicable existing housing fair market rents as established by the United States Department of Housing and Urban Development pursuant to 24 Code of Federal Regulations, Section 888.115, applying the zero-bedroom level for one person, the one-bedroom level for 2 persons, the 2-bedroom level for 3 persons, the 3-bedroom level for 4 persons and the 4-bedroom level for 5 persons. For each additional person, the aggregate maximum level increases by $75. For the purposes of this subsection, municipalities with populations greater than 10,000 are deemed Standard Metropolitan Statistical Areas in those counties for which there are 2 fair market rent values and the aggregate maximum level of assistance for all Standard Metropolitan Statistical Areas is the average of the fair market rental values for the Standard Metropolitan Statistical Areas and areas that are not Standard Metropolitan Statistical Areas for each county in which there are 2 fair market rental values.

Beginning October 2005 and annually thereafter, the aggregate maximum level of assistance must be established at the greater of 110% of the fair market rents as determined in this subsection and the amount achieved by annually increasing the most recent aggregate maximum level of assistance by the percentage increase in the federal poverty level of the current year over the federal poverty level of the prior year.

For the purposes of this subsection, "federal poverty level" means that measure defined by the federal Department of Health and Human Services and updated annually in the Federal Register under authority of 42 United States Code, Section 9902(2).

[2005, c. 231, §1 (AMD) .]

3-C. **Maximum level of assistance from July 1, 2012 to June 30, 2013.** Notwithstanding subsection 3-A or 3-B, for the period from July 1, 2012 to June 30, 2013, the maximum level of assistance is 90% of the maximum level of assistance in effect on April 1, 2012.

[2011, c. 655, Pt. R, §1 (NEW) .]

3-D. **Maximum level of assistance for fiscal years 2013-14 and 2014-15.** Notwithstanding subsection 3-A or 3-B, the aggregate maximum level of assistance for fiscal years 2013-14 and 2014-15 must be set as follows:

A. The aggregate maximum level of assistance for fiscal year 2013-14 must be the amount that is the greater of:

(1) Ninety percent of 110% of the United States Department of Housing and Urban Development fair market rent for federal fiscal year 2013; and

(2) The amount achieved by increasing the maximum level of assistance for fiscal year 2012-13 by 90% of the increase in the federal poverty level from 2012 to 2013. [2013, c. 368, Pt. OO, §7 (NEW).]

B. The aggregate maximum level of assistance for fiscal year 2014-15 must be the amount that is the greater of:

(1) Ninety percent of 110% of the United States Department of Housing and Urban Development fair market rent for federal fiscal year 2014; and

(2) The amount achieved by increasing the maximum level of assistance for fiscal year 2013-14 by 90% of the increase in the federal poverty level from 2013 to 2014. [2013, c. 368, Pt. OO, §7 (NEW).]

For the purposes of this subsection, "federal poverty level" means that measure defined by the federal Department of Health and Human Services and updated annually in the Federal Register under authority of 42 United States Code, Section 9902(2). For the purposes of this subsection, fair market rent is calculated in the same manner as in subsection 3-B.

[2013, c. 368, Pt. OO, §7 (NEW) .]

4. **Ordinance filed.** Each municipality shall present a copy of the ordinance establishing eligibility standards, maximum levels of assistance, administration and appeal procedures to the Department of Health and Human Services. The ordinance filed must include all forms and notices, including the application form, notice of decision and appeal rights. Any amendment or modification of the municipal ordinance must be submitted to the department.

[1993, c. 410, Pt. AAA, §4 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

5. **Review of ordinance.**

[1993, c. 410, Pt. AAA, §5 (RP) .]

6. **Assistance by vouchers or contract.** Except when determined impractical by the administrator for good cause shown, assistance is provided in the form of a voucher payable to vendor or vendors or through direct municipal contract with a provider of goods or services.

[1991, c. 209, §3 (NEW); 1991, c. 209, §4 (AFF) .]

SECTION HISTORY
1983, c. 577, §1 (NEW). 1985, c. 489, §§3,4,14 (AMD). 1991, c. 9, §U4 (AMD). 1991, c. 209, §§2,3 (AMD). 1991, c. 209, §4 (AFF). 1991, c. 622, §M23 (AMD). 1991, c. 780, §II1 (AMD). 1993, c. 410, §§AAA2-5 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 231, §1 (AMD). 2011, c. 655, Pt. R, §1 (AMD). 2013, c. 368, Pt. OO, §7 (AMD).

§4306. RECORDS; CONFIDENTIALITY OF INFORMATION

The overseer shall keep complete and accurate records pertaining to general assistance, including the names of eligible persons assisted and the amounts paid for their assistance. Records, papers, files and communications relating to an applicant or recipient made or received by persons charged with responsibility of administering this chapter are confidential and no information relating to a person who is an applicant or recipient may be disclosed to the general public, unless expressly permitted by that person. [1983, c. 577, §1 (NEW).]

SECTION HISTORY
1983, c. 577, §1 (NEW).

§4307. MUNICIPALITY OF RESPONSIBILITY; RESIDENCY

1. **General assistance required.** Municipalities shall provide general assistance to all eligible persons at the expense of that municipality, except as provided in section 4311.

A municipality shall not move or transport a person into another municipality to avoid responsibility for general assistance support for that person. Any municipality which illegally moves or transports a person, or illegally denies assistance to a person which results in his relocation, in addition to the other penalties provided in this chapter, shall reimburse twice the amount of assistance to the municipality which provided the assistance to that person. That reimbursement shall be made in accordance with subsection 5.

A. [1987, c. 349, Pt. H, §15 (RP).]

B. [1987, c. 349, Pt. H, §15 (RP).]

[1987, c. 349, Pt. H, §15 (RPR) .]

2. **Municipality of responsibility.** Except as provided in subsection 4, a municipality is responsible for the general assistance support of the following individuals:

A. A resident of the municipality. For the purposes of this section, a "resident" means a person who is physically present in a municipality with the intention of remaining in that municipality to maintain or establish a home and who has no other residence; and [1987, c. 349, Pt. H, §15 (NEW).]

B. Eligible persons who apply to the municipality for assistance and who are not residents of that or any other municipality. If a person is not a resident of any municipality, the municipality where that person first applies shall be responsible for support until a new residence is established. [1987, c. 349, Pt. H, §15 (NEW).]

[1987, c. 349, Pt. H, §15 (RPR) .]

3. **Durational residency requirement prohibited.** No municipality may establish a durational residency requirement for general assistance.

[1987, c. 349, Pt. H, §15 (RPR) .]

4. **Special circumstances.** Overseers of a municipality may not move or transport an applicant or recipient into another municipality to relieve their municipality of responsibility for that applicant's or recipient's support. The municipality of responsibility for relocations, persons released from correctional facilities and institutional settings is as follows.

A. When an applicant or recipient requests relocation to another municipality and the overseers of a municipality assist that person to relocate to another municipality, the municipality from which that person is moving continues to be responsible for the support of the recipient for 30 days after relocation. As used in this paragraph, "assist" includes:

(1) Granting financial assistance to relocate; and

(2) Making arrangements for a person to relocate. [2009, c. 2, §58 (COR).]

B. If an applicant is in a group home, shelter, rehabilitation center, nursing home, hospital or other institution at the time of application and has either been in that institution for 6 months or less, or had a residence immediately prior to entering the institution which the applicant had maintained and to which the applicant intends to return, the municipality of responsibility is the municipality where the applicant was a resident immediately prior to entering the institution. For the purpose of this paragraph, a hotel, motel or similar place of temporary lodging is considered an institution when a municipality:

(1) Grants financial assistance for a person to move to or stay in temporary lodging;

(2) Makes arrangements for a person to stay in temporary lodging;

(3) Advises or encourages a person to stay in temporary lodging; or

(4) Illegally denies housing assistance and, as a result of that denial, the person stays in temporary lodging. [2009, c. 2, §58 (COR).]

C. If an applicant has been released from a correctional facility within 45 days of application, the municipality of responsibility for the first 12 months of payment of benefits is the municipality that was on record as the residence of the applicant when the applicant was committed to the correctional facility. A municipality of responsibility must accept an application for general assistance by

telephone if the applicant is calling from another municipal office, as long as the written application is contemporaneously faxed or sent electronically to the municipality of responsibility. [2015, c. 267, Pt. II, §1 (NEW).]

[2015, c. 267, Pt. II, §1 (AMD) .]

5. **Disputes between municipalities.** Nothing in this section may permit a municipality to deny assistance to an otherwise eligible applicant when there is any dispute regarding residency. In cases of dispute regarding which municipality is the municipality of responsibility, the municipality where the application has been filed shall provide support until responsibility has been determined by the department. The department shall make a written determination within 30 working days of a complaint or notification of a dispute. The department's decision must include the sources of information relied upon, findings of fact and conclusions of law regarding which municipality is responsible and the reimbursement due, if any, from the responsible municipality to the municipality providing assistance. If after 30 days the reimbursement has not been paid, the municipality to which reimbursement is due shall notify the department, the department shall credit the municipality owed the reimbursement and either deduct that amount from the debtor municipality or refer the bill to the Treasurer of State for payment from any taxes, revenue, fines or fees due from the State to the municipality.

[2009, c. 2, §59 (COR) .]

6. **Appeals.** Any municipality or person who is aggrieved by any decision or action made by the department pursuant to this section shall have the right to appeal pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375. A request for that appeal shall be in writing and shall be made within 30 days of the written department decision. The appeal shall be held within 30 days of receipt of that request and shall be conducted by one or more fair hearing officers. In no event may an appeal be held before a person or body responsible for the decision or action. Review of any decision under this subsection shall be pursuant to the Maine Rules of Civil Procedure, Rule 80C.

[1987, c. 349, Pt. H, §15 (NEW) .]

SECTION HISTORY
1983, c. 577, §1 (NEW). 1987, c. 349, §H15 (RPR). RR 2009, c. 2, §§58, 59 (COR). 2015, c. 267, Pt. II, §1 (AMD).

§4308. APPLICATIONS

In order to receive assistance from any municipality, the applicant or a duly authorized representative must file a written application with the overseer, except as provided in section 4304, subsection 3. [1993, c. 410, Pt. AAA, §6 (AMD).]

1. **Initial and subsequent applications.** Except as provided in section 4316-A, subsection 1-A, a person who makes an application for assistance, who has not applied for assistance in that or any other municipality must have that person's eligibility determined solely on the basis of need. All applications for general assistance that are not initial applications are repeat applications. The eligibility of repeat applicants must be determined on the basis of need and all other conditions of eligibility established by this chapter and municipal ordinance.

[1993, c. 410, Pt. AAA, §6 (AMD) .]

1-A. **Limit on housing assistance.** Except as provided in subsections 1-B and 2, housing assistance provided pursuant to this chapter is limited to a maximum of 9 months during the period from July 1, 2012 to June 30, 2013.

[2011, c. 655, Pt. R, §2 (NEW) .]

1-B. **Extension of housing assistance due to hardship.** An applicant is eligible for housing assistance under this chapter beyond the limit established in subsection 1-A if the applicant has a severe and persistent mental or physical condition warranting such an extension or has an application for assistance pending with the federal Social Security Administration.

[2011, c. 655, Pt. R, §2 (NEW) .]

2. **Emergencies.** A person who does not have sufficient resources to provide one or more basic necessities in an emergency is eligible for emergency general assistance, even when that applicant has been found ineligible for nonemergency general assistance, except as provided in this subsection.

A. A person who is currently disqualified from general assistance for a violation of section 4315, 4316-A or 4317 is ineligible for emergency assistance under this subsection. [1985, c. 489, §§5, 14 (NEW).]

B. Municipalities may by standards adopted in municipal ordinances restrict the disbursement of emergency assistance to alleviate emergency situations to the extent that those situations could not have been averted by the applicant's use of income and resources for basic necessities. The person requesting assistance shall provide evidence of income and resources for the applicable time period. [1991, c. 528, Pt. OOO, §1 (AMD); 1991, c. 528, Pt. RRR, (AFF); 1991, c. 591, Pt. OOO, §1 (AMD).]

A municipality may provide emergency assistance when the municipality determines that an emergency is imminent and that failure to provide assistance may result in undue hardship and unnecessary costs.

[1999, c. 45, §1 (AMD) .]

3. **Initial applicant.** Notwithstanding section 4301, subsection 7, the household of an initial applicant that is otherwise eligible for emergency assistance may not be denied emergency assistance to meet an immediate need solely on the basis of the proration of a lump sum payment. Upon subsequent applications, that household's eligibility is subject to all the standards established by this chapter.

[2001, c. 571, §3 (NEW) .]

SECTION HISTORY
1983, c. 577, §1 (NEW). 1985, c. 489, §§5,14 (RPR). 1989, c. 322, §3 (AMD). 1991, c. 9, §§U5,6 (AMD). 1991, c. 528, §OOO1 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §OOO1 (AMD). 1993, c. 410, §AAA6 (AMD). 1999, c. 45, §1 (AMD). 2001, c. 571, §3 (AMD). 2011, c. 655, Pt. R, §2 (AMD).

§4309. ELIGIBILITY

1. **Eligibility of applicant; duration of eligibility.** The overseer shall determine eligibility each time a person applies or reapplies for general assistance pursuant to this chapter and the ordinance adopted by the municipality in accordance with section 4305. The period of eligibility must not exceed one month. At the expiration of that period the person may reapply for assistance and the person's eligibility may be redetermined.

[1989, c. 840, §4 (AMD) .]

1-A. **Determination of eligibility; applicant's responsibilities.** Applicants for general assistance are responsible for providing to the overseer all information necessary to determine eligibility. If further information or documentation is necessary to demonstrate eligibility, the applicant must have the first

opportunity to provide the specific information or documentation required by the overseer. When information required by the overseer is unavailable, the overseer must accept alternative available information, which is subject to verification.

[1989, c. 840, §5 (NEW) .]

1-B. **Determination of eligibility; overseer's responsibilities.** In order to determine an applicant's eligibility for general assistance, the overseer first must seek information and documentation from the applicant. Once the applicant has presented the necessary information, the overseer is responsible for determining eligibility. The overseer may seek verification necessary to determine eligibility. In order to determine eligibility, the overseer may contact sources other than the applicant for verification only with the specific knowledge and consent of the applicant, except that the overseer may examine public records without the applicant's knowledge and consent. Assistance may be denied or terminated if the applicant is unwilling to supply the overseer with necessary information, documentation, or permission to make collateral contacts, or if the overseer can not determine that eligibility exists based on information supplied by the applicant or others.

[1989, c. 840, §5 (NEW) .]

2. **Redetermination of eligibility.** The overseer may redetermine a person's eligibility at any time during the period that person is receiving assistance if the overseer is notified of any change in the recipient's circumstances that may affect the amount of assistance to which the recipient is entitled or that may make the recipient ineligible, provided that once a determination of eligibility has been made for a specific time period, a reduction in assistance for that time period may not be made without prior written notice to the recipient with the reasons for the action and an opportunity for the recipient to receive a fair hearing upon the proposed change.

[1989, c. 840, §6 (AMD) .]

3. **Eligibility of members of person's household.** Failure of an otherwise eligible person to comply with this chapter shall not affect the general assistance eligibility of any member of the person's household who is not capable of working, including at least:

A. A dependent minor child; [1983, c. 577, §1 (NEW).]

B. An elderly, ill or disabled person; and [1983, c. 577, §1 (NEW).]

C. A person whose presence is required in order to provide care for any child under the age of 6 years or for any ill or disabled member of the household. [1983, c. 577, §1 (NEW).]

[1983, c. 577, §1 (NEW) .]

4. **Eligibility of minors who are parents.** An otherwise eligible person under the age of 18 who has never married and who has a dependent child or is pregnant is eligible only if that person and child reside in a dwelling maintained by a parent or other adult relative as that parent's or relative's own home or in a foster home, maternity home or other adult-supervised supportive living arrangement unless:

A. The person has no living parent or the whereabouts of both parents are unknown; [1991, c. 528, Pt. RRR, (AFF); 1991, c. 528, Pt. SS, §3 (NEW); 1991, c. 591, Pt. SS, §3 (NEW).]

B. No parent will permit the person to live in the parent's home; [1991, c. 528, Pt. RRR, (AFF); 1991, c. 528, Pt. SS, §3 (NEW); 1991, c. 591, Pt. SS, §3 (NEW).]

C. The department determines that the physical or emotional health or safety of the person or dependent child would be jeopardized if that person and dependent child lived with a parent; [1991, c. 528, Pt. RRR, (AFF); 1991, c. 528, Pt. SS, §3 (NEW); 1991, c. 591, Pt. SS, §3 (NEW).]

D. The individual has lived apart from both parents for a period of at least one year before the birth of any dependent child; or [1991, c. 528, Pt. RRR, (AFF); 1991, c. 528, Pt. SS, §3 (NEW); 1991, c. 591, Pt. SS, §3 (NEW).]

E. The department determines, in accordance with rules adopted pursuant to this section, which must be in accordance with federal regulations, that there is good cause to waive this requirement. [1991, c. 528, Pt. RRR, (AFF); 1991, c. 528, Pt. SS, §3 (NEW); 1991, c. 591, Pt. SS, §3 (NEW).]

For the purposes of this subsection, "parent" includes legal guardian.

[2013, c. 368, Pt. OO, §8 (AMD) .]

SECTION HISTORY
1983, c. 577, §1 (NEW). 1989, c. 840, §§4-6 (AMD). 1991, c. 528, §SS3 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §SS3 (AMD). 2013, c. 368, Pt. OO, §8 (AMD).

§4310. EMERGENCY BENEFITS PRIOR TO FULL VERIFICATION

Whenever an eligible person becomes an applicant for general assistance and states to the administrator that the applicant is in an emergency situation and requires immediate assistance to meet basic necessities, the overseer shall, pending verification, issue to the applicant either personally or by mail, as soon as possible but in no event later than 24 hours after application, sufficient benefits to provide the basic necessities needed immediately by the applicant, as long as the following conditions are met. [2015, c. 494, Pt. A, §24 (AMD).]

1. **Probability of eligibility for assistance after full verification.** As a result of the initial interview with the applicant, the overseer shall have determined that the applicant will probably be eligible for assistance after full verification is completed.

[1983, c. 577, §1 (NEW) .]

2. **Documentation.** Where possible, the applicant shall submit to the overseer at the time of the initial interview, adequate documentation to verify that there is a need for immediate assistance.

[1983, c. 577, §1 (NEW) .]

3. **Information obtained.** When adequate documentation is not available at the time of the initial application, the overseer may contact at least one other person for the purpose of obtaining information to confirm the applicant's statements about his need for immediate assistance.

[1983, c. 577, §1 (NEW) .]

4. **Limitations.** In no case:

A. May the authorization of benefits under this section exceed 30 days; and [1983, c. 577, §1 (NEW).]

B. May there be further authorization of benefits to the applicant until there has been full verification confirming the applicant's eligibility. [1983, c. 577, §1 (NEW).]

[1983, c. 577, §1 (NEW) .]

SECTION HISTORY
1983, c. 577, §1 (NEW). 1991, c. 9, §U7 (AMD). 2013, c. 368, Pt. OO, §9 (AMD). 2015, c. 494, Pt. A, §24 (AMD).

§4311. STATE REIMBURSEMENT TO MUNICIPALITIES; REPORTS

1. **Departmental reimbursement.** When a municipality incurs net general assistance costs in any fiscal year prior to July 1, 2015 in excess of .0003 of that municipality's most recent state valuation relative to the state fiscal year for which reimbursement is being issued, as determined by the State Tax Assessor in the statement filed as provided in Title 36, section 381, the Department of Health and Human Services shall reimburse the municipality for 90% of the amount in excess of these expenditures when the department finds that the municipality has been in compliance with all requirements of this chapter. If a municipality elects to determine need without consideration of funds distributed from any municipally-controlled trust fund that must otherwise be considered for purposes of this chapter, the department shall reimburse the municipality for 66 2/3% of the amount in excess of such expenditures when the department finds that the municipality has otherwise been in compliance with all requirements of this chapter.

The department shall reimburse each municipality and each Indian tribe 70% of the direct costs incurred by that municipality or tribe on or after July 1, 2015 for the general assistance program granted by that municipality or tribe. For the purposes of this subsection, "Indian tribe" has the same meaning as in section 411, subsection 8-A.

[2015, c. 267, Pt. SSSS, §1 (AMD) .]

1-A. **Municipalities reimbursed.** When a municipality pays for expenses approved pursuant to section 4313 for hospital inpatient or outpatient care at any hospital on behalf of any person who is otherwise eligible and who would have been entitled to receive payments for hospital care if that care had been rendered prior to May 1, 1984, for services under the Catastrophic Illness Program, section 3185, the department shall reimburse the municipality for 100% of those payments.

[1995, c. 696, Pt. A, §39 (AMD) .]

1-B. **Reimbursement for administrative expenses.** The department shall reimburse each municipality for the costs of a portion of the direct costs of paying benefits incurred prior to July 1, 2015 through its general assistance program if the department finds that the municipality was in compliance with all requirements of this chapter during the fiscal year for which reimbursement is sought. The amount of reimbursement to each municipality must be an amount equal to:

A. Fifty percent of all general assistance granted by that municipality below the .0003% of all state valuation amount; or [1991, c. 9, Pt. U, §8 (AMD).]

B. Ten percent of all general assistance granted. [1991, c. 9, Pt. U, §8 (AMD).]

Each municipality shall elect to be reimbursed under paragraph A or B at the beginning of the fiscal year for which reimbursement is sought.

Notwithstanding any other provision of law, this subsection takes effect on July 1, 1989.

[2015, c. 267, Pt. SSSS, §1 (AMD) .]

1-C. **Indian tribe reimbursement.** The department shall reimburse each Indian tribe for the costs of a portion of the direct costs of paying benefits through its general assistance program if the department finds that the Indian tribe was in compliance with all requirements of this chapter during the fiscal year for which those benefits are sought.

The amount of reimbursement must be calculated for each fiscal year by adding 10% of all general assistance granted up to the threshold amount to 100% of all general assistance granted above the threshold amount.

For the purposes of this subsection, "Indian tribe" has the same meaning as in section 411, subsection 8-A. For purposes of this subsection, "threshold amount" means 0.0003 of the Indian tribe's most recent state valuation, as determined by the State Tax Assessor in the statement filed as provided in Title 36, section 381, relative to the year for which reimbursement is being issued.

[2013, c. 368, Pt. OO, §10 (NEW) .]

2. **Submission of reports.** Each municipality shall report on a schedule determined by the department through rulemaking the direct cost of paying benefits through the general assistance program on forms for reimbursement provided by the department.

A. [2015, c. 267, Pt. SSSS, §1 (RP).]

B. [2015, c. 267, Pt. SSSS, §1 (RP).]

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2015, c. 267, Pt. SSSS, §1 (AMD) .]

3. **Claims.** The Department of Health and Human Services may refuse to accept and pay any claim for reimbursement that is not submitted by a municipality to the department within 90 days of the payment on which that claim is based or at the end of the reporting period for which reimbursement is sought unless just cause exists for failure to file a timely claim.

[1991, c. 9, Pt. U, §10 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

SECTION HISTORY
1983, c. 577, §1 (NEW). 1983, c. 824, §X4 (AMD). 1985, c. 567, (AMD). 1987, c. 833, (AMD). 1991, c. 9, §§U8-10 (AMD). 1993, c. 410, §AAA7 (AMD). 1995, c. 696, §A39 (AMD). 2003, c. 689, §B6 (REV). 2013, c. 368, Pt. OO, §§10, 11 (AMD). 2015, c. 267, Pt. SSSS, §1 (AMD).

§4312. UNORGANIZED TERRITORY

Residents of the unorganized territory shall be eligible for general assistance in the same manner as provided in this chapter. The commissioner shall establish standards of eligibility for the unorganized territory and shall have the same responsibilities with regard to the unorganized territory as apply to overseers in a municipality. The commissioner may appoint agents to administer the general assistance program within the unorganized territory. All costs of providing general assistance in the unorganized territory shall be charged to the Unorganized Territory Education and Services Fund established under Title 36, chapter 115, except that costs which the State would reimburse under section 4311, if the unorganized territory were a municipality, shall be paid by the General Fund. [1985, c. 459, Pt. B, §1 (RPR).]

SECTION HISTORY
1983, c. 577, §1 (NEW). 1985, c. 459, §B1 (RPR).

§4313. REIMBURSEMENT TO INDIVIDUALS RELIEVING ELIGIBLE PERSONS; PRIOR APPROVAL; EMERGENCIES

Municipalities, as provided in section 4307, shall pay expenses necessarily incurred for providing basic necessities to eligible persons anywhere in the State by any person not liable for their support provided that the municipality of responsibility shall be notified and approve those expenses and services prior to their being made or delivered, except as provided in this section. [1983, c. 577, §1 (NEW).]

1. **Emergency care.** In the event of an admission of an eligible person to the hospital, the hospital shall notify the overseer of the liable municipality within 5 business days of the person's admission. In no event may hospital services to a person who meets the financial eligibility guidelines adopted pursuant to section 1716 be billed to the patient or to a municipality.

[1995, c. 696, Pt. A, §40 (AMD) .]

2. **Burial or cremation.** In the event of the death of an eligible person, the funeral director shall notify the overseer prior to burial or cremation or by the end of 3 business days following the funeral director's receipt of the body, whichever is earlier. Notwithstanding section 4305, subsection 3, paragraph C, a decision on any application for assistance with burial expenses need not be rendered until the overseer has verified that no relative or other resource is available to pay for the direct burial or cremation costs, but the decision must be rendered within 8 days after receiving an application. The father, mother, grandfather, grandmother, children or grandchildren, by consanguinity, living within or owning real or tangible property within the State, are responsible for the burial or cremation costs of the eligible person in proportion to their respective abilities. When no legally liable relative possesses a financial capacity to pay either in lump sum or on an installment basis for the direct costs of a burial or cremation, the contribution of a municipality under this subsection is limited to a reasonable calculation of the funeral director's direct costs, less any and all contributions from any other source.

[2007, c. 411, §1 (AMD) .]

SECTION HISTORY
1983, c. 577, §1 (NEW). 1983, c. 701, §4 (AMD). 1985, c. 245, (AMD). 1987, c. 542, §§H4,H8 (AMD). 1993, c. 410, §AAA8 (AMD). 1995, c. 696, §A40 (AMD). 2005, c. 483, §1 (AMD). 2007, c. 411, §1 (AMD).

§4314. COOPERATION IN ADMINISTRATION OF GENERAL ASSISTANCE

1. **State departments.** Upon the request of any municipal official charged with the responsibility of administering general assistance, the Department of Health and Human Services and any other department of the State having information which has a bearing on the eligibility of any person applying for general assistance shall release that information. The information shall be restricted to those facts necessary for the official to make a determination of eligibility for general assistance.

[1983, c. 577, §1 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

2. **Financial institutions.** A treasurer of any bank, federally or state-chartered credit union, trust company, benefit association, insurance company, safe deposit company or any corporation or association receiving deposits of money, except national banks, shall, on request in writing signed by the overseer of any municipality or its agents, or by the Commissioner of Health and Human Services or the commissioner's agents or by the Commissioner of Defense, Veterans and Emergency Management or the commissioner's agents, inform that overseer or the Department of Health and Human Services or the Bureau of Maine

Veterans' Services of the amount deposited in the corporation or association to the credit of the person named in the request, who is a charge upon the municipality or the State, or who has applied for support to the municipality or the State.

[1997, c. 455, §§8, 32 (AMD); 2003, c. 689, Pt. B, §§6, 7 (REV) .]

3. **Verification of employment.** The applicant has responsibility for providing documentary verification of benefits received during the period for which assistance is requested, or in the month immediately prior to the application for assistance when those wages and benefits are expected to be the same during the period for which assistance is requested.

The overseer shall give the applicant written notice that if the applicant does not provide the documentary verification within one week of the application, the employer will be contacted.

Notwithstanding any other provision of law, every employer shall, upon written request of the overseer, release information regarding any wages or other financial benefits paid to the applicant or a member of the applicant's household. No employer may discharge or otherwise adversely affect an employee because of any request for information pursuant to this section.

[1983, c. 577, §1 (NEW) .]

4. **Confidentiality.** Any person who seeks and obtains information under this section is subject to the same rules of confidentiality as the person who is caretaker of the information which is by law confidential.

[1983, c. 577, §1 (NEW) .]

5. **Refusal.** Any person who refuses to provide any information to an overseer who requests it in accordance with this section shall state in writing the reasons for the refusal within 3 days of receiving the request.

[1983, c. 577, §1 (NEW) .]

6. **Refusal; penalty.** A person who refuses upon request to provide information under this section without just cause commits a civil violation for which a fine of not less than $25 and not more than $100 may be adjudged.

[2003, c. 452, Pt. K, §25 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

7. **False information; penalty.** A person who intentionally or knowingly renders false information under this section to an administrator commits a Class E crime.

[2003, c. 452, Pt. K, §26 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY
1983, c. 577, §1 (NEW). 1991, c. 626, §4 (AMD). 1995, c. 86, §2 (AMD). 1997, c. 455, §§8,32 (AMD). 2003, c. 452, §§K25,26 (AMD). 2003, c. 452, §X2 (AFF). 2003, c. 689, §§B6,7 (REV).

§4315. FALSE REPRESENTATION

Whoever knowingly and willfully makes any false representation of a material fact to the overseer of any municipality or to the department or its agents for the purpose of causing that or any other person to be granted assistance by the municipality or by the State is guilty of a Class E crime and shall reimburse the municipality for that assistance. Further assistance may be denied until that person reimburses the

municipality for the assistance or enters into a written agreement, which must be reasonable under the circumstances, to reimburse the municipality or that person has been ineligible for assistance for a period of 120 days, whichever period is longer. [2015, c. 312, §1 (AMD).]

A person disqualified from receiving general assistance for making a false representation must be provided notice and an opportunity for an appeal as provided in sections 4321 and 4322. [1993, c. 410, Pt. AAA, §9 (AMD).]

If the overseer of any municipality or the fair hearing officer finds that a recipient made a false representation to the overseer in violation of this section, that recipient is required to reimburse the municipality for any assistance rendered for which that recipient was ineligible. The recipient is ineligible from receiving further assistance for a period of 120 days or until that person reimburses the municipality for the assistance or enters into a written agreement, which must be reasonable under the circumstances, to reimburse that municipality, whichever period is longer. [2015, c. 312, §2 (AMD).]

Any recipient whose assistance is terminated or denied under this section has the right to appeal that decision pursuant to the Maine Rules of Civil Procedure, Rule 80-B. [1993, c. 410, Pt. AAA, §9 (AMD).]

No recipient who has been granted assistance, in accordance with this chapter, may have that assistance terminated prior to the decision of the fair hearing officer. In the event of any termination of assistance to any recipient, the dependents of that person may still apply for and, if eligible, receive assistance. [1983, c. 577, §1 (NEW).]

SECTION HISTORY
1983, c. 577, §1 (NEW). 1991, c. 622, §M24 (AMD). 1993, c. 410, §AAA9 (AMD). 2015, c. 312, §§1, 2 (AMD).

§4315-A. USE OF INCOME FOR BASIC NECESSITIES REQUIRED

All persons requesting general assistance must use their income for basic necessities. Except for initial applicants, recipients are not eligible to receive assistance to replace income that was spent within the 30-day period prior to the application on goods and services that are not basic necessities. The income not spent on goods and services that are basic necessities is considered available to the applicant. A municipality may require recipients to utilize income and resources according to standards established by the municipality, except that a municipality may not reduce assistance to a recipient who has exhausted income to purchase basic necessities. Municipalities shall provide written notice to applicants of the standards established by the municipalities. [1991, c. 528, Pt. OOO, §2 (NEW); 1991, c. 528, Pt. RRR, (AFF); 1991, c. 591, Pt. OOO, §2 (NEW).]

SECTION HISTORY
1991, c. 528, §OOO2 (NEW). 1991, c. 528, §RRR (AFF). 1991, c. 591, §OOO2 (NEW).

§4316. WORK REQUIREMENT

(REPEALED)

SECTION HISTORY
1983, c. 577, §1 (NEW). 1983, c. 697, §§1,2 (AMD). 1985, c. 489, §§6,14 (RP).

§4316-A. WORK REQUIREMENT

1. **Ineligibility for assistance.** An applicant is ineligible for assistance for 120 days in all municipalities in the State when any municipality establishes that the applicant, without just cause:

A. Refuses to search for employment when that search is reasonable and appropriate; [1985, c. 489, §§7, 14 (NEW).]

B. Refuses to register for work; [1985, c. 489, §§7, 14 (NEW).]

C. Refuses to accept a suitable job offer under this section; [1985, c. 489, §§7, 14 (NEW).]

D. Refuses to participate in a training, educational or rehabilitation program that would assist the applicant in securing employment; [1993, c. 410, Pt. AAA, §10 (AMD).]

E. [1993, c. 410, Pt. AAA, §10 (RP).]

F. Refuses to perform or willfully fails to perform a job assigned under subsection 2; or [1993, c. 410, Pt. AAA, §10 (AMD).]

G. Willfully performs a job assigned under subsection 2 below the average standards of that job. [1993, c. 410, Pt. AAA, §10 (AMD).]

H. [1993, c. 410, Pt. AAA, §10 (RP).]

If a municipality finds that an applicant has violated a work-related rule without just cause, under this subsection or subsection 1-A, it is the responsibility of that applicant to establish the presence of just cause.

[1993, c. 410, Pt. AAA, §10 (AMD) .]

1-A. **Period of ineligibility.** An applicant, whether an initial or repeat applicant, who quits work or is discharged from employment due to misconduct as defined in Title 26, section 1043, subsection 23, is ineligible to receive assistance for 120 days after the applicant's separation from employment.

[1993, c. 410, Pt. AAA, §10 (NEW) .]

2. **Municipal work program.** A municipality may require that an otherwise eligible person who is capable of working be required to perform work for the municipality or work for a nonprofit organization, if that organization has agreed to participate as an employer in the municipal work program, as a condition of receiving general assistance. The municipality may also require recipients, as a part of the municipal work program, to participate in a training, educational or rehabilitative program that would assist the recipient in securing employment. The municipal work program is subject to the following requirements.

A. A person may not, as a condition of general assistance eligibility, be required to do any amount of work that exceeds the value of the net general assistance that the person would otherwise receive under municipal general assistance standards. Any person performing work under this subsection must be provided with net general assistance, the value of which is computed at a rate of at least the State's minimum wage. [1993, c. 410, Pt. AAA, §10 (AMD).]

B. A person may not be required to work under this subsection for a nonprofit organization if that work would violate a basic religious belief of that person. [1993, c. 410, Pt. AAA, §10 (AMD).]

C. An eligible person performing work under this subsection may not replace regular municipal employees or regular employees of a participating nonprofit organization. [1993, c. 410, Pt. AAA, §10 (AMD).]

D. An eligible person in need of emergency assistance may not be required to perform work under this subsection prior to receiving general assistance. An applicant who is not in need of emergency assistance may be required to satisfactorily fulfill a workfare requirement prior to receiving the nonemergency assistance conditionally granted to that applicant. [1993, c. 410, Pt. AAA, §10 (AMD).]

E. Expenses related to work performed under this subsection by an eligible person must be considered in determining the amount of net general assistance to be provided to the person. [1993, c. 410, Pt. AAA, §10 (AMD).]

F. General assistance provided by a municipality for work performed by an eligible person under this subsection must be:

(1) Included in the reimbursable net general assistance costs; and

(2) Itemized separately in reports to the Department of Health and Human Services under section 4311. [1993, c. 410, Pt. AAA, §10 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

G. A person may not be required to work under this subsection if that person is physically or mentally incapable of performing the work assigned. [1991, c. 9, Pt. U, §12 (NEW).]

[1993, c. 410, Pt. AAA, §10 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

3. **Limitations of work requirement.** In no case may any work requirement or training or educational program under this section interfere with a person's:

A. Existing employment; [1985, c. 489, §§7, 14 (NEW).]

B. Ability to pursue a bona fide job offer; [1985, c. 489, §§7, 14 (NEW).]

C. Ability to attend an interview for possible employment; [1985, c. 489, §§7, 14 (NEW).]

D. Classroom participation in a primary or secondary educational program intended to lead to a high school diploma; or [1993, c. 410, Pt. AAA, §10 (AMD).]

E. Classroom or on-site participation in a training program that is either approved or determined, or both, by the Department of Labor to be reasonably expected to assist the individual in securing employment. This paragraph does not include participation in a degree granting program, except when that program is a training program operated under the control of the Department of Health and Human Services or the Department of Labor. [1993, c. 410, Pt. AAA, §10 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

[1993, c. 410, Pt. AAA, §10 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

4. **Eligibility regained.** A person who has been disqualified by any municipality for not complying with any work requirement of this section may regain eligibility during the 120-day period by becoming employed or otherwise complying with the work requirements of this section. An applicant who is disqualified due to failure to comply with the municipal work program may be given only one opportunity to regain eligibility during the 120-day disqualification period, except that if an applicant who regains eligibility is again disqualified for failing to comply with the municipal work program within the initial period of disqualification, the applicant is ineligible for assistance for 120 days and does not have the opportunity to requalify during the 120-day period.

[1993, c. 410, Pt. AAA, §10 (AMD) .]

5. **Just cause defined.** Just cause for failure to meet work requirements or the use of potential resources must be found when there is reasonable and verifiable evidence of:

A. Physical or mental illness or disability; [1985, c. 489, §§7, 14 (NEW).]

B. Below-minimum wages; [1985, c. 489, §§7, 14 (NEW).]

C. Sexual harassment; [1985, c. 489, §§7, 14 (NEW).]

D. Physical or mental inability to perform required job tasks; [1985, c. 489, §§7, 14 (NEW).]

E. Inability to work required hours or to meet piece work standards; [1985, c. 489, §§7, 14 (NEW).]

F. Lack of transportation to and from work or training; [1985, c. 489, §§7, 14 (NEW).]

G. Inability to arrange for necessary child care or care of an ill or disabled family member; [1993, c. 410, Pt. AAA, §10 (AMD).]

H. Any reason found to be good cause by the Department of Labor; and [1985, c. 489, §§7, 14 (NEW).]

I. Any other evidence that is reasonable and appropriate. [1993, c. 410, Pt. AAA, §10 (AMD).]

The overseer may not require medical verification of medical conditions that are apparent or are of such short duration that a reasonable person would not ordinarily seek medical attention. In any case in which the overseer requires medical verification and the applicant has no means of obtaining such verification, the overseer shall grant assistance for the purpose of obtaining that verification.

[1993, c. 410, Pt. AAA, §10 (AMD) .]

SECTION HISTORY
1985, c. 489, §§7,14 (NEW). 1991, c. 9, §§U11-14 (AMD). 1991, c. 528, §§OOO3,4 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §§OOO3,4 (AMD). 1991, c. 622, §§M25,26 (AMD). 1993, c. 410, §AAA10 (AMD). 2003, c. 689, §B6 (REV).

§4317. USE OF POTENTIAL RESOURCES

An applicant or recipient must make a good faith effort to secure any potential resource that may be available, including, but not limited to, any state or federal assistance program, employment benefits, governmental or private pension programs, available trust funds, support from legally liable relatives, child-support payments and jointly held resources where the applicant or recipient share may be available to the individual. Assistance may not be withheld pending receipt of such resource as long as application has been made or good faith effort is being made to secure the resource. [1993, c. 410, Pt. AAA, §11 (AMD).]

An individual applying for or receiving assistance due to a disability must make a good faith effort to make use of any medical and rehabilitative resources that may be recommended by a physician, psychologist or other professional retraining or rehabilitation specialist that are available without financial burden and would not constitute further physical risk to the individual. [1993, c. 410, Pt. AAA, §11 (AMD).]

An applicant who refuses to utilize potential resources without just cause, after receiving a written 7-day notice, is disqualified from receiving assistance until the applicant has made a good faith effort to secure the resource. [1993, c. 410, Pt. AAA, §11 (AMD).]

An applicant who forfeits receipt of or causes reduction in benefits from another public assistance program because of fraud, misrepresentation or a knowing or intentional violation of program rules or a refusal to comply with program rules without just cause is not eligible to receive general assistance to replace the forfeited assistance for the duration of the forfeiture. [1993, c. 410, Pt. AAA, §11 (AMD).]

An applicant who is found to be ineligible for unemployment compensation benefits because of a finding of fraud by the Department of Labor pursuant to Title 26, section 1051, subsection 1 is ineligible to receive general assistance to replace the forfeited unemployment compensation benefits for the duration of the forfeiture established by the Department of Labor. [2013, c. 368, Pt. OO, §12 (NEW).]

SECTION HISTORY
1983, c. 577, §1 (NEW). 1993, c. 410, §AAA11 (AMD). 2013, c. 368, Pt. OO, §12 (AMD).

§4318. RECOVERY OF EXPENSES

A municipality or the State, which has incurred general assistance program costs for the support of any eligible person, may recover the full amount expended for that support either from the person relieved or from any person liable for the recipient's support, their executors or administrators, in a civil action. In no case may a municipality or the State be authorized to recover through a civil action, the full or part of, the amount expended for the support of a previously eligible person, if, as a result of the repayment of that amount, this person would, in all probability, again become eligible for general assistance. [1985, c. 489, §§8, 14 (RPR).]

Notwithstanding any other provision of law, municipalities have a lien for the value of all general assistance payments made to a recipient on any lump sum payment made to that recipient under the former Workers' Compensation Act, the Maine Workers' Compensation Act of 1992 or similar law of any other state. [1995, c. 462, Pt. A, §44 (AMD).]

The department shall enter into an agreement with the Social Security Administration to institute an interim assistance reimbursement for the purpose of the repayment of state and local funds expended for providing assistance to Supplemental Security Income applicants or recipients while the Supplemental Security Income payments are pending or suspended. Written authorization must be given by the recipients. [1991, c. 780, Pt. R, §5 (AMD).]

1. **Repayment.**

[1985, c. 489, §§8, 14 (RP) .]

2. **Public assistance.**

[1985, c. 489, §§8, 14 (RP) .]

A municipality may not recover from any recipient who has been injured while performing work under section 4316-A, subsection 2, any portion of any medical or rehabilitative expenses associated with that injury or any portion of any other general assistance benefits associated with that injury. [1991, c. 9, Pt. U, §15 (AMD).]

Nothing in this section may be construed as limiting or affecting in any way the right of any individual to file an action under the Maine Tort Claims Act, Title 14, chapter 741, except that a municipality that provides general assistance to a minor is absolutely immune from suit on any tort claims seeking recovery or damages by or on behalf of the minor recipient in connection with the provision of general assistance. [1991, c. 9, Pt. U, §15 (AMD).]

All collections, fees and payments received by the department from the Federal Government as a result of an interim assistance reimbursement must be dedicated to support the administration of the General Assistance program. [1993, c. 415, Pt. H, §1 (NEW).]

SECTION HISTORY
1983, c. 577, §1 (NEW). 1985, c. 489, §§8,14 (RPR). 1987, c. 67, (AMD). 1991, c. 9, §U15 (AMD). 1991, c. 622, §M27 (AMD). 1991, c. 780, §R5 (AMD). 1993, c. 415, §H1 (AMD). 1995, c. 462, §A44 (AMD).

§4319. LIABILITY OF RELATIVES FOR SUPPORT

1. **Relatives liable.** A parent of a child under 25 years of age and a spouse living in or owning property in the State shall support their children or husband or wife in proportion to their respective ability. Liability for burial expenses is governed by section 4313.

[1993, c. 410, Pt. AAA, §12 (AMD) .]

2. **Rental payments to relatives.** A municipality or the State may decide not to make payments for rental assistance on behalf of an otherwise eligible individual when the rental payments would be made to a parent, grandparent, child, grandchild, sibling, parent's sibling or any of their children, unless the municipality finds that the rental arrangement has existed for 3 months prior to the application for assistance and is necessary to provide the relative with basic necessities.

[1993, c. 410, Pt. AAA, §12 (AMD) .]

3. **Recovery of assistance provided.** A municipality or the State, after providing general assistance to a dependent of a legally responsible parent or to a person's spouse who is financially capable of providing support, may then seek reimbursement or relief for that support by initiating a complaint to the Superior Court or District Court, including by small claims action, located in the division or county where the legally responsible parent or spouse resides. The court may cause the legally responsible parent or spouse to be summoned and upon hearing or default may assess and apportion a reasonable sum upon those who are found to be of sufficient ability for the support of the eligible person and shall issue a writ of execution. The assessment may not be made to pay any expense for relief provided more than 12 months before the complaint was filed. Any action brought under this section is governed by the Maine Rules of Civil Procedure. The court may, from time to time, make any further order on complaint of an interested party and, after notice is given, alter the assessment or apportionment.

[1993, c. 410, Pt. AAA, §12 (AMD) .]

SECTION HISTORY
1983, c. 577, §1 (NEW). 1983, c. 701, §5 (AMD). 1989, c. 370, (RPR). 1991, c. 622, §M28 (AMD). 1993, c. 410, §AAA12 (AMD).

§4320. LIENS ON REAL ESTATE

A municipality or the State may claim a lien against the owner of real estate for the amount of money spent by it to provide mortgage payments on behalf of an eligible person under this chapter on any real estate that is the subject of a mortgage, whether land or buildings or a combination thereof. In addition, a municipality may claim a lien against the owner of real estate for the amount of money spent by it to make capital improvements to the real estate, whether land or buildings or a combination of land and buildings, on behalf of an eligible person under this chapter. [1991, c. 528, Pt. OOO, §5 (AMD); 1991, c. 528, Pt. RRR, (AFF); 1991, c. 591, Pt. OOO, §5 (AMD).]

The municipal officers, their designee or the State shall file a notice of the lien with the register of deeds of the county wherein the property is located within 30 days of making a mortgage payment or, if applicable, payment for capital improvements. That filing secures the municipality or State's lien interest for an amount equal to the sum of that mortgage or capital improvement payment and all subsequent mortgage or capital improvement payments made on behalf of the same eligible person. Not less than 10 days prior to the filing, the municipal officers, their designee or the State shall send notification of the proposed action by certified mail, return receipt requested, to the owner of the real estate and any record holder of the mortgage. The lien notification must clearly inform the recipient of the limitations upon enforcement contained in this section; it shall also contain the title, address and telephone number of the municipal official who granted the assistance. A new written notice including these provisions must be given to the recipient each time the amount secured by the lien is increased. The lien is effective until enforced by an action for equitable relief or until discharged. [1991, c. 528, Pt. OOO, §6 (AMD); 1991, c. 528, Pt. RRR, (AFF); 1991, c. 591, Pt. OOO, §6 (AMD).]

Interest on the amount of money secured by the lien may be charged by the State or a municipality, but in no event may the rate exceed the maximum rate of interest allowed by the Treasurer of State, pursuant to Title 36, section 186. For the State, the rate of interest shall be established by the department. For a municipality, the rate of interest shall be established by the municipal officers. Interest shall accrue from and including the date the lien is filed. [1983, c. 697, §3 (RPR).]

The costs of securing and enforcing the lien may be recoverable upon enforcement. [1983, c. 697, §3 (RPR).]

No lien may be enforced under this section while the person named in the lien is either currently receiving any form of public assistance or, as a result of enforcement, would become eligible for general assistance. [1983, c. 697, §3 (RPR).]

In no event may the lien be enforced prior to the death of the recipient of general assistance or the transfer of the property. [1983, c. 697, §3 (NEW).]

SECTION HISTORY
1983, c. 577, §1 (NEW). 1983, c. 697, §3 (RPR). 1985, c. 489, §§9,14 (AMD). 1991, c. 528, §§OOO5,6 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §§OOO5,6 (AMD).

§4321. GRANT, DENIAL, REDUCTION OR TERMINATION TO BE COMMUNICATED IN WRITING; RIGHT TO A HEARING

Any action relative to the grant, denial, reduction, suspension or termination of relief provided under this chapter must be communicated to the applicant in writing. The decision shall include the specific reason or reasons for that action and shall inform the person affected of his right to a hearing, the procedure for requesting such a hearing, the right to notify the department and the available means for notifying the department, if he believes that the municipality has acted in violation of this chapter. All proceedings relating to the grant, denial, reduction, suspension or termination of relief provided under this chapter are not public proceedings under Title 1, chapter 13, unless otherwise requested by the applicant or recipient. [1983, c. 577, §1 (NEW).]

SECTION HISTORY
1983, c. 577, §1 (NEW).

§4322. RIGHT TO A FAIR HEARING

A person aggrieved by a decision, act, failure to act or delay in action concerning that person's application for general assistance under this chapter has the right to an appeal. If a person's application has been approved, general assistance may not be revoked during the period of entitlement until that person has been provided notice and an opportunity for hearing as provided in this section. Within 5 working days of receiving a written decision or notice of denial, reduction or termination of assistance, in accordance with the provisions of section 4321, or within 10 working days after any other act or failure to act by the municipality with regard to an application for assistance, the person may request an appeal. A hearing must be held by the fair hearing authority within 5 working days following the receipt of a written request by the applicant for an appeal. The hearing may be conducted by the municipal officers, a board of appeals created under Title 30-A, section 2691, or one or more persons appointed by the municipal officers to act as a fair hearing authority. An appeal may not be held before a person or body responsible for the decision, act, failure to act or delay in action relating to the applicant. [1993, c. 410, Pt. AAA, §13 (AMD).]

The person requesting the appeal and the municipal administrator responsible for the decision being appealed must be afforded the right to confront and cross-examine any witnesses presented at the hearing, present witnesses in their behalf and be represented by counsel or other spokesperson. A claimant must be advised of these rights in writing. The decision of such an appeal must be based solely on evidence adduced at the hearing. The Maine Rules of Evidence do not apply to information presented to the fair hearing authority. The standard of evidence is the standard set in Title 5, section 9057, subsection 2. The person requesting the appeal must, within 5 working days after the appeal, be furnished with a written decision detailing the reasons for that decision. When any decision by a fair hearing authority or court authorizing assistance is made, that assistance must be provided within 24 hours. Review of any action or failure to act under this chapter must be conducted pursuant to the Maine Rules of Civil Procedure, Rule 80-B. The municipality shall make a record

of the fair hearing. The municipality's obligation is limited to keeping a taped record of the proceedings. The applicant shall pay costs for preparing any transcripts required to pursue an appeal of a fair hearing authority's decision. [2009, c. 2, §60 (COR).]

SECTION HISTORY
1983, c. 577, §1 (NEW). 1983, c. 697, §4 (AMD). 1985, c. 489, §§10,14 (AMD). 1987, c. 737, §§C66,C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD). 1993, c. 410, §AAA13 (AMD). RR 2009, c. 2, §60 (COR).

§4323. DEPARTMENT OF HEALTH AND HUMAN SERVICES; RESPONSIBILITIES

The Department of Health and Human Services shall, in accordance with this section, share responsibility with municipalities for the proper administration of general assistance. [1993, c. 410, Pt. AAA, §13 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

1. **Review.** The department shall review the administration of general assistance in each municipality for compliance with this chapter. This review shall be made on a regular basis and may be made in response to a complaint from any person as necessary.

The department shall inspect the municipality's records and discuss the administration of the program with the overseer. The overseer or his designee shall be available during the department's review and shall cooperate in providing all necessary information.

The department shall report the results of its review in writing to the municipality and, when applicable, to the complainant. The written notice shall set forth the department's findings of whether the municipality is in compliance with this chapter.

[1985, c. 489, §§11, 14 (AMD) .]

2. **Violation; penalty.** If the department finds any violation of this chapter after review, it shall notify the municipality that it has 30 days in which to correct that violation and specify what action shall be taken in order to achieve compliance. The municipality shall file a plan with the department setting forth how it will attain compliance. The department shall notify the municipality if the plan is acceptable and that it will review the municipality for compliance within 60 days of accepting the plan. Any municipality which fails to file an acceptable plan with the department or which is in violation of this chapter at the expiration of the 60-day period shall be subject to a civil penalty of not less than $500. The Department of Health and Human Services shall enforce this section in any court of competent jurisdiction. Every 30-day period that a municipality is in violation of this chapter after review and notification shall constitute a separate offense. In addition to the civil penalty, the department shall withhold reimbursement to any municipality which is in violation of this chapter until it reaches compliance.

[1983, c. 577, §1 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

3. **Departmental assistance.** Whenever the department finds that a person in immediate need of general assistance has not received that assistance as a result of a municipality's failure to comply with the requirements of this chapter, the department shall, within 24 hours of receiving a request to intervene and after notifying the municipality, grant this assistance in accordance with regulations adopted by it. The expense of that assistance granted, including a reasonable proportion of the State's administrative cost that can be attributed to that assistance, shall be billed by the department to the municipality. Should that bill remain unpaid 30 days after presentation to the municipality, the department shall refer the bill to the Treasurer of State for payment from any taxes, revenue, fines or fees due from the State to the municipality.

A municipality may not be held responsible for reimbursing the department for assistance granted under this subsection if the department failed to intervene within 24 hours of receiving the request to intervene or if the department failed to make a good faith effort, prior to the intervention, to notify the municipality of the department's intention to intervene.

[1989, c. 840, §7 (AMD) .]

4. **Appeal.** Any municipality or person who is aggrieved by any decision or action made by the department pursuant to this section shall have the right to appeal pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV. A request for that appeal shall be in writing and shall be made within 30 days of receiving notification. The appeal shall be held within 30 days of receipt of that request and shall be conducted by one or more fair hearing officers. In no event may an appeal be held before a person or body responsible for the decision or action. Review of any decision under this section shall be pursuant to the Maine Rules of Civil Procedure, Rule 80 C.

[1985, c. 489, §§11, 14 (AMD) .]

5. **Emergency contact information.** The department shall collect from each municipality emergency contact information for use by municipal residents in applying for assistance under this section. The department shall forward the municipal emergency contact information periodically to the statewide 2-1-1 telephone number designated pursuant to Title 35-A, section 7108.

[2007, c. 600, §1 (NEW) .]

SECTION HISTORY
1983, c. 577, §1 (NEW). 1985, c. 489, §§11,14 (AMD). 1989, c. 840, §7 (AMD). 1993, c. 410, §AAA13 (AMD). 2003, c. 689, §B6 (REV). 2007, c. 600, §1 (AMD).

§4324. REPORT TO THE LEGISLATURE

(REPEALED)

SECTION HISTORY
1983, c. 577, §1 (NEW). 1985, c. 489, §§12,14 (RP).

§4325. MUNICIPAL GUARANTEE OF SAFE, DECENT RENTAL HOUSING AND RESIDENTIAL NEIGHBORHOODS

(REPEALED)

SECTION HISTORY
1989, c. 484, §5 (NEW).

§4326. NONLAPSING FUNDS

Any balance remaining in the General Assistance - Reimbursement to Cities and Towns program in the Department of Human Services at the end of any fiscal year must be carried forward for the next fiscal year. [2003, c. 673, Pt. DD, §1 (NEW).]

SECTION HISTORY
2003, c. 673, §DD1 (NEW).

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§4450. DEFINITIONS

(REPEALED)

SECTION HISTORY
1969, c. 433, §50 (NEW). 1971, c. 598, §40 (AMD). 1977, c. 417, §2 (RPR). 1983, c. 577, §2 (RP).

§4451. SETTLEMENTS

(REPEALED)

SECTION HISTORY
1969, c. 433, §§51,52 (AMD). 1971, c. 598, §§41,42 (AMD). 1973, c. 470, §2 (RP).

§4452. PAUPER SUPPLIES

(REPEALED)

SECTION HISTORY
1973, c. 470, §2 (RP).

§4452-A. EMERGENCY ADMITTANCE TO HOSPITALS

(REPEALED)

SECTION HISTORY
1967, c. 388, (NEW). 1973, c. 470, §2 (RP).

§4453. SETTLEMENTS; RETAINED AND LOST

(REPEALED)

SECTION HISTORY
1969, c. 9, (AMD). 1973, c. 470, §2 (RP).

§4454. RELIEF FOR PERSONS LOSING SETTLEMENTS

(REPEALED)

SECTION HISTORY
1973, c. 470, §2 (RP).

§4455. NOTICE TO STATE OF ASSISTANCE

(REPEALED)

SECTION HISTORY
1973, c. 470, §2 (RP).

§4456. CHILDREN'S HOME AT BATH

(REPEALED)

SECTION HISTORY
1973, c. 470, §2 (RP).

§4457. LIMITATIONS ON ACQUIRING PAUPER SETTLEMENT

(REPEALED)

SECTION HISTORY
1967, c. 544, §60 (AMD). 1973, c. 470, §2 (RP).

§4458. DUTY OF TOWNS TO RELIEVE POOR

(REPEALED)

SECTION HISTORY
1973, c. 470, §2 (RP).

§4458-A. APPLICATION TO MUNICIPALITIES FOR SUPPORT OF INDIGENT DISCHARGEES FROM THE PINELAND HOSPITAL AND TRAINING CENTER

(REPEALED)

SECTION HISTORY
1965, c. 380, (NEW). 1973, c. 470, §2 (RP).

§4459. OVERSEERS' DUTIES; EMPLOYMENT OF PAUPERS OR DEPENDENT PERSONS

(REPEALED)

SECTION HISTORY
1969, c. 504, §§36-A (AMD). 1973, c. 470, §2 (RP).

§4459-A. ESTABLISHMENT OF RULES AND REGULATIONS

(REPEALED)

SECTION HISTORY
1973, c. 473, §1 (NEW). 1973, c. 681, §6 (AMD). 1975, c. 293, §4 (AMD). 1975, c. 770, §93 (RP).

§4460. RECORD OF WAGES PAID

(REPEALED)

SECTION HISTORY
1973, c. 470, §2 (RP).

§4461. DELEGATION OF DUTIES; OATH; BOND

(REPEALED)

SECTION HISTORY
1965, c. 23, (AMD). 1983, c. 577, §3 (RP).

§4462. AUCTIONS PROHIBITED; CONTRACTS FOR SUPPORT

(REPEALED)

SECTION HISTORY
1973, c. 470, §2 (RP).

§4463. HOMES FOR POOR AND INFIRM; UNION FARMS

(REPEALED)

SECTION HISTORY
1973, c. 788, §90 (RP).

§4464. REMOVAL TO UNION FARM

(REPEALED)

SECTION HISTORY
1973, c. 470, §2 (RP).

§4465. JOINT BOARD OF OVERSEERS

(REPEALED)

SECTION HISTORY
1973, c. 788, §90 (RP).

§4466. UNION OF TOWNS FOR EMPLOYMENT OF SOCIAL WELFARE WORKERS

(REPEALED)

SECTION HISTORY
1973, c. 788, §90 (RP).

§4467. LIABILITY OF RELATIVES FOR SUPPORT; PROCEDURE

(REPEALED)

SECTION HISTORY
1977, c. 417, §3 (AMD). 1983, c. 577, §4 (RP).

§4468. RELIEF OF PAUPERS IN UNINCORPORATED AND DEORGANIZED PLACES; STATE PAUPERS

(REPEALED)

SECTION HISTORY
1965, c. 56, §§1,2 (AMD). 1967, c. 486, (AMD). 1973, c. 470, §2 (RP).

§4469. REIMBURSEMENT OF TOWNS RELIEVING PERSONS REMOVING FROM UNINCORPORATED PLACES

(REPEALED)

SECTION HISTORY
1973, c. 470, §2 (RP).

§4470. REMOVAL OF STATE PAUPERS

(REPEALED)

SECTION HISTORY

1973, c. 470, §2 (RP).

§4471. REIMBURSEMENT BY STATE FOR RELIEF OF PERSONS HAVING NO SETTLEMENT

(REPEALED)

SECTION HISTORY
1973, c. 470, §2 (RP).

§4472. MAINTENANCE OF PAUPERS BY CERTAIN PLANTATIONS

(REPEALED)

SECTION HISTORY
1969, c. 60, (AMD). 1971, c. 192, (AMD). 1973, c. 470, §2 (RP).

§4473. PERSONS NEEDING RELIEF IN CERTAIN PLANTATIONS UNDER CARE OF ASSESSORS; STATE PAUPERS NOT AFFECTED

(REPEALED)

SECTION HISTORY
1973, c. 470, §2 (RP).

§4474. RELIEF AND BURIAL, BY INDIVIDUALS, OF PERSONS IN UNINCORPORATED PLACES

(REPEALED)

SECTION HISTORY
1973, c. 788, §90 (RP).

§4475. NOTICE TO TOWN OF SETTLEMENT WHEN PERSON FOUND DESTITUTE

(REPEALED)

SECTION HISTORY
1973, c. 470, §2 (RP).

§4476. RELIEF TO PERSONS HAVING SETTLEMENTS ELSEWHERE; ACTIONS BETWEEN TOWNS

(REPEALED)

SECTION HISTORY
1973, c. 470, §2 (RP).

§4477. NOTICE TO TOWN OF SETTLEMENT; REFUSAL OF RELIEF IN CERTAIN CASES

(REPEALED)

SECTION HISTORY
1965, c. 247, (AMD). 1973, c. 470, §2 (RP).

§4478. TIME PERIOD FOR ANSWER TO NOTICE, IF PAUPER NOT REMOVED; FAILURE TO ANSWER

(REPEALED)

SECTION HISTORY
1973, c. 470, §2 (RP).

§4479. NOTICE AND ANSWER BY MAIL

(REPEALED)

SECTION HISTORY
1973, c. 470, §2 (RP).

§4480. REFUSAL TO MOVE TO TOWN OF SETTLEMENT; PROCEEDINGS; FEES AND COSTS

(REPEALED)

SECTION HISTORY
1973, c. 470, §2 (RP).

§4481. COMMITMENT OF PERSONS RETURNING AFTER REMOVAL

(REPEALED)

SECTION HISTORY
1973, c. 470, §2 (RP).

§4482. REMOVAL OF OUT-OF-STATE PAUPERS; EXCEPTIONS

(REPEALED)

SECTION HISTORY
1973, c. 470, §2 (RP).

§4483. REIMBURSEMENT TO INDIVIDUALS RELIEVING ELIGIBLE PERSONS; PRIOR APPROVAL; EMERGENCIES

(REPEALED)

SECTION HISTORY
1975, c. 574, §1 (RPR). 1977, c. 417, §4 (AMD). 1983, c. 577, §5 (RP).

§4484. OVERSEERS TO COMPLAIN OF INTEMPERATE PAUPERS

(REPEALED)

SECTION HISTORY
1973, c. 470, §2 (RP). 1973, c. 582, §6 (RP).

§4485. RECOVERY FROM PAUPER OR WIFE

(REPEALED)

SECTION HISTORY

1973, c. 470, §2 (RP).

§4486. OVERSEERS TO TAKE POSSESSION OF DECEASED PAUPER'S PROPERTY

(REPEALED)

SECTION HISTORY
1973, c. 470, §2 (RP).

§4487. SUPPORT OF PAUPERS; REIMBURSEMENT

(REPEALED)

SECTION HISTORY
1973, c. 470, §2 (RP).

§4488. PROSECUTION AND DEFENSE OF TOWNS

(REPEALED)

SECTION HISTORY
1983, c. 577, §6 (RP).

§4489. PLANTATIONS MAY RAISE MONEY

(REPEALED)

SECTION HISTORY
1977, c. 417, §5 (RP).

§4490. BRINGING PAUPERS INTO TOWN

(REPEALED)

SECTION HISTORY
1973, c. 470, §2 (RP).

§4491. FALSE REPRESENTATIONS TO OVERSEERS

(REPEALED)

SECTION HISTORY
1977, c. 417, §6 (AMD). 1983, c. 577, §7 (RP).

§4492. FINANCIAL INFORMATION TO BE FURNISHED

(REPEALED)

SECTION HISTORY
1965, c. 292, §1 (AMD). 1973, c. 537, §23 (AMD). 1975, c. 293, §4 (AMD). 1977, c. 417, §7 (AMD). 1983, c. 577, §8 (RP).

§4493. CENTRAL MAINE SANATORIUM

(REPEALED)

SECTION HISTORY

1973, c. 470, §2 (RP).

§4494. LOCATION OF CHILDREN OF PAUPERS FOR SCHOOL PURPOSES; EXPENSES; REIMBURSEMENT

(REPEALED)

SECTION HISTORY
1973, c. 470, §2 (RP).

§4495. REIMBURSEMENT BY STATE

(REPEALED)

SECTION HISTORY
1965, c. 434, §1 (NEW). 1973, c. 470, §2 (RP).

§4496. COOPERATION IN ADMINISTRATION OF PUBLIC ASSISTANCE

(REPEALED)

SECTION HISTORY
1971, c. 622, §§77-A (NEW). 1973, c. 288, (AMD). 1975, c. 664, (RPR). 1983, c. 577, §9 (RP).

§4497. MUNICIPAL GENERAL ASSISTANCE; RESIDENT DEFINED

(REPEALED)

SECTION HISTORY
1973, c. 470, §1 (NEW). 1973, c. 473, §2 (NEW). 1973, c. 625, §121 (RP). 1975, c. 293, §4 (AMD). 1975, c. 574, §2 (RPR). 1975, c. 704, (AMD). 1977, c. 417, §8 (AMD). 1983, c. 577, §10 (RP).

§4498. ASSISTANCE; UNINCORPORATED PLACE

(REPEALED)

SECTION HISTORY
1973, c. 470, §1 (NEW). 1973, c. 473, §2 (NEW). 1973, c. 625, §121 (RP). 1975, c. 293, §4 (AMD). 1977, c. 417, §9 (RPR). 1983, c. 577, §11 (RP).

§4499. COSTS; LIMIT

(REPEALED)

SECTION HISTORY
1973, c. 470, §1 (NEW). 1973, c. 473, §2 (NEW). 1973, c. 625, §121 (RP). 1973, c. 681, §7 (AMD). 1975, c. 293, §4 (AMD). 1977, c. 417, §10 (AMD). 1977, c. 717, §1 (AMD). 1979, c. 382, §1 (AMD). 1981, c. 298, (AMD). 1983, c. 577, §12 (RP).

§4500. CLAIMS FOR REIMBURSEMENT

(REPEALED)

SECTION HISTORY
1973, c. 470, §1 (NEW). 1975, c. 293, §4 (AMD). 1983, c. 577, §13 (RP).

§4500-A. RECOVERY OF EXPENSE

(REPEALED)

SECTION HISTORY
1973, c. 788, §91 (NEW). 1977, c. 417, §11 (RPR). 1983, c. 577, §14 (RP).

§4501. GRANT, DENIAL, REDUCTION OR TERMINATION TO BE COMMUNICATED IN WRITING; RIGHT TO A HEARING

(REPEALED)

SECTION HISTORY
1973, c. 470, §1 (NEW). 1973, c. 625, §122 (NEW). 1973, c. 788, §§92,93 (RP).

§4502. RIGHT TO PRETERMINATION EVIDENTIARY HEARING

(REPEALED)

SECTION HISTORY
1973, c. 625, §122 (NEW). 1973, c. 681, §8 (AMD). 1973, c. 788, §92 (RP).

§4503. RIGHT TO FAIR HEARING

(REPEALED)

SECTION HISTORY
1973, c. 625, §122 (NEW). 1973, c. 681, §§8-A (AMD). 1973, c. 788, §92 (RP).

§4504. ESTABLISHMENT OF ELIGIBILITY STANDARDS

(REPEALED)

SECTION HISTORY
1973, c. 788, §94 (NEW). 1975, c. 293, §4 (AMD). 1975, c. 623, §32 (AMD). 1977, c. 417, §12 (RPR). 1979, c. 382, §2 (AMD). 1983, c. 577, §15 (RP).

§4505. GRANT, DENIAL, REDUCTION OR TERMINATION TO BE COMMUNICATED IN WRITING; RIGHT TO A HEARING

(REPEALED)

SECTION HISTORY
1973, c. 788, §94 (NEW). 1975, c. 574, §3 (AMD). 1983, c. 577, §16 (RP).

§4506. RIGHT TO PRETERMINATION EVIDENTIARY HEARING

(REPEALED)

SECTION HISTORY
1973, c. 788, §94 (NEW). 1977, c. 417, §13 (RP).

§4507. RIGHT TO A FAIR HEARING

(REPEALED)

SECTION HISTORY
1973, c. 788, §94 (NEW). 1977, c. 417, §14 (RPR). 1983, c. 577, §17 (RP).

§4508. CONFIDENTIALITY OF INFORMATION

(REPEALED)

SECTION HISTORY
1975, c. 574, §4 (NEW). 1983, c. 577, §18 (RP).

Part 6: INDIANS

Chapter 1351: INDIANS AND TRIBES GENERALLY

§4701. INDIAN DEFINED

(REPEALED)

SECTION HISTORY
1979, c. 732, §§16,31 (RP).

§4702. DEPARTMENT OF INDIAN AFFAIRS; COMMISSIONER, QUALIFICATIONS, EMPLOYMENT AND SALARY; PERSONNEL

(REPEALED)

SECTION HISTORY
1965, c. 340, §1 (RPR). 1971, c. 544, §79 (AMD). 1975, c. 293, §4 (AMD). 1977, c. 97, §1 (AMD). 1977, c. 674, §21 (AMD). 1979, c. 732, §§16,31 (RP).

§4703. RECORD OF PROCEEDINGS; ACCOUNT OF RECEIPTS AND EXPENDITURES

(REPEALED)

SECTION HISTORY
1979, c. 732, §§16,31 (RP).

§4704. HEALTH OFFICERS

(REPEALED)

SECTION HISTORY

1979, c. 732, §§16,31 (RP).

§4705. OVERSEERS OF THE POOR AND OTHER SPECIAL OFFICERS

(REPEALED)

SECTION HISTORY
1979, c. 732, §§16,31 (RP).

§4706. CLERKS OF TRIBES

(REPEALED)

SECTION HISTORY
1967, c. 465, §1 (RPR). 1979, c. 732, §§16,31 (RP).

§4707. CONTRACTS OF INDIANS FOR TIMBER AND GRASS

(REPEALED)

SECTION HISTORY
1979, c. 732, §§16,31 (RP).

§4708. LIMITATIONS ON LEASES AND CONTRACTS MADE BY COMMISSIONER

(REPEALED)

SECTION HISTORY
1979, c. 732, §§16,31 (RP).

§4709. ACTIONS BY ATTORNEY GENERAL

(REPEALED)

SECTION HISTORY
1979, c. 732, §§16,31 (RP).

§4710. WARRANTS

(REPEALED)

SECTION HISTORY
1975, c. 771, §226 (AMD). 1979, c. 732, §§16,31 (RP).

§4711. BOUNTIES ON PRODUCE; PROOF

(REPEALED)

SECTION HISTORY
1979, c. 732, §§16,31 (RP).

§4712. ACCOUNT OF APPROPRIATIONS

(REPEALED)

SECTION HISTORY
1979, c. 732, §§16,31 (RP).

§4713. RELIEF OF INDIANS NOT MEMBERS OF TRIBES; STATEMENTS; REIMBURSEMENT

(REPEALED)

SECTION HISTORY
1971, c. 544, §80 (AMD). 1975, c. 293, §4 (AMD). 1977, c. 97, §2 (RPR). 1979, c. 732, §§16,31 (RP).

§4714. EXPENDITURE OF TRIBAL FUNDS

(REPEALED)

SECTION HISTORY
1975, c. 771, §227 (AMD). 1979, c. 732, §§16,31 (RP).

§4715. POSING AS INDIAN IN VENDING

(REPEALED)

SECTION HISTORY
1993, c. 738, §C6 (RP).

§4716. CONSTABLES

(REPEALED)

SECTION HISTORY
1971, c. 622, §§77-B (AMD). 1979, c. 732, §§16,31 (RP).

§4717. ADOPTION OF ORDINANCES BY PENOBSCOT TRIBE AND PASSAMAQUODDY TRIBE OF INDIANS

(REPEALED)

SECTION HISTORY
1965, c. 513, §41 (NEW). 1971, c. 544, §81 (AMD). 1977, c. 694, §370 (AMD). 1979, c. 127, §150 (AMD). 1979, c. 732, §§16,31 (RP).

§4718. REGISTRATION AND LICENSING OF DOGS

(REPEALED)

SECTION HISTORY
1969, c. 95, §1 (NEW). 1979, c. 732, §§16,31 (RP).

§4719. SCHOOL COMMITTEES

(REPEALED)

SECTION HISTORY
1973, c. 353, (NEW). 1973, c. 571, §§53-C (NEW). 1973, c. 783, §43 (AMD). 1973, c. 788, §95 (RP). 1979, c. 732, §§16,31 (RP).

§4720. INDIAN BONES

(REPEALED)

SECTION HISTORY
1973, c. 788, §96 (NEW). 1993, c. 738, §C6 (RP).

§4721. BAPTISMAL RECORDS IN LIEU OF BIRTH CERTIFICATES

(REPEALED)

SECTION HISTORY
1973, c. 740, §1 (NEW). 1993, c. 738, §C6 (RP).

§4722. TRIBAL RELIEF OF THE POOR

(REPEALED)

SECTION HISTORY
1977, c. 97, §3 (NEW). 1979, c. 732, §§16,31 (RP).

§4723. PROGRAM FOR RELIEF; RULE MAKING

(REPEALED)

SECTION HISTORY
1977, c. 97, §3 (NEW). 1979, c. 732, §§16,31 (RP).

§4724. SUPERIOR COURT JURISDICTION

(REPEALED)

SECTION HISTORY
1977, c. 97, §3 (NEW). 1977, c. 694, §371 (AMD). 1979, c. 732, §§16,31 (RP).

§4725. CONFIDENTIALITY OF INFORMATION

(REPEALED)

SECTION HISTORY
1977, c. 97, §3 (NEW). 1979, c. 732, §§16,31 (RP).

Chapter 1352: MAINE INDIAN HOUSING AUTHORITY

§4731. SHORT TITLE

(REPEALED)

SECTION HISTORY
1965, c. 280, (NEW). 1979, c. 732, §§16,31 (RP).

§4732. FINDINGS AND DECLARATION OF NECESSITY

(REPEALED)

SECTION HISTORY
1965, c. 280, (NEW). 1967, c. 252, §1 (AMD). 1979, c. 732, §§16,31 (RP).

§4733. CREATE RESPECTIVE TRIBAL HOUSING AUTHORITIES

(REPEALED)

SECTION HISTORY
1965, c. 280, (NEW). 1967, c. 252, §2 (RPR). 1979, c. 732, §§17,31 (RPR). 1983, c. 421, (AMD). 1983, c. 812, §131 (AMD). 1993, c. 738, §C6 (RP).

§4734. APPOINTMENT AND REMOVAL OF COMMISSIONERS

(REPEALED)

SECTION HISTORY
1965, c. 280, (NEW). 1967, c. 252, §3 (RPR). 1979, c. 732, §§18,31 (RP).

§4735. AREA OF OPERATION

(REPEALED)

SECTION HISTORY
1965, c. 280, (NEW). 1967, c. 252, §4 (RPR). 1967, c. 497, (AMD). 1979, c. 732, §§18,31 (RP).

§4736. REFERENDUM APPROVAL NOT APPLICABLE

(REPEALED)

SECTION HISTORY
1965, c. 280, (NEW). 1967, c. 252, §5 (AMD). 1979, c. 732, §§18,31 (RP).

§4736-A. EMINENT DOMAIN POWER OF THE PENOBSCOT INDIAN TRIBAL GOVERNOR AND COUNCIL

(REPEALED)

SECTION HISTORY
1977, c. 418, (NEW). 1979, c. 732, §§18,31 (RP).

§4736-B. REFERENDUM

(REPEALED)

SECTION HISTORY
1977, c. 418, (NEW). 1979, c. 732, §§18,31 (RP).

§4737. AUTHORIZATION FOR TRANSFER OF REAL PROPERTY

(REPEALED)

SECTION HISTORY
1965, c. 280, (NEW). 1967, c. 252, §6 (RPR). 1979, c. 732, §§18,31 (RP).

§4738. STATE AID

(REPEALED)

SECTION HISTORY
1965, c. 280, (NEW). 1967, c. 252, §7 (AMD). 1979, c. 732, §§18,31 (RP).

§4739. RELATION OF POWERS OF LOCAL OFFICIALS AND STATE PUBLIC BODIES

(REPEALED)

SECTION HISTORY
1965, c. 280, (NEW). 1967, c. 252, §8 (RPR). 1979, c. 732, §§18,31 (RP).

Chapter 1352-A: SCHOOL COMMITTEE

§4741. SCHOOL COMMITTEE

(REPEALED)

SECTION HISTORY
1973, c. 333, §1 (NEW). 1973, c. 625, §124 (RP).

§4742. SUPERINTENDENT

(REPEALED)

SECTION HISTORY
1973, c. 333, §1 (NEW). 1973, c. 625, §124 (RP).

§4743. PERSONNEL AND FISCAL POLICIES

(REPEALED)

SECTION HISTORY
1973, c. 333, §1 (NEW). 1973, c. 625, §124 (RP).

Chapter 1353: PENOBSCOT TRIBE

§4761. MEMBERSHIP

(REPEALED)

SECTION HISTORY
1967, c. 494, §§17-A (AMD). 1979, c. 732, §§18,31 (RP).

§4762. ADOPTION OF PERSON INTO TRIBE; RIGHTS CONFERRED UPON ADOPTED MEMBERS; EXCLUSION FROM CERTAIN OFFICES

(REPEALED)

SECTION HISTORY

1967, c. 494, §§17-B (AMD). 1973, c. 232, (RPR). 1979, c. 732, §§18,31 (RP).

§4763. FILING CERTIFICATE OF ADOPTION

(REPEALED)

SECTION HISTORY
1967, c. 494, §§17-C (AMD). 1973, c. 232, (RPR). 1979, c. 732, §§18,31 (RP).

§4764. OATH OF ADOPTED PERSONS

(REPEALED)

SECTION HISTORY
1969, c. 433, §53 (AMD). 1971, c. 598, §43 (AMD). 1973, c. 232, (RPR). 1979, c. 732, §§18,31 (RP).

§4765. LOSS OF MEMBERSHIP BY ABANDONMENT

(REPEALED)

SECTION HISTORY
1979, c. 732, §§18,31 (RP).

§4766. LOSS OF MEMBERSHIP DOES NOT AFFECT MEMBERSHIP OF OTHER MEMBERS OF FAMILY

(REPEALED)

SECTION HISTORY
1979, c. 732, §§18,31 (RP).

§4767. RESTORATION TO MEMBERSHIP

(REPEALED)

SECTION HISTORY
1967, c. 494, §§17-D (AMD). 1979, c. 732, §§18,31 (RP).

§4768. DIVIDENDS AND RENTALS WITH RESPECT TO NONRESIDENT MEMBERS

(REPEALED)

SECTION HISTORY
1979, c. 732, §§18,31 (RP).

§4769. FORFEITED MONEY USED FOR FAMILY BENEFIT

(REPEALED)

SECTION HISTORY
1979, c. 732, §§18,31 (RP).

§4770. REMOVAL OF NONMEMBERS FROM RESERVATION

(REPEALED)

SECTION HISTORY
1979, c. 105, (RPR). 1979, c. 541, §A150 (AMD). 1979, c. 732, §§18,31 (RP).

§4771. DESTITUTE PERSONS ON RESERVATION

(REPEALED)

SECTION HISTORY
1977, c. 97, §4 (RP).

§4772. DESTITUTE MEMBERS OUTSIDE OF RESERVATION

(REPEALED)

SECTION HISTORY
1971, c. 544, §82 (AMD). 1975, c. 293, §4 (AMD). 1977, c. 97, §5 (RP).

§4773. PAYMENTS DUE UNDER TREATY OR LAW

(REPEALED)

SECTION HISTORY
1979, c. 732, §§18,31 (RP).

§4774. SCHOOLS

(REPEALED)

SECTION HISTORY
1965, c. 87, §§1,2 (AMD). 1965, c. 450, §2 (RP). 1965, c. 513, §42 (RP).

§4774-A. INDIAN ISLAND PENOBSCOT SCHOOL COMMITTEE

(REPEALED)

SECTION HISTORY
1971, c. 383, §1 (NEW). 1973, c. 333, §3 (RP). 1973, c. 571, §54 (AMD). 1973, c. 571, §§56-A (RP).

§4775. LEASE OF ISLANDS

(REPEALED)

SECTION HISTORY
1979, c. 732, §§18,31 (RP).

§4776. RESTRICTIONS ON SALE OF WOOD OR TIMBER

(REPEALED)

SECTION HISTORY
1979, c. 732, §§18,31 (RP).

§4777. CONVEYANCES

(REPEALED)

SECTION HISTORY
1979, c. 541, §A151 (AMD). 1979, c. 732, §§18,31 (RP).

§4778. LOTS NOT TO BE SOLD OR LEASED

(REPEALED)

SECTION HISTORY
1979, c. 732, §§18,31 (RP).

§4779. SURVEYS; TRIBAL USE OF WATERS AND TIMBERLANDS

(REPEALED)

SECTION HISTORY
1979, c. 541, §A152 (AMD). 1979, c. 732, §§18,31 (RP).

§4780. ASSIGNMENTS OF UNASSIGNED LANDS

(REPEALED)

SECTION HISTORY
1967, c. 99, §1 (AMD). 1973, c. 625, §126 (AMD). 1979, c. 732, §§18,31 (RP).

§4781. -- CERTIFICATE OF COMMISSIONER; FORM

(REPEALED)

SECTION HISTORY
1967, c. 99, §2 (AMD). 1967, c. 494, §§17-E (AMD). 1979, c. 732, §§18,31 (RP).

§4782. ABANDONMENT AS FORFEITURE OF LANDS

(REPEALED)

SECTION HISTORY
1979, c. 732, §§18,31 (RP).

§4783. DEATH OF LANDOWNER

(REPEALED)

SECTION HISTORY
1979, c. 732, §§18,31 (RP).

§4784. CONVEYANCES BY RELEASE DEED; LOTS ON OLD TOWN ISLAND; MISCELLANEOUS DEFECTS

(REPEALED)

SECTION HISTORY

1973, c. 299, (RPR). 1973, c. 788, §97 (AMD). 1979, c. 732, §§18,31 (RP).

§4785. DEPOSIT OF DEEDS WITH COMMISSIONER

(REPEALED)

SECTION HISTORY
1979, c. 732, §§18,31 (RP).

§4786. COPIES OF DEEDS AS EVIDENCE

(REPEALED)

SECTION HISTORY
1979, c. 732, §§18,31 (RP).

§4787. LEASE OF ISLAND SHORES

(REPEALED)

SECTION HISTORY
1979, c. 541, §A153 (AMD). 1979, c. 732, §§18,31 (RP).

§4788. PRIVILEGES FOR MILLS, BOOMS AND FISHERIES

(REPEALED)

SECTION HISTORY
1979, c. 732, §§18,31 (RP).

§4789. WARRANTS FOR INTEREST ON 4 TOWNSHIPS PURCHASED; RENTS

(REPEALED)

SECTION HISTORY
1975, c. 771, §228 (AMD). 1979, c. 732, §§18,31 (RP).

§4790. EXCISE TAXES

(REPEALED)

SECTION HISTORY
1967, c. 465, §2 (RP). 1967, c. 494, §§17-F (AMD). 1967, c. 544, §61 (RP).

§4791. CENSUS; ANNUAL MEETING; NOTICES; CORRECTION OF LISTS; COMPENSATION OF COUNCIL

(REPEALED)

SECTION HISTORY
1967, c. 494, §§17-G (AMD). 1979, c. 732, §§18,31 (RP).

§4792. PENOBSCOT TRIBAL ELECTIONS

(REPEALED)

SECTION HISTORY
1967, c. 166, (AMD). 1967, c. 494, §§17-H (AMD). 1967, c. 544, §62 (AMD). 1969, c. 249, (AMD). 1969, c. 433, §§54,55 (AMD). 1969, c. 590, §§33,34 (AMD). 1971, c. 432, §1 (AMD). 1971, c. 540, (AMD). 1971, c. 598, §44 (AMD). 1973, c. 130, §1 (RPR). 1975, c. 771, §229 (AMD). 1979, c. 83, (AMD). 1979, c. 84, (AMD). 1979, c. 732, §§18,31 (RP).

§4793. GOVERNOR AND COUNCIL

(REPEALED)

SECTION HISTORY
1973, c. 130, §2 (NEW). 1977, c. 97, §6 (AMD). 1979, c. 122, (AMD). 1979, c. 732, §§18,31 (RP).

§4794. FISH AND WILDLIFE VIOLATIONS ON TRIBAL LAND

(REPEALED)

SECTION HISTORY
1979, c. 85, (NEW). 1979, c. 732, §§18,31 (RP).

Chapter 1355: PASSAMAQUODDY TRIBE

§4831. PASSAMAQUODDY TRIBAL ELECTIONS

(REPEALED)

SECTION HISTORY
1967, c. 167, (AMD). 1967, c. 494, §§17-I (AMD). 1967, c. 544, §63 (RPR). 1969, c. 433, §§56,57 (AMD). 1971, c. 432, §§2,3 (AMD). 1971, c. 598, §45 (AMD). 1973, c. 104, (RPR). 1973, c. 740, §2 (RPR). 1975, c. 97, §3 (AMD). 1975, c. 771, §230 (AMD). 1977, c. 434, §§1-3 (AMD). 1979, c. 732, §§18,31 (RP).

§4831-A. PASSAMAQUODDY TRIBAL GOVERNMENT

(REPEALED)

SECTION HISTORY
1973, c. 740, §3 (NEW). 1975, c. 97, §§4-6 (AMD). 1977, c. 434, §4 (AMD). 1979, c. 732, §§18,31 (RP).

§4832. CENSUS AND MEMBERSHIP

(REPEALED)

SECTION HISTORY
1967, c. 494, §§17-J (AMD). 1973, c. 62, (RPR). 1975, c. 97, §§7,8 (AMD). 1979, c. 732, §§18,31 (RP).

§4833. APPLICABILITY OF PROVISIONS

(REPEALED)

SECTION HISTORY
1979, c. 732, §§18,31 (RP).

§4834. INDIAN TOWNSHIP FOREST RESOURCES; PASSAMAQUODDY TRUST FUNDS

(REPEALED)

SECTION HISTORY
1969, c. 217, (RPR). 1973, c. 141, (AMD). 1973, c. 460, §18 (AMD). 1975, c. 72, §§1,2 (AMD). 1979, c. 183, (AMD). 1979, c. 732, §§18,31 (RP).

§4835. NO SALE OR PERMITS FOR FOREIGNERS

(REPEALED)

SECTION HISTORY
1979, c. 732, §§18,31 (RP).

§4836. CERTIFICATION TO CONTROLLER; WARRANTS FOR PAYMENT

(REPEALED)

SECTION HISTORY
1979, c. 732, §§18,31 (RP).

§4837. REMOVAL OF POOR TO RESERVATIONS; REIMBURSEMENT TO TOWNS

(REPEALED)

SECTION HISTORY
1973, c. 625, §127 (AMD). 1975, c. 293, §4 (AMD). 1977, c. 97, §7 (RP).

§4838. SCHOOLS

(REPEALED)

SECTION HISTORY
1965, c. 87, §3 (AMD). 1965, c. 450, §3 (RP). 1965, c. 513, §43 (RP).

§4839. INDIAN TOWNSHIP PASSAMAQUODDY SCHOOL COMMITTEE

(REPEALED)

SECTION HISTORY
1969, c. 463, (NEW). 1973, c. 333, §3 (RP). 1973, c. 571, §55 (AMD). 1973, c. 571, §§56-A (RP).

§4840. PLEASANT POINT PASSAMAQUODDY SCHOOL COMMITTEE

(REPEALED)

SECTION HISTORY

1971, c. 384, §1 (NEW). 1973, c. 333, §3 (RP). 1973, c. 571, §56 (AMD). 1973, c. 571, §§56-A (RP).

Subtitle 4: HUMAN SERVICES

Part 1: SERVICES TO MAINE'S AGING AND ADULTS

Chapter 1451: GENERAL PROVISIONS

§5101. SHORT TITLE

This Act may be cited as the "1973 Act of Maine's Elderly." [1973, c. 630, §1 (NEW).]

SECTION HISTORY
1973, c. 630, §1 (NEW).

§5102. DECLARATION OF A PEOPLE

This declaration of a people shall serve as a credo of the elderly offering a philosophy that serves as a general state of policy and basic tenets to guide the administration and implementation of this Act. The declaration of a people: [1973, c. 630, §1 (NEW).]

We older Americans place great emphasis on leading a life of value to our nation, states, communities, friends, families and to ourselves. America's elderly want to and are able to contribute to the good of our fellow human beings, even if such contribution lies outside the traditional realms of employment and productivity. We want to help improve the quality of life of each citizen of the United States regardless of his age. Our personal experiences, knowledge and skills are our qualifications. We are a strong, vital segment of society. We possess the power of a people. [1973, c. 630, §1 (NEW).]

We older Americans believe that attaining the status of senior citizen is merely beginning another stage in the life of each man and is not a signal to withdraw from life. Each person ages from birth to death. We are all aging men. [1973, c. 630, §1 (NEW).]

While our particular page in the history of mankind is the choice of our Creator, it is our place in history which surrounds us with the consequences of American society. Aging men have been transformed by the events of American society. America's elderly now gain sustenance and meet social needs outside our homes, and have no family under our roof. Once we were dependent on our family, now we are dependent on impersonal organizations, systems and our society as a whole. America's exiling of us as the unwanted generation is its loss -- its economic, its human, its moral, its spiritual loss. [1973, c. 630, §1 (NEW).]

We do not want to be taken from the mainstream of life, away from the everyday activities of society, and put on the shelf. We do not want a dole, but rather help in our times of crisis. We wish to live with minimum dependence on other people and government. [1973, c. 630, §1 (NEW).]

To achieve this credo, we older Americans believe the United States must provide us a full and equal opportunity for meeting sustenance and social needs -- the same opportunity that is enjoyed by our fellow citizens. To continue fulfilling our role in history, to continue helping our fellow human beings and to enrich our society; the elderly must be provided an opportunity to attain the basic essentials of life. [1973, c. 630, §1 (NEW).]

To achieve this credo, we believe older Americans must plan, establish, direct and operate our own programs and services. We also believe we must participate in the administration and operation of programs conducted by others for our benefit. Through our programs, we intend to bring benefits not just to ourselves, but to all generations in fulfillment of our personal responsibility to help improve the quality of life of all human beings. [1973, c. 630, §1 (NEW).]

To assist us, our families -- children, brothers, sisters, nieces and nephews -- must care about us. Is it too much to seek, that the people to whom we devoted ourselves, devote themselves to us? [1973, c. 630, §1 (NEW).]

To assist us, the government of the United States of America and each State of the Union must conduct programs which are mutually acceptable to us. The programs must be fostered by units on aging located at the highest echelons of government and charged with ultimate line authority and responsibility for any government program serving the elderly. [1973, c. 630, §1 (NEW).]

Government should not do all for the elderly, but rather challenge and help citizens to grasp their personal responsibilities. Government should not be the sole keeper of America's elderly, but rather a help in times of crisis. Programs must help us care for ourselves. They must encourage all people, especially our families to care about us. Programs must provide a strong advocacy of America's elderly, unencumbered by the restrictions of partisan politics and the pressures of special interests, except those interests inherent to this credo of the elderly. [1973, c. 630, §1 (NEW).]

Programs we operate must be distinct and clearly identified as intended to benefit older people, or be identified as the elderly's way of helping mankind. Government programs benefiting America's elderly must be distinct and visibly separate from other government services. This distinctness must be maintained in legislation, sources of funds and generally in operation of programs and services. We believe our policy provides that programs serving older people may be integrated with programs serving broader populations in those instances where gross duplication of identical programs would otherwise result. We also believe that programs with features specifically needed by older people must not be integrated with programs serving broader populations -- even though the programs may be similar -- except where it is conclusively demonstrated that such specific features will be retained or that greater benefits will accrue to the elderly from the integration of programs. [1973, c. 630, §1 (NEW).]

First, older people must receive income adequate to obtain the basic essentials of life from the market place, like our fellow Americans; rather than be given income supplement programs, such as food stamps, Old Age Assistance, subsidized housing and property tax relief. Secondly, the elderly with a time of crisis because of age, physical condition or social status must be assisted by appropriations providing services directly to them, such as homemakers, meals on wheels, home health care and nursing homes. [1973, c. 630, §1 (NEW).]

AMERICA MUST CONSIDER AND DECIDE HOW TO ACHIEVE PURPOSEFUL, PRIMARY GOALS TO GIVE AGING MEN THE OPPORTUNITY OF RETURNING TO A FULLER EXISTENCE OR AMERICA SHALL CONTINUE TO RELEGATE AGING MEN TO THE BACK DOOR STOOP OF HISTORY WHERE WE WILL SLIDE INVISIBLY AND UNNOTICED INTO EXTINCTION. THE LAST CHOICE IS NOT ACCEPTABLE. [1973, c. 630, §1 (NEW).]

Responsibility for achieving this credo rests on the shoulders of all Americans, but especially our own. We shall attain a life of greater value if each American accepts his personal responsibility for his fellow human beings. We shall reestablish our role in society by operating services to help all generations. We shall resurrect our independence by redirecting the country's resources. [1973, c. 630, §1 (NEW).]

We shall express the status of our survival to all Americans. We shall carry our call to all the sources of help, to all the seats of power. We shall wield our power as a people. Through our own groups, we shall shatter the bondage of our geriatric shackles. [1973, c. 630, §1 (NEW).]

As older Americans, we grasp the gauntlet of this credo. We pledge ourselves to it. We shall achieve it. We accept the credo's challenge, not with the intent of personal gain, but rather remembering that, what we achieve today will benefit those who follow, for we will soon be gone. [1973, c. 630, §1 (NEW).]

SECTION HISTORY
1973, c. 630, §1 (NEW).

§5103. DECLARATION OF OBJECTIVES

1. **Objectives.** It is declared that, in keeping with the traditional American concept of the inherent dignity of the individual in our society, the older people of our State are entitled to, and it is the joint and several duty of the individual, his family, relatives and friends; the community and private agencies of the

community; and the governments of the political subdivisions of this State, the State of Maine and the United States of America to assist our older people to secure equal opportunity to full and free enjoyment of the following objectives:

A. An adequate income in retirement in accordance with the American standard of living; [1973, c. 630, §1 (NEW).]

B. The best possible physical and mental health which science can make available and without regard to economic status; [1973, c. 630, §1 (NEW).]

C. Suitable housing, independently selected, designed and located with reference to special needs and available at costs which older citizens can afford; [1973, c. 630, §1 (NEW).]

D. Full restorative services for those who require institutional care; [1973, c. 630, §1 (NEW).]

E. Opportunity for employment with no discriminatory personnel practices because of age; [1973, c. 630, §1 (NEW).]

F. Retirement in health, honor and dignity after years of contribution to the economy; [1973, c. 630, §1 (NEW).]

G. Pursuit of a meaningful life within the widest range of civic, cultural, and recreational opportunities; [1973, c. 630, §1 (NEW).]

H. Efficient community services, including access to low-cost transportation, which provide social assistance in a coordinated manner and which are readily available when needed; [1973, c. 630, §1 (NEW).]

I. Immediate benefit from proven research knowledge which can sustain and improve health and happiness; [1973, c. 630, §1 (NEW).]

J. Freedom, independence and the free exercise of individual initiative in planning and managing their own lives. [1973, c. 630, §1 (NEW).]

[1973, c. 630, §1 (NEW) .]

2. **Purpose.** It is further declared that thousands of older people in this State are suffering unnecessary harm from the lack of adequate services. It is therefore the purpose of this Act, in support of the above objectives, to:

A. Make available programs which include a full range of health, education and social services to our older citizens who need them; [1973, c. 630, §1 (NEW).]

B. Give full and special consideration to older citizens with special needs in planning such programs and, pending the availability of such programs for all older citizens, give priority to the elderly with the greatest economic and social need; [1973, c. 630, §1 (NEW).]

C. Provide programs which will assure the coordinated and effective delivery of a full range of essential services to our older citizens and, where applicable, also furnish meaningful employment opportunities for many individuals, including older persons, young persons and volunteers from the community; and [1973, c. 630, §1 (NEW).]

D. Insure that the planning and operation of such programs will be undertaken as a partnership of older citizens, families, community leaders, private agencies and community, state and local governments, with appropriate assistance as available from the Federal Government. [1973, c. 630, §1 (NEW).]

[1973, c. 630, §1 (NEW) .]

SECTION HISTORY
1973, c. 630, §1 (NEW).

§5104. DEFINITIONS

For the purposes of this Act, unless the context otherwise indicates, the following words shall have the following meanings. [1973, c. 793, §3 (RPR).]

1. **Agreement.** "Agreement" means a legally binding document between 2 parties including such documents as are commonly referred to as accepted application, proposal, prospectus, contract, grant, joint or cooperative agreement or purchase of service.

[1973, c. 793, §3 (RPR) .]

1-A. **Adult.** "Adult" means any person who has attained the age of 18 years or who is a legally emancipated minor.

[1989, c. 329, §7 (NEW) .]

1-B. **Aging, elderly or older person.** "Aging, elderly or older person" are synonymous terms, and mean any person 60 years of age or older or any person otherwise described as elderly or older for the purpose of eligibility for assistance or services under specific federal or state laws and programs.

[1989, c. 329, §7 (NEW) .]

2. **Bureau or state agency.**

[2011, c. 657, Pt. BB, §4 (RP) .]

3. **Commissioner.** "Commissioner" means the Commissioner, Maine Department of Health and Human Services, or his successors.

[1975, c. 293, §4 (AMD); 2003, c. 689, Pt. B, §7 (REV) .]

4. **Committee.**

[2011, c. 657, Pt. BB, §5 (RP) .]

5. **Department.** "Department" means the Maine Department of Health and Human Services.

[1975, c. 293, §4 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

5-A. **Dependent adult.** "Dependent adult" means any adult who is wholly or partially dependent upon one or more other persons for care or support, either emotional or physical, and who would be in danger if that care or support were withdrawn.

[2011, c. 542, Pt. A, §37 (AMD) .]

6. **Director.**

[2011, c. 657, Pt. BB, §6 (RP) .]

7. **Elderly or older people.**

[1989, c. 329, §11 (RP) .]

7-A. **Incapacitated adult.** "Incapacitated adult" means any adult who is impaired by reason of mental illness, mental deficiency, physical illness or disability to the extent that the adult lacks sufficient understanding or capacity to make or communicate responsible decisions concerning that individual's person, or to the extent the adult cannot effectively manage or apply that individual's estate to necessary ends.

[2011, c. 542, Pt. A, §38 (AMD) .]

8. **Nonprofit organization.** "Nonprofit organization" means any agency, institution or organization which is, or is owned and operated by, one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and which has a territory of operations that may extend to a neighborhood or community region or the State.

[1989, c. 329, §13 (AMD) .]

9. **Public.** "Public" means municipal, county and other governmental bodies which are political subdivisions within the State of Maine.

[1973, c. 793, §3 (NEW) .]

10. **Rural area.** "Rural area" means a geographical area or place of less than 10,000 inhabitants. "Rural population" consists of all persons living in places of less than 10,000 inhabitants incorporated as cities, villages, boroughs and towns, including those persons living in the rural portions of extended cities, unincorporated places of less than 10,000 inhabitants and other territory, incorporated or unincorporated.

[1975, c. 90, §C, §1 (NEW) .]

11. **Extended city.** "Extended city" means a city containing one or more areas, each of at least 5 square miles in extent and with a population density of less than 100 persons per square mile according to the 1970 census. The area or areas shall constitute at least 25% of the land area of the legal city or total 5 square miles or more.

[1975, c. 90, §C, §1 (NEW) .]

SECTION HISTORY
1973, c. 630, §1 (NEW). 1973, c. 793, §3 (RPR). P&SL 1975, c. 90, §§SEC.C,1 (AMD). 1975, c. 293, §4 (AMD). 1981, c. 470, §A103 (AMD). 1989, c. 329, §§7-13 (AMD). 2003, c. 689, §B6 (REV). 2011, c. 542, Pt. A, §§37, 38 (AMD). 2011, c. 657, Pt. BB, §§4-6 (AMD).

§5104-A. STATE AGENCIES TO COOPERATE

State agencies shall cooperate fully with the department in carrying out this Part. The department is authorized to request such personnel, financial assistance, facilities and data as are reasonably required to assist it to fulfill its powers and duties. [2011, c. 657, Pt. BB, §7 (AMD).]

State agencies proposing to develop, establish, conduct or administer programs or to assist programs relating to this Part shall, prior to carrying out such actions, consult with the department. [2011, c. 657, Pt. BB, §7 (AMD).]

All agencies of State Government shall advise the department of their proposed administrative fiscal and legislative activities relating to this Part. [2011, c. 657, Pt. BB, §7 (AMD).]

State agencies, in the implementation of their activities relating to this Part, shall keep the department fully informed of their progress. [2011, c. 657, Pt. BB, §7 (AMD).]

SECTION HISTORY
1973, c. 793, §4 (NEW). 2011, c. 657, Pt. BB, §7 (AMD).

Chapter 1453: ELDER AND ADULT SERVICES

§5105. BUREAU OF ELDER AND ADULT SERVICES

(REPEALED)

SECTION HISTORY
1973, c. 630, §1 (NEW). 1973, c. 793, §6 (RPR). P&SL 1975, c. 90, §C5 (AMD). 1975, c. 293, §4 (AMD). 1975, c. 771, §231 (AMD). 1985, c. 785, §B94 (AMD). 1989, c. 329, §15 (AMD). 2003, c. 689, §B6 (REV). 2007, c. 539, Pt. N, §39 (AMD). 2011, c. 657, Pt. BB, §8 (RP).

§5106. POWERS AND DUTIES

The department shall establish, in accordance with the purposes and intent of this Part, the overall planning, policy, objectives and priorities for all functions and activities conducted or supported in the State that relate to Maine's aging population and incapacitated and dependent adults. In order to carry out the above, the department has the power and duty to: [2011, c. 657, Pt. BB, §9 (AMD).]

1. **Encourage and assist development.** Encourage and assist development of more coordinated use of existing and new resources and services relating to Maine's aging population and incapacitated and dependent adults;

[1989, c. 329, §16 (AMD) .]

2. **Information system.** Develop and maintain an up-to-date information system related to Maine's aging population and incapacitated and dependent adults. The information must be available for use by the people of Maine, the political subdivisions, public and private nonprofit agencies and the State. Educational materials must be prepared, published and disseminated. Objective devices and research methodologies must be continuously developed. Maintaining statistical information through uniform methods that are reasonably feasible and economically efficient must be specified for use by public and private agencies, organizations and individuals. Existing sources of information must be used to the fullest extent possible, while maintaining confidentiality safeguards of state and federal law. Information may be requested and received from any state government or public or private agency. To the extent reasonable and feasible, information must maintain compatibility with federal information sharing standards.

Functions of this information system include, but are not limited to:

A. Conducting research on the causes and nature of problems relating to Maine's aging population and incapacitated and dependent adults; [1989, c. 329, §16 (AMD).]

B. Collecting, maintaining and disseminating such knowledge, data and statistics related to Maine's aging population and incapacitated and dependent adults as will enable the department to fulfill its responsibilities; [2011, c. 657, Pt. BB, §9 (AMD).]

C. Determining through a detailed survey the extent of problems relating to Maine's aging population and incapacitated and dependent adults and the needs and priorities for solving such problems in the state and political subdivisions; [1989, c. 329, §16 (AMD).]

D. Maintaining an inventory of the types and quantity of facilities, programs and services operated under public or private auspices for Maine's aging population and incapacitated and dependent adults. This function must include the unduplicated count, location and characteristics of people served by each facility, program or service; and the amount, type and source of resources supporting functions related to Maine's aging population and incapacitated and dependent adults; and [2011, c. 657, Pt. BB, §9 (AMD).]

E. Conducting a continuous evaluation of the impact, quality and value of facilities, programs and services, including their administrative adequacy and capacity. Activities operated by or with the assistance of the State and the Federal Government must be evaluated. Activities to be included, but to which the department is not limited, are those relating to education, employment and vocational services, income, health, housing, transportation, community, social, rehabilitation, protective services and public guardianship or conservatorship for older people and incapacitated and dependent adults and programs such as the supplemental security income program, Medicare, Medicaid, property tax refunds and the setting of standards for the licensing of nursing, intermediate care and boarding homes. Included are activities as authorized by this and so much of the several Acts and amendments to them enacted by the people of the State and those authorized by United States Acts and amendments to them such as the:

(1) Elderly Householders Tax and Rent Refund Act of 1971;

(2) Priority Social Services Act of 1973;

(3) Chapter 470 of the public laws of 1969 creating the State Housing Authority;

(4) United States Social Security Act of 1935;

(5) United States Housing Act of 1937;

(6) United States Older Americans Act of 1965;

(7) United States Age Discrimination Act of 1967;

(8) Home Based Care Act of 1981;

(9) Congregate Housing Act of 1979;

(10) Adult Day Care Services Act of 1983;

(11) Adult Day Care Licensing Act of 1987;

(12) Adult Protective Services Act of 1981;

(13) The Uniform Probate Code, Title 18-A;

(14) The Americans with Disabilities Act of 1990;

(15) The Developmental Disabilities Assistance and Bill of Rights Act of 2000; and

(16) The ADA Amendments Act of 2008; [2011, c. 657, Pt. BB, §9 (AMD).]

[2011, c. 657, Pt. BB, §9 (AMD) .]

3. **Coordination of efforts.** Assist the Legislative and Executive Branches of State Government, especially the Governor and the Bureau of the Budget, to coordinate all State Government efforts relating to Maine's aging population and incapacitated and dependent adults, by:

A. Submitting to each branch of State Government no later than September 1st of each year an annual report covering its activities for the immediately past fiscal year and future plans, including recommendations for changes in state and federal laws; [2011, c. 657, Pt. BB, §9 (AMD).]

B. Reviewing all proposed legislation, fiscal activities, plans, policies and other administrative functions relating to Maine's aging population and incapacitated and dependent adults made by or requested of all state agencies. The department has the authority to submit to those bodies findings, comments and recommendations, which are advisory. Such findings and comments must recommend what modification in proposals or actions is required to make proposed legislation, fiscal activities and administrative activities consistent with such policies and priorities; and [2011, c. 657, Pt. BB, §9 (AMD).]

C. Making recommendations to the respective branches of State Government related to improving the quality of life of Maine's aging population and incapacitated and dependent adults, and shall consult with and be consulted by all responsible state agencies regarding the policies, priorities and objectives of functions related to Maine's aging population and incapacitated and dependent adults; [2011, c. 657, Pt. BB, §9 (AMD).]

[2011, c. 657, Pt. BB, §9 (AMD) .]

4. **Comprehensive state plan.** Prepare and administer a comprehensive state plan relating to Maine's aging population and incapacitated and dependent adults, developed by the department subject to the direction of the commissioner. The comprehensive state plan must be implemented for the purpose of coordinating all activities and of assuring compliance with applicable state and federal laws and regulations relating to Maine's aging population and incapacitated and dependent adults. Implementation of this duty means that the department has the authority, through a review process, to advise on the preparation and administration of any portion of any state plan relating to Maine's aging population and incapacitated and dependent adults, prepared and administered by any agency of State Government for submission to the Federal Government to obtain federal funding under federal legislation. Such state plans, or portions thereof, must include, but are not limited to, all state plans dealing with education, employment and vocational services, income, health, housing, protective services, public guardianship and conservatorship, rehabilitation, social services, transportation and welfare. The department shall advise the commissioner and Governor on preparation of and provisions to be included in such plans relating to Maine's aging population and incapacitated and dependent adults;

[2011, c. 657, Pt. BB, §9 (AMD) .]

5. **Programs.** Plan, establish and maintain necessary or desirable programs for individuals or groups of individuals. The department may use the full range of its powers and duties to serve Maine's aging population and incapacitated and dependent adults through indirect services provided by agreement and through direct services provided by state employees;

[2011, c. 657, Pt. BB, §9 (AMD) .]

6. **Organizational unit.** Function as the organizational unit of State Government with sole responsibility for conducting and coordinating, subject to the direction of the commissioner, programs authorized by this Part and so much of the several Acts, amendments and successors to them enacted by the people of the State and those authorized by the United States Acts, amendments and successors to them as relate to Maine's aging population and incapacitated and dependent adults:

A. The 1973 Act of Maine's Elderly; [1973, c. 793, §6 (NEW).]

B. The Priority Social Service Act of 1973, including only meals for older people, transportation for older people and coordinated elderly programs; [1989, c. 329, §16 (AMD).]

C. The United States Older Americans Act of 1965; and [1989, c. 329, §16 (AMD).]

D. Adult Protective Services Act of 1981. [1989, c. 329, §16 (NEW).]

The department is designated as the single agency of State Government solely responsible for administering, subject to the direction of the commissioner, any state plans as may be required by the above Acts, and for administering programs of Acts of the State or United States relating to Maine's aging population and incapacitated and dependent adults that are not the specific responsibility of another state agency under state or federal law;

[2011, c. 657, Pt. BB, §9 (AMD) .]

7. **Mobilize resources.** Help communities mobilize their resources to benefit Maine's aging population and incapacitated and dependent adults. The department shall provide or coordinate the provision of information, technical assistance and consultation to state, regional and local governments, and to public and private nonprofit agencies, institutions, organizations and individuals. The help is for the purpose of encouraging, developing and assisting with the initiation, establishment and administration of any plans, programs or services with a view to the establishment of a statewide network of comprehensive, coordinated services and opportunities for Maine's aging population and incapacitated and dependent adults. Included in this duty is authority to coordinate the efforts and enlist the assistance of all public and private agencies, organizations and individuals interested in Maine's aging population and incapacitated and dependent adults;

[2011, c. 657, Pt. BB, §9 (AMD) .]

8. **Funds.** Seek and receive funds from the Federal Government and private sources to further its activities. Included in this function is authority to solicit, accept, administer, disburse and coordinate for the State in accordance with the intent, objectives and purposes of this Part; and within any limitation that may apply from the sources of such funds, the efforts to obtain and the use of any funds from any source to benefit Maine's aging population and incapacitated and dependent adults. Any gift of money or property made by will or otherwise, and any grant or other funds appropriated, services or property available from the Federal Government, the State or any political subdivision thereof and from all other sources, public or private, may be accepted and administered. The department may do all things necessary to cooperate with the Federal Government or any of its agencies in making application for any funds. Included in this duty is authority to advise regarding the disbursement of all state funds, or funds administered through agencies of State Government, appropriated or made available to benefit Maine's aging population and incapacitated and dependent adults;

[2011, c. 657, Pt. BB, §9 (AMD) .]

9. **Agreements.** Enter into agreements necessary or incidental to the performance of its duties. Included is the power to make agreements with qualified community, regional and state level, private nonprofit and public agencies, organizations and individuals in this and other states to develop or provide facilities, programs and services for Maine's aging population and incapacitated and dependent adults. Agreements with such agencies, organizations and individuals may be executed only with agencies reviewed by the area agency pursuant to section 5116, subsection 1, paragraph B. The department may engage expert advisors and assistants, who may serve without compensation or may be compensated to the extent funds may be available by appropriation, grant or allocation from a state department. The department may pay for such expert advisors or assistants;

[2011, c. 657, Pt. BB, §9 (AMD) .]

10. **Rules.** Prepare, adopt, amend, rescind and administer, subject to the direction of the commissioner, policies, priorities, procedures and rules to govern its affairs and the development and operation of facilities, programs and services. The department may adopt rules to carry out the powers and duties pursuant to this Part and in accordance with the purpose and objectives of this Part. It shall especially adopt such rules as may be necessary to define contractual terms, conditions of agreements and all other rules as are necessary for the proper administration of this Part. Such adoption, amendment and rescission must be made as provided under the Maine Administrative Procedure Act;

[2011, c. 657, Pt. BB, §9 (AMD) .]

11. **Educational program.** Develop and implement, as an integral part of programs, an educational program; assist in the development of, and cooperation with, educational programs for employees of state and local governments and businesses and industries in the State; and convene and conduct conferences of public

and private nonprofit organizations concerned with the development and operation of programs for Maine's aging population and incapacitated and dependent adults. Included is the power to sponsor the Blaine House Conference on Aging;

[2011, c. 657, Pt. BB, §9 (AMD) .]

11-A. **Elderly Legal Services Program.** Support and maintain an Elderly Legal Services Program, by agreement with such nonprofit organization as the department finds best able to provide direct services to those of Maine's elderly in greatest economic and social need throughout the State;

[2011, c. 657, Pt. BB, §9 (AMD) .]

11-B. **Adult protective services.** Administer a program of protective services as provided in chapter 958-A designed to protect incapacitated and dependent adults from abuse, neglect, exploitation and physical danger. The program is described in the Adult Protective Services Act;

[2011, c. 542, Pt. A, §40 (AMD) .]

11-C. **Long-term care ombudsman program.** Support and maintain a long-term care ombudsman program, in accordance with the federal 1987 Older Americans Act, 42 United States Code, as amended, by agreement with such nonprofit organization as the department finds best able to provide the services;

[2011, c. 657, Pt. BB, §9 (AMD) .]

12. **Training programs.** Foster, develop, organize, conduct or provide for the conduct of training programs for persons in the field of serving Maine's aging population and incapacitated and dependent adults;

[1989, c. 329, §16 (NEW) .]

13. **Coordinate activities.** Coordinate activities and cooperate with programs in this and other states for the common advancement of programs for Maine's aging population and incapacitated and dependent adults; and

[2011, c. 657, Pt. BB, §9 (AMD) .]

14. **Establish and maintain an office.**

[2011, c. 657, Pt. BB, §9 (RP) .]

15. **Duties.** Do such other acts and exercise such other powers necessary or convenient to execute and carry out the purposes and authority expressly granted in this Part.

[1973, c. 793, §6 (NEW) .]

SECTION HISTORY
1973, c. 630, §1 (NEW). 1973, c. 793, §6 (RPR). 1975, c. 293, §4 (AMD). 1981, c. 463, §D1 (AMD). 1981, c. 470, §§A104-A111 (AMD). 1983, c. 523, §1 (AMD). 1989, c. 329, §16 (AMD). 1991, c. 622, §QQ1 (AMD). 2003, c. 653, §21 (AMD). 2003, c. 689, §B7 (REV). 2011, c. 542, Pt. A, §§39, 40 (AMD). 2011, c. 657, Pt. BB, §9 (AMD).

§5107. STATE AGENCIES TO COOPERATE

(REPEALED)

SECTION HISTORY

1973, c. 630, §1 (NEW). 1973, c. 793, §7 (RP).

§5107-A. LONG-TERM CARE OMBUDSMAN PROGRAM

In accordance with the program established pursuant to section 5106, subsection 11-C, the ombudsman may enter onto the premises of any residential care facility, as defined in section 7852, subsection 14, licensed according to section 7801, any assisted living facility licensed pursuant to chapter 1663 or 1664 and any nursing facility licensed according to section 1817 to investigate complaints concerning those facilities or to perform any other functions authorized by this section or other applicable law or rules. The ombudsman shall investigate complaints received on behalf of individuals receiving long-term care services provided by home-based care programs, the Medicaid waiver program, licensed home health agencies, assisted living services providers, certified homemaker agencies and licensed adult day care agencies. To carry out this function, any staff member or volunteer authorized by the ombudsman may enter onto the premises of any residential care facility, assisted living facility or nursing facility during the course of an investigation, speak privately with any individual in the facility who consents to the conversation and inspect and copy all records pertaining to a resident as long as the resident or the legal representative of the resident consents in writing to that inspection. The consent, when required and not obtainable in writing, may be conveyed orally or otherwise to the staff of the facility. When a resident is not competent to grant consent and has no legal representative, the ombudsman may inspect the resident's records and may make copies without the written consent of a duly appointed legal representative. The ombudsman may authorize as many individuals as necessary, in addition to staff, to carry out this function except that these individuals may not make copies of confidential client information. Appropriate identification must be issued to all such persons. In accordance with the federal 1987 Older Americans Act, 42 United States Code, as amended, a person may not serve as an ombudsman without training as to the rights and responsibilities of an ombudsman or without a specific plan of action under direction of the ombudsman. The ombudsman shall renew the authorization and issue identification annually. The findings of the ombudsman must be available to the public upon request. [2001, c. 596, Pt. B, §9 (AMD); 2001, c. 596, Pt. B, §25 (AFF).]

The ombudsman and volunteers shall visit, talk with and make personal, social and legal services available to residents; inform residents of their rights, entitlements and obligations under federal and state laws by distributing education materials and meeting with groups or individuals; assist residents in asserting their legal rights regarding claims for public assistance, medical care and social security benefits or in actions against agencies responsible for those programs, as well as in all other matters in which residents are aggrieved, including, but not limited to, advising residents to litigate; investigate complaints received from residents or concerned parties regarding care or other matters concerning residents; and participate as observer and resource in any on-site survey or other regulatory review performed by state agencies pursuant to state or federal law. [1993, c. 284, §1 (AMD).]

The ombudsman may provide advocacy during the hospital discharge process to assist patients with complex medical needs who experience significant barriers in accessing long-term services and supports. If the ombudsman provides advocacy, the ombudsman shall ensure that the patient has information regarding available options including, but not limited to: home and community-based services provided under MaineCare or funded by the State; admission to a residential care facility as defined in section 7852, subsection 14 and licensed according to section 7801; admission to a nursing facility licensed according to section 1817; and admission to an assisted living facility or program licensed pursuant to chapter 1663 or 1664. The ombudsman also may provide assistance to the patient after discharge from the hospital. [2015, c. 506, §1 (NEW).]

Information or records maintained by the ombudsman concerning complaints may not be disclosed unless the ombudsman authorizes the disclosure. The ombudsman may not disclose the identity of any complainant or resident unless the complainant, the resident or a legal representative of either consents in writing to the disclosure or a court orders the disclosure. [1991, c. 622, Pt. QQ, §2 (NEW).]

A complainant, a resident or a legal representative of either, in providing the consent, may specify to whom such identity may be disclosed and for what purposes, in which event no other disclosure is authorized. [1991, c. 622, Pt. QQ, §2 (NEW).]

Any person, official or institution that in good faith participates in the registering of a complaint pursuant to this section or in good faith investigates that complaint or provides access to those persons carrying out the investigation about an act or practice in any residential care facility licensed according to section 7801, any assisted living facility or program or any nursing facility licensed according to section 1817 or that participates in a judicial proceeding resulting from that complaint is immune from any civil or criminal liability that otherwise might result from these actions. For the purpose of any civil or criminal proceedings, there is a rebuttable presumption that any person acting pursuant to this section did so in good faith. [1995, c. 670, Pt. B, §4 (AMD); 1995, c. 670, Pt. D, §5 (AFF).]

SECTION HISTORY
1991, c. 622, §QQ2 (NEW). 1993, c. 284, §1 (AMD). 1995, c. 670, §§B3,4 (AMD). 1995, c. 670, §D5 (AFF). 2001, c. 596, §B9 (AMD). 2001, c. 596, §B25 (AFF). 2015, c. 506, §1 (AMD).

§5107-B. LONG-TERM CARE STEERING COMMITTEE

(REPEALED)

SECTION HISTORY
1995, c. 696, §B5 (NEW). 1997, c. 665, §2 (AMD). 1997, c. 734, §1 (AMD). 2003, c. 465, §3 (RP).

§5107-C. PROGRAM ESTABLISHED

(REPEALED)

SECTION HISTORY
1997, c. 734, §2 (NEW). 2001, c. 559, §BB1 (RP).

§5107-D. ELIGIBILITY FOR SERVICES UNDER THE PERSONAL CARE ASSISTANCE PROGRAM

(REPEALED)

SECTION HISTORY
1997, c. 734, §2 (NEW). 2001, c. 559, §BB1 (RP).

§5107-E. EVALUATION TEAMS

(REPEALED)

SECTION HISTORY
1997, c. 734, §2 (NEW). 2001, c. 559, §BB1 (RP).

§5107-F. REIMBURSEMENT

(REPEALED)
(REPEALED)

SECTION HISTORY
1997, c. 734, §2 (NEW). 2001, c. 559, §BB1 (RP).

§5107-G. BIENNIAL REVIEW OF REIMBURSEMENT RATES

(REPEALED)

SECTION HISTORY

1999, c. 401, §SSS1 (NEW). 2001, c. 559, §BB2 (RP).

§5107-H. CERTAIN FAMILY MEMBERS AS PERSONAL CARE ASSISTANTS *(REPEALED)*

SECTION HISTORY
1999, c. 615, §1 (NEW). 1999, c. 615, §2 (AFF). 2001, c. 559, §BB3 (RP).

§5107-I. QUALITY ASSURANCE REVIEW COMMITTEE

The department shall establish a quality assurance review committee, referred to in this section as the "committee," to review the provision of home care coordination services for long-term services and supports for elders and adults with disabilities. The committee membership must include consumers of home care services; representatives of consumers; consumer advocates, including the long-term care ombudsman program; health care and service providers; representatives from each area agency on aging; and staff of each agency that provides home care coordination services. The joint standing committee of the Legislature having jurisdiction over health and human services matters may make recommendations to the department regarding committee membership. [2011, c. 495, §1 (AMD).]

1. **Chair; meetings.** The members of the committee shall choose a chair, who may not be a representative of a home care coordination agency. The committee shall meet at least quarterly.

[2001, c. 362, §1 (NEW) .]

2. **Duties.** The committee shall assess, evaluate and prepare findings regarding quality of care coordination, including:

A. Implementation, monitoring and modification of the plan of care of a consumer of home care services; [2001, c. 362, §1 (NEW).]

B. Advocacy on behalf of the consumer of home care services for access to appropriate community resources; [2001, c. 362, §1 (NEW).]

C. Ensuring coordination of service providers and timely delivery of services pursuant to the plan of care and identified needs of the consumer of home care services; [2001, c. 362, §1 (NEW).]

D. Maintaining contact, on behalf of the consumer of home care services, with family members and others in the consumer's support structure and with other representatives, guardians, surrogates or providers of services or supports; [2001, c. 362, §1 (NEW).]

E. Ensuring the continuity of care; [2001, c. 362, §1 (NEW).]

F. With the participation of the consumer of home care services or the consumer's representative and providers of services or support, monitoring services and supports and evaluating the effectiveness of the plan of care; [2001, c. 362, §1 (NEW).]

G. Coordinating and requesting assessments and reassessments and providing necessary consumer status reports to the assessor in a timely manner; [2001, c. 362, §1 (NEW).]

H. Providing the consumer of home care services with appropriate information regarding eligibility, rules and benefits and helping the consumer apply for appropriate assistance; [2001, c. 362, §1 (NEW).]

I. Addressing consumer complaints in a timely manner; and [2001, c. 362, §1 (NEW).]

J. Providing the consumer of home care services with information about the services of the long-term care ombudsman under section 5107-A and the availability of legal services. [2001, c. 362, §1 (NEW).]

[2001, c. 362, §1 (NEW) .]

3. **Coordination.** The committee shall work to coordinate its efforts with those of any other quality assurance initiatives, committees and working groups within the department relating to the delivery of long-term care services.

[2001, c. 362, §1 (NEW) .]

4. **Annual report.** By January 1st each year, the committee shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters concerning the committee's work during the year, any specific findings or recommendations regarding the duties imposed in subsection 2 and the actions taken to resolve problems.

[2011, c. 495, §2 (AMD) .]

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

[2001, c. 362, §1 (NEW) .]

SECTION HISTORY
2001, c. 362, §1 (NEW). 2011, c. 495, §§1, 2 (AMD).

§5107-J. LONG-TERM CARE OVERSIGHT COMMITTEE

(REPEALED)

SECTION HISTORY
2003, c. 465, §4 (NEW). 2009, c. 299, Pt. A, §4 (AMD). 2009, c. 369, Pt. A, §32 (RP). 2009, c. 652, Pt. A, §31 (RP).

Chapter 1455: MAINE COMMITTEE ON AGING

§5108. COMMITTEE

(REPEALED)

SECTION HISTORY
1973, c. 630, §1 (NEW). 1973, c. 793, §8 (RPR). 1975, c. 293, §4 (AMD). 1975, c. 771, §§231-A (AMD). 1981, c. 703, §A30 (RPR). 1983, c. 812, §132 (AMD). 1983, c. 862, §72 (AMD). 1987, c. 58, §1 (RP).

§5108-A. COMMITTEE ESTABLISHED; MEMBERSHIPS; APPOINTMENTS

(REPEALED)

SECTION HISTORY
1987, c. 58, §2 (NEW). 1989, c. 679, §§1,2 (AMD). 1991, c. 622, §S30 (RP).

§5109. MEMBERSHIP

(REPEALED)

SECTION HISTORY
1973, c. 630, §1 (NEW). 1973, c. 793, §9 (AMD). 1987, c. 58, §3 (RP).

§5110. STATE AGENCIES TO COOPERATE

(REPEALED)

SECTION HISTORY
1973, c. 630, §1 (NEW). 1973, c. 793, §10 (RP).

§5111. ADMINISTRATIVE AUTHORITY

(REPEALED)

SECTION HISTORY
1973, c. 630, §1 (NEW). 1973, c. 793, §11 (RPR). 1983, c. 812, §133 (AMD). 1985, c. 785, §B95 (AMD). 1991, c. 622, §S30 (RP).

§5112. POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1973, c. 630, §1 (NEW). 1973, c. 788, §98 (AMD). 1973, c. 793, §11 (RPR). P&SL 1975, c. 90, §§SEC.C,5 (AMD). 1975, c. 530, (AMD). 1977, c. 78, §151 (AMD). 1977, c. 480, §§1,2 (AMD). 1977, c. 696, §192 (AMD). 1979, c. 541, §A154 (AMD). 1981, c. 72, §§1-3 (AMD). 1981, c. 463, §D2 (AMD). 1981, c. 703, §A31 (AMD). 1985, c. 89, (AMD). 1989, c. 68, §C3 (AMD). 1989, c. 502, §A78 (AMD). 1989, c. 679, §3 (AMD). 1989, c. 702, §E11 (AMD). 1991, c. 408, (AMD). 1991, c. 548, §§A20,21 (AMD). 1991, c. 622, §QQ3 (AMD). 1991, c. 622, §S30 (RP). 1993, c. 349, §76 (AFF).

Chapter 1457: COORDINATED COMMUNITY PROGRAMS FOR MAINE'S ELDERLY

§5113. PURPOSE

It is the purpose of this chapter to encourage and assist community and regional agencies to concentrate resources in order to develop greater capacity and foster the development of coordinated community programs to help older people by entering into new cooperative arrangements with each other and with providers of social services for planning for the provision of, and providing, social services and, where necessary, to reorganize or reassign functions, in order to secure and maintain maximum independence and dignity in a home environment for older people capable of self-care with appropriate supportive services and remove individual and social barriers to economic and personal independence for older persons. [1973, c. 630, §1 (NEW).]

SECTION HISTORY
1973, c. 630, §1 (NEW).

§5114. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings: [1973, c. 630, §1 (NEW).]

1. **Coordinated community program.** "Coordinated community program" means a system for providing all necessary social services in a manner designed to:

A. Facilitate accessibility to and utilization of all social services provided within the geographic area served by such system by any public or private agency or organization; [1973, c. 630, §1 (NEW).]

B. Develop and make the most efficient use of social services in meeting the needs of older persons; and [1973, c. 630, §1 (NEW).]

C. Use available resources efficiently and with a minimum of duplication. [1973, c. 630, §1 (NEW).]

[1981, c. 470, Pt. A, §112 (AMD) .]

2. **Social services.** "Social services" means any of the following services that meet such standards as the commissioner may prescribe:

A. Health services, including health aides, home care, homemakers, home repair and chore service and community care including counseling, information and referral services, continuing education, recreation and volunteer services; [1973, c. 630, §1 (NEW).]

B. Transportation, when necessary to facilitate access to social services, with priority given to health services including hospitals, physician care, bona fide clinics, prescription drugs and other essential medications, meals programs and food distribution centers; and with priority given to income producing and supplement programs including social security, supplemental security and tax refunds; [2015, c. 494, Pt. D, §5 (AMD).]

C. Meals programs that provide at least one hot meal per day and any additional meals, hot or cold, that the recipient of a grant or contract may elect to provide, each of which assures a minimum of 1/3 of the daily recommended dietary allowances as established by the Food and Nutrition Board of the National Academy of Science -- National Research Council, and that provide such meals programs for individuals aged 60 and over and their spouses at sites close to the individual's residence; and where appropriate to furnish transportation to such site or home-delivered meals to homebound older people; and to administer such meals programs in accordance with the appropriate and pertinent portions of the "nutrition and other program requirements" of the National Nutrition Program for the Elderly; [2015, c. 494, Pt. D, §5 (AMD).]

D. Services designed to encourage and assist older persons to use facilities and services available to them; [1973, c. 630, §1 (NEW).]

E. Services designed to assist older persons to obtain adequate housing; [1973, c. 630, §1 (NEW).]

F. Services designed to assist older persons in avoiding institutionalization, including evaluation and screening and home health services; [2015, c. 332, §1 (AMD).]

G. Any other services necessary for the general well-being of older persons; or [2015, c. 332, §1 (AMD).]

H. Services designed to assist older persons with maintaining their financial independence and avoiding financial exploitation, including personal financial management assistance. [2015, c. 332, §2 (NEW).]

[2015, c. 494, Pt. D, §5 (AMD) .]

SECTION HISTORY
1973, c. 630, §1 (NEW). 1981, c. 470, §A112 (AMD). 2015, c. 332, §§1, 2 (AMD). 2015, c. 494, Pt. D, §5 (AMD).

§5115. COORDINATED COMMUNITY PROGRAMS

Coordinated community programs are authorized to be provided by the office through grants to each area agency with a plan approved under section 5118 for paying part of the cost, pursuant to the last 2 paragraphs of this section, of the preparation, development and administration of a plan by each area agency designated pursuant to section 5116, subsection 1, paragraph B for a coordinated community program consistent with section 5118 and the evaluation of activities carried out under such plan; and the development and provision of coordinated community programs for the delivery of social services. [2011, c. 2, §28 (COR).]

From the sums appropriated for any fiscal year, each area agency shall be allotted an amount which bears the same ratio to such sum as the population aged 60 or over in such geographical boundaries of the area served by the area agency bears to the population aged 60 or over in the entire State. [1973, c. 630, §1 (NEW).]

The number of persons aged 60 or over in the geographical boundaries of the area served by any area agency and in the entire State must be determined by the commissioner on the basis of the most recent and satisfactory data available to the commissioner. [2015, c. 494, Pt. D, §6 (AMD).]

Whenever the commissioner determines that any amount allotted to an area agency for a fiscal year under this section will not be used by such agency for carrying out the purpose for which the allotment was made, the commissioner shall make such amount available for carrying out such purpose to one or more other area agencies to the extent the commissioner determines such other area agencies will be able to use such additional amount for carrying out such purpose. Any amount made available to an area agency from an appropriation for a fiscal year pursuant to the preceding sentence must, for purposes of this section, be regarded as part of such agency's allotment, as determined under the preceding provisions of this section for such year. [2015, c. 494, Pt. D, §6 (AMD).]

From such agency's allotment under this section for a fiscal year, such amount as the state agency determines, but not more than 15% thereof, shall be available for paying such percentage as the state agency determines, but not more than 75% of the cost of administration of area plans; and such amount as the state agency determines, but not more than 20% thereof, shall be available for paying such percentage as the state agency determines, but not more than 50%, of the cost of social services which are not provided as a part of a coordinated community program in program areas for which there is an area plan approved by the state agency. [1973, c. 630, §1 (NEW).]

The remainder of such allotment shall be available to the area agency only for paying such percentage as the state agency determines, but not more than 75% of the cost of social services provided in the area as a part of a coordinated community program in a service area in which there is an area plan approved by the state agency. [1973, c. 630, §1 (NEW).]

SECTION HISTORY
1973, c. 630, §1 (NEW). RR 2011, c. 2, §28 (COR). 2015, c. 494, Pt. D, §6 (AMD).

§5116. STATE ORGANIZATION

1. **Organization.** In order for an area of the State to be eligible to participate in the program of grants to area agencies from allotments under section 5115:

A. The State shall be divided into distinct coordinated community program areas, hereinafter in this chapter referred to as an area, after considering the geographical distribution of individuals aged 60 and older in the area, the incidence of the need for social services, including the number of older persons with low incomes residing in such areas, the distribution of resources available to provide such services and the location of units of general purpose county and municipal government within the State; and [1973, c. 630, §1 (NEW).]

B. The state agency must, in accordance with regulations of the commissioner, designate an area agency as the sole area agency to:

(1) Develop the area plan to be submitted to the commissioner for approval under section 5118;

(2) Administer the area plan within such area;

(3) Be primarily responsible for the coordination of all area activities related to the purposes of this Act; and

(4) Review and comment on, under its own initiative or at the request of any state or federal department or agency, any application from any agency or organization within such area to such state or federal department or agency for assistance related to meeting the needs of older persons; and

(5) Develop and provide, or assure the provision of, coordinated community programs for the delivery of social services; and [2015, c. 494, Pt. D, §7 (AMD).]

C. The area agency designated pursuant to paragraph B shall:

(1) Determine which portions of its area will be included in the area plan to be developed in accordance with section 5118; and

(2) Provide assurances satisfactory to the commissioner that the area agency will take into account, in connection with matters of general policy arising in the development and administration of the area plan for any fiscal year, the recommendations of older people in need of or served by social services provided under such plan. [2015, c. 494, Pt. D, §7 (AMD).]

[2015, c. 494, Pt. D, §7 (AMD) .]

SECTION HISTORY
1973, c. 630, §1 (NEW). 2015, c. 494, Pt. D, §7 (AMD).

§5117. AREA ORGANIZATION

An area agency designated under section 5116, subsection 1, paragraph B must be an established office of aging which is operating within an area designated pursuant to section 5116, subsection 1, paragraph A, or any public or nonprofit private agency in an area which is able to operate under grants authorized by this Act and which is able to engage in the planning or provision of a broad range of social services within such an area and must provide assurance, found adequate by the state agency, that it will have the ability to develop an area plan and to carry out, directly or through contractual or other arrangements, a program pursuant to the plan within the area. In designating an area agency, the state agency shall give preference to an established office on aging, unless the state agency finds that no such office within the area will have the capacity to carry out the area plan. [1973, c. 630, §1 (NEW).]

SECTION HISTORY
1973, c. 630, §1 (NEW).

§5118. AREA PLANS

1. **Plans.** In order to be approved by the state agency, an area plan must be developed by the area agency designated with respect to such area under section 5116, subsection 1, paragraph B and must:

A. Provide for the establishment of a coordinated community program for the delivery of social services within the area covered by the plan, including determining the need for social services in such area, taking into consideration, among other things, the number of older persons with low incomes residing in such area, the extent to which existing public or private programs meet such need, evaluating the effectiveness of the use of resources in meeting such need, and entering into agreements with providers of social services in such area, for the provision of such services to meet such need; [1973, c. 630, §1 (NEW).]

B. In accordance with criteria established by the commissioner by regulation relating to priorities, provide for the initiation, expansion or improvement of social services in the area covered by the area plan; [2015, c. 494, Pt. D, §8 (AMD).]

C. Provide for the establishment and maintenance of information and referral sources in sufficient numbers to assure that all older persons within the planning and service area covered by the plan will have reasonably convenient access to such sources. For purposes of this paragraph, an information and referral source is a location where a public or private agency or organization:

(1) Maintains current information with respect to the opportunities and services available to older persons, and develops current lists of older persons in need of services and opportunities; and

(2) Employs a specially trained staff to inform older persons of the opportunities and services that are available, and assists these persons to take advantage of these opportunities and services; [2015, c. 494, Pt. D, §8 (AMD).]

D. Provide that the area agency will:

(1) Conduct periodic evaluations of activities carried out pursuant to the area plan;

(2) Render appropriate technical assistance to providers of social services in the planning and service area covered by the area plan;

(3) When necessary and feasible, enter into arrangements, consistent with the area plan, under which funds under this Title may be used to provide legal services to older persons in the area carried out through federally assisted programs or other public or nonprofit agencies;

(4) Take into account, in connection with matters of general policy arising in the development and administration of the area plan, the recommendations of older people in need of or served by social services provided under such plan;

(5) When possible, enter into arrangements with organizations providing children services so as to provide opportunities for older persons to aid or assist, on a voluntary basis, in the delivery of such services to children; and

(6) Establish an advisory council, which may be the board of directors or a subcommittee thereof, of the area agency consisting of at least 65% older people representatives of the target population and the general public, to advise the area agency on all matters relating to the administration of the plan and operations conducted thereunder. [2015, c. 494, Pt. D, §8 (AMD).]

E. Provide for the use of such methods of administration as are necessary for the proper and efficient administration of the plan; [1981, c. 470, Pt. A, §115 (AMD).]

F. Provide that the area agency will make such reports, in such form and containing such information as the commissioner may from time to time require, and comply with such requirements as the commissioner may impose to assure the correctness of these reports; [2015, c. 494, Pt. D, §8 (AMD).]

G. Establish objectives consistent with the purposes of this Title toward which activities under the plan will be directed, identify obstacles to the attainment of those objectives and indicate how it proposes to overcome those obstacles; [2015, c. 494, Pt. D, §8 (AMD).]

H. Provide that no social service will be directly provided by the state agency or an area agency, except when, in the judgment of the state agency, provision of that service by the state agency or an area agency is necessary to assure an adequate supply of that service; and [2015, c. 494, Pt. D, §8 (AMD).]

I. Provide that preference must be given to persons aged 60 or over for any staff positions, full-time or part-time, in area agencies for which these persons qualify. [2015, c. 494, Pt. D, §8 (AMD).]

J. [1981, c. 470, Pt. A, §116 (RP).]

K. [1981, c. 470, Pt. A, §116 (RP).]

L. [1981, c. 470, Pt. A, §116 (RP).]

M. [1981, c. 470, Pt. A, §116 (RP).]

[2015, c. 494, Pt. D, §8 (AMD) .]

2. **Approval of area plan.** The commissioner shall approve any area plan that the commissioner finds fulfills the requirements of subsection 1, paragraphs A to I.

[2015, c. 494, Pt. D, §8 (AMD) .]

3. **Notice and opportunity for hearing.** The commissioner may not make a final determination disapproving any area plan, or any modification thereof, or make a final determination that an area agency is ineligible under section 5116, without first affording the area agency reasonable notice and opportunity for a hearing.

[2015, c. 494, Pt. D, §8 (AMD) .]

4. **Findings.** Whenever the director, after reasonable notice and opportunity for hearing to the area agency, finds that:

A. The area agency is not eligible under section 5116; [1981, c. 470, Pt. A, §117 (NEW).]

B. The area plan has been so changed that it no longer complies with subsection 1, paragraphs A to I; or [1981, c. 470, Pt. A, §117 (NEW).]

C. In the administration of the plan, there is a failure to comply substantially with any provision of subsection 1, paragraphs A to I, the commissioner shall notify the area agency that no further payments from its allotments under section 5115 and Section 306 of the federal Older Americans Act of 1965, 42 United States Code, Section 3026 will be made to the agency or, in the commissioner's discretion, that further payments to the agency will be limited to projects under or portions of the area plan not affected by the failure, until the commissioner is satisfied that there will no longer be any failure to comply. Until the commissioner is so satisfied, further payments may not be made to the agency from its allotments under section 5115, or payments may be limited to projects under or portions of the area plan not affected by the failure. The commissioner shall, in accordance with rules adopted by the commissioner, disburse funds so withheld directly to any public or nonprofit private organization or agency of the area, submitting an approved plan in accordance with section 5116. Any payment or payments must be matched in the proportions specified in section 5116. [2015, c. 494, Pt. D, §8 (AMD).]

[2015, c. 494, Pt. D, §8 (AMD) .]

5. **Final action; dissatisfaction.** An agency that is dissatisfied with a final action under subsection 2, 3 or 4 may appeal to the commissioner by filing a petition with the commissioner within 60 days after final action. The judgment of the commissioner affirming or setting aside, in whole or in part, any action is final.

[2015, c. 494, Pt. D, §8 (AMD) .]

SECTION HISTORY
1973, c. 630, §1 (NEW). 1981, c. 470, §§A113-117 (AMD). 2003, c. 510, §B8 (AMD). 2015, c. 494, Pt. D, §8 (AMD).

Chapter 1457-A: CONGREGATE HOUSING FOR MAINE'S ELDERLY

§5151. POLICY

(REPEALED)

SECTION HISTORY
1979, c. 717, §1 (NEW). 1983, c. 695, §1 (AMD). 1995, c. 670, §D5 (AFF). 1995, c. 670, §A3 (RP).

§5152. DEFINITIONS

(REPEALED)

SECTION HISTORY
1979, c. 717, §1 (NEW). 1983, c. 695, §2 (RPR). 1995, c. 670, §D5 (AFF). 1995, c. 670, §A3 (RP).

§5153. ADMINISTRATION OF CONGREGATE HOUSING SERVICES PROGRAMS

(REPEALED)

SECTION HISTORY
1979, c. 717, §1 (NEW). 1983, c. 695, §3 (RPR). 1989, c. 329, §17 (AMD). 1995, c. 670, §D5 (AFF). 1995, c. 670, §A3 (RP).

§5154. VOLUNTARY CERTIFICATION OF CONGREGATE HOUSING SERVICES PROGRAMS

(REPEALED)

SECTION HISTORY
1983, c. 695, §4 (NEW). 1989, c. 329, §18 (AMD). 1995, c. 670, §D5 (AFF). 1995, c. 670, §A3 (RP).

§5155. FIRE SAFETY INSPECTION

(REPEALED)

SECTION HISTORY
1995, c. 362, §3 (NEW). 1995, c. 670, §D5 (AFF). 1995, c. 670, §A3 (RP).

Chapter 1458: HOME WEATHERIZATION AND FUEL ASSISTANCE PROGRAMS

§5201. PROVISION OF FUNDS

(REPEALED)

SECTION HISTORY
1977, c. 571, §1 (NEW). 1983, c. 482, §2 (AMD). 1985, c. 527, §8 (RP).

§5202. DEFINITIONS

(REPEALED)

SECTION HISTORY
1977, c. 571, §1 (NEW). 1983, c. 482, §3 (RPR). 1985, c. 527, §8 (RP).

§5203. ADMINISTRATION OF WINTERIZATION PROGRAM

(REPEALED)

SECTION HISTORY
1977, c. 571, §1 (NEW). 1981, c. 233, §1 (AMD). 1983, c. 482, §§4-7 (AMD). 1985, c. 527, §8 (RP). 1985, c. 613, (AMD). 1985, c. 737, §A58 (AMD).

§5204. POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1977, c. 571, §1 (NEW). 1981, c. 233, §2 (AMD). 1983, c. 482, §8 (AMD). 1985, c. 527, §8 (RP).

§5205. CONFIDENTIALITY OF RECORDS

(REPEALED)

SECTION HISTORY
1983, c. 482, §9 (NEW). 1985, c. 527, §8 (RP).

§5206. PENALTY

(REPEALED)

SECTION HISTORY
1985, c. 284, (NEW). 1985, c. 527, §8 (RP).

Part 1-A: ADMINISTRATION

Chapter 1471: GENERAL PROVISIONS

§5304. DEFINITIONS

For purposes of this Part and Part 2, unless the context otherwise indicates, the following words shall have the following meanings. [1973, c. 793, §12 (NEW).]

1. **Agreement.** "Agreement" means a legally binding document between 2 parties including such document as is commonly referred to as purchase of services, contract, grant or accepted proposal.

[1973, c. 793, §12 (NEW) .]

1-A. **Adult developmental services.** "Adult developmental services" has the same meaning as in Title 34-B, section 1001, subsection 1-A.

[2011, c. 542, Pt. A, §41 (NEW) .]

2. **Office.** "Office" means the Office of Child and Family Services, Department of Health and Human Services.

[2013, c. 368, Pt. CCCC, §5 (AMD) .]

3. **Bureau of Elder and Adult Services.**

[2011, c. 657, Pt. BB, §10 (RP) .]

4. **Commissioner.** "Commissioner" means the Commissioner of the Department of Health and Human Services or his successors.

[1975, c. 293, §4 (AMD); 2003, c. 689, Pt. B, §7 (REV) .]

5. **Committee.** "Committee" means the Maine Committee on Aging.

[1973, c. 793, §12 (NEW) .]

6. **Council.** "Council" means the Maine Human Services Council.

[1983, c. 409, §2 (AMD) .]

7. **Department.** "Department" means the Maine Department of Health and Human Services.

[1975, c. 293, §4 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

8. **Director.** "Director" means the director, Bureau of Resource Development, Maine Department of Health and Human Services.

[1975, c. 293, §§4, 5 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

9. **Director, Bureau of Elder and Adult Services.**

[2011, c. 657, Pt. BB, §11 (RP) .]

10. **Elderly or Older People.** "Elderly" or "Older People" are synonymous and mean persons 60 years of age or more, or those persons otherwise defined as elderly or older for the purpose of eligibility for assistance or services under specific federal or state laws and programs.

[1973, c. 793, §12 (NEW) .]

11. **Human services.** "Human services" means any facilities, functions, programs or services administered or supported, financially or otherwise, by State Government, including, but not limited to, the following services, including services to older people funded by Title IV or Title VI, or their successors or amendments or additions thereto of the United States Social Security Act, as amended, and excepting all other services to older people:

A. Children's, youth, family and social services; [1973, c. 793, §12 (NEW).]

B. Any service, health, medical care, rehabilitation or social welfare, administered or supported currently or in the future by the department; and [1973, c. 793, §12 (NEW).]

C. Any income maintenance, income supplement, public assistance, general assistance, welfare, donated food or food stamp program. [1973, c. 793, §12 (NEW).]

[1975, c. 90, §C, §5 (AMD) .]

12. **Household.** "Household" means household as defined for purposes of the state income tax.

[1973, c. 793, §12 (NEW) .]

13. **Household income.** "Household income" means all income received by all persons of a household, as defined for income tax purposes, in a calendar year while members of the household.

[1973, c. 793, §12 (NEW) .]

14. **Income.** "Income" means the sum of Maine adjusted gross income determined in accordance with Title 36, Part 8, the amount of capital gains excluded from adjusted gross income, alimony, support money, nontaxable strike benefits, the gross amount of any pension or annuity including railroad retirement benefits, all payments received under the Federal Social Security Act, state unemployment insurance laws and veterans' disability pensions, nontaxable interest received from the Federal Government or any of its instrumentalities, workers' compensation and the gross amount of "loss of time" insurance, cash public assistance and relief. It does not include gifts from nongovernmental sources or surplus foods or other relief in kind supplied by a governmental agency or property tax relief for the elderly.

[1987, c. 769, Pt. A, §79 (AMD) .]

15. **Nonprofit organization.** "Nonprofit organization" means any agency, institution or organization which is, or is owned and operated by one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and which has a territory of operations that may extend to a neighborhood or community region of the State of Maine.

[1981, c. 470, Pt. A, §118 (AMD) .]

16. **Public.** "Public" means municipal, county and other governmental bodies which are political subdivisions within the State of Maine.

[1973, c. 793, §12 (NEW) .]

17. **Social services.** "Social services" means any facilities, functions, programs or services administered or supported financially or otherwise, by State Government including, but not limited to, the following social services, including services to older people funded by Title IV or Title VI, or their successors or amendments or additions thereto of the United States Social Security Act, as amended, and excepting all other service to older people:

A. Any service listed in Part 2 of the March 1973 Report to the Appropriations Committee, pages 6 to 9, 106th Legislature, with recommendations to adopt basic policies to guide the appropriation of state funds for social services; [1973, c. 793, §12 (NEW).]

B. Any service designated as a priority social service pursuant to section 6110; [1973, c. 793, §12 (NEW).]

C. Any service commonly practiced under public or private auspices by registered social workers, professional social workers, human service workers and social workers. [1973, c. 793, §12 (NEW).]

[1975, c. 90, §C, §5 (AMD) .]

18. **Rural area.** "Rural area" means a geographical area or place of less than 10,000 inhabitants. "Rural population" consists of all persons living in places of less than 10,000 inhabitants incorporated as cities, villages, boroughs and towns, including those persons living in the rural portions of extended cities, unincorporated places of less than 10,000 inhabitants and other territory, incorporated or unincorporated.

[1975, c. 90, §C, §2 (NEW) .]

19. **Extended city.** "Extended city" means a city containing one or more areas, each of at least 5 square miles in extent and with a population density of less than 100 persons per square mile according to the 1970 census. The area or areas shall constitute at least 25% of the land area of the legal city or total 5 square miles or more.

[1975, c. 90, §C, §2 (NEW) .]

SECTION HISTORY
1973, c. 793, §12 (NEW). P&SL 1975, c. 90, §§SEC.C,2,5 (AMD). 1975, c. 293, §§4,5 (AMD). 1981, c. 470, §A118 (AMD). 1983, c. 409, §2 (AMD). 1987, c. 769, §A79 (AMD). 1989, c. 329, §§19,20 (AMD). 1991, c. 824, §A47 (AMD). 2003, c. 689, §§B6,7 (REV). 2011, c. 542, Pt. A, §41 (AMD). 2011, c. 657, Pt. BB, §§10, 11 (AMD). 2013, c. 368, Pt. CCCC, §5 (AMD).

§5305. STATE AGENCIES TO COOPERATE

State agencies shall cooperate fully with the bureau and council in carrying out this Part and Part 2. The bureau and council are authorized to request such personnel, financial assistance, facilities and data as are reasonably required to assist the bureau and council to fulfill their powers and duties. [1973, c. 793, §12 (NEW).]

State agencies proposing to develop, establish, conduct or administer programs or to assist programs relating to this Part and Part 2 shall, prior to carrying out such actions, consult with the bureau. All agencies of State Government shall advise the bureau of their proposed administrative, fiscal and legislative activities relating to this Part and Part 2. State agencies, in the implementation of their activities relating to this Part, shall keep the bureau fully informed of their progress. [1973, c. 793, §12 (NEW).]

SECTION HISTORY
1973, c. 793, §12 (NEW).

§5306. AGREEMENTS WITH COMMUNITY AGENCIES

All funds disbursed by the department to a community agency for the purpose of financially supporting a human service shall be covered by a written agreement, pursuant to the same provisions specified for the department in Title 34, section 12. [1981, c. 493, §2 (AMD); 1995, c. 560, Pt. K, §82 (AMD); 1995, c. 560, Pt. K, §83 (AFF); 2001, c. 354, §3 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY

1977, c. 307, §1 (NEW). 1981, c. 493, §2 (AMD). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). 2003, c. 689, §B6 (REV).

Chapter 1473: BUREAU OF RESOURCE DEVELOPMENT

§5308. OFFICE OF CHILD AND FAMILY SERVICES

There is within the Department of Health and Human Services the Office of Child and Family Services. The office must be a separate, distinct administrative unit, which may not be integrated in any way as a part or function of any other administrative unit of the department. The office is equal in organizational level and status with other major organizational units within the department or its successors. The office is under the immediate and full supervision of the commissioner or the chief officer of whatsoever unit succeeds the department. [2013, c. 368, Pt. CCCC, §6 (AMD).]

It is the intent of this Part that the office shall function as a central office administrative unit of the department with the advice of the council and that the powers, duties, authority and responsibility of the office may not be delegated, decentralized or assigned to regional, local or other units of the department, except as provided in this section, section 6108 and Title 5, section 464. Regarding any portion of this Part and Part 2 that relate to provision of services directly to eligible people through staff employed subject to the Civil Service Law by the department or other organizational units of State Government, the office may carry out its powers and duties through regional or other administrative units of the department or State Government. [2013, c. 368, Pt. CCCC, §6 (AMD).]

Regarding any portion of this Part and Part 2 that relate to development, execution and monitoring of agreements, the office shall carry out its powers and duties directly with public or private, nonprofit agencies without acting through other administrative units of the department as intermediaries, except as provided in section 6108. Functions relating to agreements do not require the approval of any other unit of the department, except as the office is responsible and accountable to the commissioner and except as the office shall function with the advice of the council pursuant to Title 5, section 464 and with the consent of the Maine Committee on Aging pursuant to section 5112, subsection 3 and except as provided by section 6108. [2013, c. 368, Pt. CCCC, §6 (AMD).]

The office is the sole agency of State Government responsible for administration of this Part and Part 2 subject to the direction of the commissioner. The office shall fully coordinate with appropriate state agencies and fully utilize existing support services. [2013, c. 368, Pt. CCCC, §6 (AMD).]

SECTION HISTORY
1973, c. 793, §12 (NEW). 1975, c. 293, §3 (AMD). 1979, c. 541, §A155 (AMD). 1981, c. 10, §2 (AMD). 1985, c. 785, §B96 (AMD). 1989, c. 400, §§11,14 (AMD). 1991, c. 824, §A48 (AMD). 2003, c. 689, §B6 (REV). 2013, c. 368, Pt. CCCC, §6 (AMD).

§5309. DIRECTOR

The bureau is administered by a director. [2007, c. 539, Pt. N, §40 (AMD).]

The director shall be a person qualified by training and experience with human services or by satisfactory experience of a comparable nature in the direction, organization and administration of public or private human services. The director shall be immediately and fully responsible to the commissioner and shall not be partially or indirectly responsible to any other official of the department. [1973, c. 793, §12 (NEW).]

The director shall serve full time in a position that is separate from and not integrated in any way with another position in the department. He shall not concurrently hold another title and shall perform duties solely germane to the powers and duties pursuant to this Part and Part 2. [1973, c. 793, §12 (NEW).]

The director shall possess full authority and responsibility for administering all the powers and duties of the bureau provided in section 5310, subject to the direction of the commissioner, and with the advice of the council pursuant to section 5316, and the advice of the Maine Committee on Aging pursuant to section 5112, subsection 3, and except as otherwise provided in section 6108. [1979, c. 541, Pt. A, §156 (AMD).]

The director shall assume and discharge all responsibilities vested in the bureau. He shall not in any case assign to another unit of the department which is not responsible to him any power or duty granted to the bureau by statute, or by rules, regulations or procedures adopted pursuant to this Part and Part 2. [1973, c. 793, §12 (NEW).]

The director may employ, subject to the Civil Service Law and within the limits of available funds, competent professional personnel and other staff necessary to carry out the purposes of this Part and Part 2. He shall prescribe the duties of the staff and assign a sufficient number of staff full time to the bureau to achieve its powers and duties. Regarding the provision of human services by the bureau directly to eligible people, the director may arrange to house staff or assign staff who are responsible to him to regional or other units of the department or State Government. Regarding the development, execution and monitoring of agreements, the director shall not house nor assign staff to any other unit of the department or State Government. Such staff shall report solely and directly to him. The director shall assign staff to the council as provided in sections 5305 and 5315. [1985, c. 785, Pt. B, §97 (AMD).]

SECTION HISTORY
1973, c. 793, §12 (NEW). 1975, c. 771, §232 (AMD). 1979, c. 541, §A156 (AMD). 1985, c. 785, §B97 (AMD). 2007, c. 539, Pt. N, §40 (AMD).

§5310. POWERS AND DUTIES

The bureau shall establish in accordance with the purposes and intent of this Part and Part 2, with the advice of the council and subject to the direction of the commissioner, the overall planning, policy, objectives and priorities for all functions and activities relating to human services, including services to older people funded by Title IV or Title VI, or their successors or amendments or additions thereto of the United States Social Security Act, as amended, and excepting all other services to older people which are conducted or supported in the State. In order to carry out the above, the bureau shall have the power and duty to: [1975, c. 90, §C, §5 (AMD).]

1. Encourage and assist development of more effective and more coordinated use of existing and new resources and social services available to Maine's residents;

[1973, c. 793, §12 (NEW) .]

2. Serve as a clearinghouse for information related to the field of social services and gather knowledge and statistics on social services, using existing sources of knowledge and data to the fullest extent possible;

[1973, c. 793, §12 (NEW) .]

3. Prepare, publish and disseminate educational materials dealing with social services for Maine's citizens;

[1973, c. 793, §12 (NEW) .]

4. Convene and conduct conferences of such authorities and officials of public and private nonprofit organizations concerned with the development and operation of social service programs intended to benefit citizens as the director deems necessary or proper for the development and implementation of the intent and objectives of this Part and Part 2;

[1973, c. 793, §12 (NEW) .]

5. Provide or coordinate the provision of information, technical assistance and consultation about the field of social services to public and private nonprofit organizations and provide such help in accord with the intent and objectives of this Part and Part 2;

[1973, c. 793, §12 (NEW) .]

6. Coordinate and assist in the planning, development and establishment by public or private nonprofit organizations of social service, programs intended to benefit residents and which are in accord with the intent and objectives of this Part and Part 2. It is the intent of the Legislature that, in exercising this duty, the bureau shall take action to preclude the development or conduct of services which result in duplication of functions or activities funded in whole or part by the Priority Social Services Act of 1973 or Titles IV and VI, or their successors or amendments or additions thereto, of the U.S. Social Security Act, as amended;

[1975, c. 90, §C, §5 (AMD) .]

7. Function as the organizational unit of State Government with the sole responsibility for conducting and coordinating, with the advice of the council or of the committee and subject to the direction of the commissioner, functions assigned to it by the commissioner, and functions authorized by this Part and Part 2 and so much of the several Acts, amendments and successors to them enacted by the people of the State of Maine and those authorized by the United States Acts, amendments and successors to them as relate to human services, including services to older people funded by Titles IV and VI, or their successors or amendments or additions thereto of the United States Social Security Act, as amended, and excepting all other services to older people:

A. The Priority Social Services Act of 1973 except services to older people in accordance with section 6108; and [1973, c. 793, §12 (NEW).]

B. Title IV and VI, in their entirety, of the United States Social Security Act, as amended. [1973, c. 793, §12 (NEW).]

The bureau is designated as the single agency of State Government solely responsible for administering, subject to the direction of the commissioner, any state plans as may be required by the above Acts, and for administering programs or Acts of the State or United States relating to such human services which are not the specific responsibility of another state agency under state or federal law.

[1975, c. 90, §C, §5 (AMD) .]

8. Assist, with the advice of the council, the Legislative and Executive Branches of State Government, especially the Governor, commissioner and Bureau of the Budget, to coordinate all government efforts relating to human services, except services to older people, by:

A. Submitting to each branch of State Government no later than September 1st of each year an annual report covering its activities for the immediately past fiscal year and future plans, including reports of the committee; [1973, c. 793, §12 (NEW).]

B. Reviewing all proposed legislation, fiscal activities, plans, policies and other administrative functions relating to such human services made by or requested of all state agencies. The bureau shall have the authority to submit to those bodies findings, comments and recommendations, which shall be advisory. Such findings and comments shall recommend what modification in proposals or actions shall be taken to make proposed legislation, fiscal activities and administrative activities consistent with such policies and priorities; [1973, c. 793, §12 (NEW).]

C. Making recommendations to the respective branches of State Government related to improving the quality of such human services and shall consult with and be consulted by all responsible state agencies regarding the policies, priorities and objectives of functions related to human services; [1973, c. 793, §12 (NEW).]

[1973, c. 793, §12 (NEW) .]

9. Carry on a continuing evaluation of the social services programs and activities affecting Maine's residents, to determine the needs and priorities for types of social services; the types of services available; the number, location and characteristics of people served by each type of service; the amount, type and source of resources supporting types of services, the administrative adequacy and capacity of social service agencies; and the quality and quantity of types of social services; as well as to determine the value and impact of programs operated by or administered with the assistance of the State and Federal Governments; including social services as authorized by this and the several Acts and amendments to them enacted by the People of the State of Maine; and those authorized by these United States Acts and amendments to them; the Social Security Act of 1935, the Economic Opportunity Act of 1965, and similar Acts. Such human services to be included, but to which the bureau is not limited, are those relating to education, employment and vocational services, income, health, housing, community, mental health, adult developmental, social, transportation and rehabilitation services for people, except older people. Maintaining statistical information through use of uniform methods, which are reasonable, feasible and economically efficient, must be specified for use by public and private agencies, organizations and individuals assisted by state or federal funds pursuant to this Part;

[2011, c. 542, Pt. A, §42 (AMD) .]

10. Prepare, adopt and administer policies, priorities, procedures, rules and regulations to govern its affairs and the development and operation of programs and activities conducted under the authority and in accordance with the purpose and objectives of this Part and Part 2, especially such rules and regulations as may be necessary to carry out the designation of beneficiaries in section 6112, and to define contractual terms, conditions of agreements, quality of performance standards and such other rules as are necessary;

[1973, c. 793, §12 (NEW) .]

11. Provide for the coordination of state and federal programs and activities related to social services in accord with the purpose and objectives of this Part and Part 2;

[1973, c. 793, §12 (NEW) .]

12. Administer in accordance with the intent and objectives of this Part and Part 2, or within any limitation which may apply from the sources of such funds, any funds from any source for the benefit of Maine's residents in need of social services;

[1973, c. 793, §12 (NEW) .]

13. Assist the commissioner in all matters pertaining to social services;

[1973, c. 793, §12 (NEW) .]

14. Develop, in cooperation with other agencies, a plan for meeting the needs for trained personnel in the field of social services and for training persons for carrying out social services related to the intent and objectives of this Part and Part 2, and conduct and provide for the conducting of such training;

[1973, c. 793, §12 (NEW) .]

15. Perform other functions necessary to the powers and duties expressly stated in this Part and Part 2.

[1973, c. 793, §12 (NEW) .]

SECTION HISTORY
1973, c. 793, §12 (NEW). P&SL 1975, c. 90, §§SEC.C,5 (AMD). 2011, c. 542, Pt. A, §42 (AMD).

§5311. OFFICE OF CHILD CARE COORDINATION

(REPEALED)

SECTION HISTORY
1985, c. 476, (NEW). 1989, c. 400, §§12,14 (AMD). 1993, c. 158, §3 (RP).

§5312. HEAD START

The Head Start program is administered by the Division of Purchased and Support Services. [1995, c. 502, Pt. D, §10 (AMD).]

SECTION HISTORY
1991, c. 780, §DDD13 (NEW). 1995, c. 502, §D10 (AMD).

Chapter 1475: MAINE HUMAN SERVICES COUNCIL

§5313. COUNCIL

(REPEALED)

SECTION HISTORY
1973, c. 793, §12 (NEW). 1975, c. 293, §4 (AMD). 1977, c. 78, §152 (AMD). 1983, c. 409, §3 (AMD). 1983, c. 812, §134 (AMD). 1989, c. 503, §B93 (AMD). 1989, c. 576, §4 (RP).

§5314. MEMBERSHIP

(REPEALED)

SECTION HISTORY
1973, c. 793, §12 (NEW). 1975, c. 771, §233 (AMD). 1983, c. 409, §4 (AMD). 1989, c. 576, §4 (RP).

§5315. ADMINISTRATIVE AUTHORITY

(REPEALED)

SECTION HISTORY
1973, c. 793, §12 (NEW). P&SL 1975, c. 90, §C5 (AMD). 1979, c. 542, §D1 (AMD). 1983, c. 409, §§5,6 (AMD). 1983, c. 812, §135 (AMD). 1985, c. 785, §B98 (AMD). 1989, c. 576, §4 (RP).

§5316. POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1973, c. 793, §12 (NEW). P&SL 1975, c. 90, §C5 (AMD). 1983, c. 409, §§7-9 (AMD). 1989, c. 576, §4 (RP).

Chapter 1477: COMMUNITY SERVICES

§5321. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1991, c. 780, Pt. DDD, §14 (NEW).]

1. **Bureau.**

[1995, c. 502, Pt. D, §11 (RP) .]

2. **Community action agency.** "Community action agency" means a private nonprofit agency that has previously been designated by and authorized to accept funds from the Federal Community Services Administration under the United States Economic Opportunity Act of 1964.

[1991, c. 780, Pt. DDD, §14 (NEW) .]

3. **Director.** "Director" means the director of the division.

[1995, c. 502, Pt. D, §12 (AMD) .]

3-A. **Division.** "Division" means the Division of Purchased and Support Services within the department.

[1995, c. 502, Pt. D, §13 (NEW) .]

4. **Poverty level.** "Poverty level" means the official poverty level issued by the Director of the United States Office of Management and Budget.

[1991, c. 780, Pt. DDD, §14 (NEW) .]

5. **Service area.** "Service area" means the geographical area within the jurisdiction of a community action agency.

[1991, c. 780, Pt. DDD, §14 (NEW) .]

SECTION HISTORY
1991, c. 780, §DDD14 (NEW). 1995, c. 502, §§D11-13 (AMD).

§5322. DIVISION RESPONSIBILITIES

The division shall carry out the responsibilities of State Government related to planning and financing community services and community action agencies and shall administer state and federal community services programs and other block grants that may be available, including, but not limited to, the Community Services Block Grant. [1995, c. 502, Pt. D, §14 (AMD).]

SECTION HISTORY
1991, c. 780, §DDD14 (NEW). 1995, c. 502, §D14 (AMD).

§5323. POWERS AND DUTIES

1. **Federal, state and other funds.** Through plans and contracts, the division shall obtain, distribute and administer federal, state and other community services funds. Balances of funds appropriated to the division to carry out the purposes of this chapter may not lapse, but must be carried forward from year to year to be expended for the same purpose.

[1995, c. 502, Pt. D, §14 (AMD) .]

2. **Monitoring of poverty level.** The division shall monitor the poverty level of state citizens and carry out the following activities:

A. Conduct an annual survey of poverty in Maine, reporting the results of this survey to the Governor, the Legislature and the public; [1991, c. 780, Pt. DDD, §14 (NEW).]

B. Make recommendations annually to the Governor and the Legislature on ways and means to combat and reduce poverty in the State; [1991, c. 780, Pt. DDD, §14 (NEW).]

C. Seek federal, state and private funds to combat poverty in the State; and [1991, c. 780, Pt. DDD, §14 (NEW).]

D. Advise the Governor, the Legislature and local officials on the impact of state and local policies on poverty in the State. [1991, c. 780, Pt. DDD, §14 (NEW).]

[1995, c. 502, Pt. D, §14 (AMD) .]

3. **Overseeing community action agencies.** The division shall oversee community action agencies as follows.

A. The division shall designate community action agencies every 7 years in accordance with the requirements of this chapter. [1995, c. 502, Pt. D, §14 (AMD).]

B. The division shall establish audit requirements in accordance with the Human Services Community Agency Accounting Practices Act. [1995, c. 502, Pt. D, §14 (AMD).]

C. The division shall evaluate community action agencies every 3 years. [1995, c. 502, Pt. D, §14 (AMD).]

[1995, c. 502, Pt. D, §14 (AMD) .]

4. **Planning and coordination for state services.** The division shall provide planning and coordination for state services to people with low income.

[1995, c. 502, Pt. D, §14 (AMD) .]

5. **Technical assistance.** The division shall provide technical assistance to community action agencies and other groups serving the interests of people with low income in this State.

[1995, c. 502, Pt. D, §14 (AMD) .]

6. **Monitoring local program operators.** The division shall monitor subgrantees to ensure conformance with appropriate rules.

[1995, c. 502, Pt. D, §14 (AMD) .]

SECTION HISTORY
1991, c. 780, §DDD14 (NEW). 1995, c. 502, §D14 (AMD).

§5324. COMMUNITY ACTION AGENCIES

1. **Designation.** Community action agencies must be designated by the division to carry out the purposes of this chapter. In making these designations, the division shall solicit and consider comments from other state agencies or authorities that operate programs in which community action agencies participate. These designations are for 7 years.

[1995, c. 502, Pt. D, §14 (AMD) .]

2. **Designation withdrawn.** The division may withdraw its designation of a community action agency after an evaluation in which the agency has demonstrated substantial incompetency and a clear inability to carry out the purposes of this chapter, unless there is or has been financial malfeasance, which may be cause for immediate withdrawal of designation. In performing these evaluations, the division shall solicit and consider comments from other state agencies or authorities that operate programs in which the community action agency participates.

The division shall notify an agency of a pending withdrawal of designation. Upon notification, the agency has up to 6 months to take corrective action, at which time a designation withdrawal evaluation must be performed by the division. Failure to pass this evaluation means immediate loss of designation.

Upon the final order from the division that rescinds a community action agency's designation, the community action agency may file a petition for review of this final decision in the appropriate Superior Court within 30 days under the Maine Rules of Civil Procedure, Rule 80B.

[1995, c. 502, Pt. D, §14 (AMD) .]

3. **Community action agencies.** Community action agencies have the power and duty to:

A. Develop information regarding the causes and conditions of poverty in the service area; [1991, c. 780, Pt. DDD, §14 (NEW).]

B. Determine how much and how effectively assistance is being provided to deal with those causes and conditions; [1991, c. 780, Pt. DDD, §14 (NEW).]

C. Establish priorities among projects, activities and areas as needed for the best and most efficient use of available resources; [1991, c. 780, Pt. DDD, §14 (NEW).]

D. Develop, administer and operate programs to reduce poverty with particular emphasis on self-help approaches and programs to promote economic opportunities through affirmative action; [1991, c. 780, Pt. DDD, §14 (NEW).]

E. Initiate, sponsor and provide programs and services responsive to the needs of the poor that are not otherwise being met; [1991, c. 780, Pt. DDD, §14 (NEW).]

F. Promote interagency cooperation and coordination of all services and activities in the service area that are related to the purposes of this chapter; [1991, c. 780, Pt. DDD, §14 (NEW).]

G. Establish effective procedures by which the poor and other concerned area residents may influence the character of programs affecting their interests, provide for their regular participation in the implementation of those programs and provide technical and other support needed to enable low-income and neighborhood groups to secure on their own behalf available assistance from public and private sources; [1991, c. 780, Pt. DDD, §14 (NEW).]

H. Join with and encourage business, labor and other private groups and organizations to undertake, together with private officials and agencies, activities in support of the purposes of this chapter that will result in the increased use of private resources and capabilities in providing social and economic opportunities to low-income citizens; [1991, c. 780, Pt. DDD, §14 (NEW).]

I. Enter into contracts with federal, state and local public agencies and private agencies and organizations, businesses and individuals as necessary to carry out the purposes of this chapter; and [1991, c. 780, Pt. DDD, §14 (NEW).]

J. Receive funds from federal, state and local public and private sources as appropriate to carry out the purposes of this chapter. [1991, c. 780, Pt. DDD, §14 (NEW).]

[1991, c. 780, Pt. DDD, §14 (NEW) .]

SECTION HISTORY
1991, c. 780, §DDD14 (NEW). 1995, c. 502, §D14 (AMD).

§5325. GOVERNING BOARD FOR COMMUNITY ACTION AGENCY

1. **Board of directors; establishment.** Each community action agency shall establish a governing board of directors, which must consist of not less than 15 nor more than 30 members. One third of the members must be representatives of low-income residents of the service area who are selected through a democratic process in accordance with guidelines established by the bureau. One third of the members must be elected public officials or their designees or officials of public agencies operating in the service area. One third of the members must be representatives of private sector organizations, including business and industry, as well as educational, civic, labor and religious organizations. All meetings of the board of directors must be in accordance with the freedom of access laws.

[1991, c. 780, Pt. DDD, §14 (NEW) .]

2. **Responsibilities.** A community action agency board of directors is responsible for the following:

A. Overall direction, oversight and development of policies of the agency; [1991, c. 780, Pt. DDD, §14 (NEW).]

B. Selection, evaluation and dismissal of the executive director of the community action agency; [1991, c. 780, Pt. DDD, §14 (NEW).]

C. Approval of all contracts; [1991, c. 780, Pt. DDD, §14 (NEW).]

D. Approval of all agency budgets; [1991, c. 780, Pt. DDD, §14 (NEW).]

E. Performance of an annual audit by an independent, qualified outside auditor. The audit must be submitted upon completion to the bureau; [1991, c. 780, Pt. DDD, §14 (NEW).]

F. Convening public meetings to provide low-income and other citizens of the service area the opportunity to comment upon policies and programs of the community action agencies; and [1991, c. 780, Pt. DDD, §14 (NEW).]

G. Evaluate agency programs and assess community and agency needs. [1991, c. 780, Pt. DDD, §14 (NEW).]

[1991, c. 780, Pt. DDD, §14 (NEW) .]

SECTION HISTORY
1991, c. 780, §DDD14 (NEW).

§5326. PROGRAMS

All programs administered by community action agencies must conform with federal and state laws and regulations. Applicants for programs and assistance must be promptly notified of their rights and responsibilities when they qualify for or are denied services. [1991, c. 780, Pt. DDD, §14 (NEW).]

SECTION HISTORY
1991, c. 780, §DDD14 (NEW).

§5327. ALLOCATION OF COMMUNITY SERVICES BLOCK GRANT FUNDS

1. **Distribution of Community Services Block Grant funds.** In accordance with Title 5, section 1670, the division shall administer and distribute to community action agencies Community Services Block Grant funds received from the Federal Government. The division may expend up to but not more than 5% of the block grant per fiscal year to carry out its administrative functions under this chapter.

[1995, c. 502, Pt. D, §14 (AMD) .]

2. **Community action agencies; priority.** Of the amount passed through to local agencies, community action agencies must receive first priority in the allocation of Community Services Block Grant funds. These funds must be distributed according to a formula determined annually as follows.

A. Twenty percent of the amount passed through to local agencies must be divided equally among all designated agencies. [1991, c. 780, Pt. DDD, §14 (NEW).]

B. The balance of the funds must be distributed according to rules adopted by the division. [1995, c. 502, Pt. D, §14 (AMD).]

[1995, c. 502, Pt. D, §14 (AMD) .]

3. **Block grant proposals.** Proposals for Community Services Block Grant funds submitted to the Legislature by the division in accordance with Title 5, section 1670 must be developed and must:

A. Include a description of current allocation of Community Services Block Grant funds and how the plan proposes to change that allocation; [1991, c. 780, Pt. DDD, §14 (NEW).]

B. Retain the absolute minimum necessary for administrative costs; and [1991, c. 780, Pt. DDD, §14 (NEW).]

C. Provide for maximum flexibility within community action agencies for the use of Community Services Block Grant funds. [1991, c. 780, Pt. DDD, §14 (NEW).]

[1995, c. 502, Pt. D, §14 (AMD) .]

SECTION HISTORY
1991, c. 780, §DDD14 (NEW). 1995, c. 502, §D14 (AMD).

§5328. CONFIDENTIALITY OF RECORDS

1. **Confidentiality.** Records containing the following information are confidential and may not be considered public records for the purpose of Title 1, section 402, subsection 3:

A. Information acquired by a state agency, municipality, district, private corporation, copartnership, association, fuel vendor, private contractor, individual or an employee or agent of any of those persons or entities, providing services related to authorized programs of the division or programs administered by community action agencies, when that information was provided by the applicant for those services or by a 3rd person; and [1995, c. 502, Pt. D, §14 (AMD).]

B. Statements of financial condition or information pertaining to financial condition submitted to any of the persons or entities set forth in paragraph A in connection with an application for services related to authorized programs of the division or programs administered by community action agencies. [1995, c. 502, Pt. D, §14 (AMD).]

[1995, c. 502, Pt. D, §14 (AMD) .]

2. **Exceptions.** Notwithstanding subsection 1, a person or agency directly involved in the administration or auditing of authorized programs of the division or programs administered by community action agencies and an agency of the State with a legitimate reason to know must be given access to those records described in subsection 1.

[1995, c. 502, Pt. D, §14 (AMD) .]

3. **Waiver of protection.** Nothing in this section may be construed to limit in any way the right of any person whose interest is protected by this section to waive in writing the benefits of protection.

[1991, c. 780, Pt. DDD, §14 (NEW) .]

4. **Reports to State Government or Federal Government.** Notwithstanding subsection 1, the division may make full and complete reports concerning its administration of authorized programs as may be required by the Federal Government, an agency or department of the Federal Government or the Legislature.

[1995, c. 502, Pt. D, §14 (AMD) .]

SECTION HISTORY
1991, c. 780, §DDD14 (NEW). 1995, c. 502, §D14 (AMD).

§5329. RULES

The division shall adopt rules to carry out the requirements of this chapter. [1995, c. 502, Pt. D, §14 (AMD).]

SECTION HISTORY
1991, c. 780, §DDD14 (NEW). 1995, c. 502, §D14 (AMD).

Part 2: PRIORITY SOCIAL SERVICES PROGRAM

Chapter 1501: GENERAL PROVISIONS

§6101. SHORT TITLE

This Part may be cited as the "Priority Social Services Act of 1973." [1991, c. 2, §84 (COR).]

SECTION HISTORY
P&SL 1973, c. 38, §B1 (NEW). RR 1991, c. 2, §84 (COR).

§6102. OBJECTIVES

The objectives of this Act are: [1973, c. 38, Pt. B, §1 (NEW).]

1. To secure and maintain maximum independence and dignity in a family and home environment for people capable of self-care with the benefit of priority social services;

[1973, c. 38, Pt. B, §1 (NEW) .]

2. To remove individual and social barriers to personal and economic independence for citizens; and

[1973, c. 38, Pt. B, §1 (NEW) .]

3. To better utilize existing resources available at the national, state and local levels in order to improve the effectiveness of priority social services.

[1973, Pt. B, §1 (NEW) .]

SECTION HISTORY
P&SL 1973, c. 38, §B1 (NEW).

§6103. PURPOSE

To achieve this objective, it is the purpose of this Part: [1991, c. 2, §85 (COR).]

1. To establish a state authorized and funded program to finance a portion of the expenditures for certain priority social services;

[1973, c. 38, Pt. B, §1 (NEW) .]

2. To appropriate funds primarily for contractual purchase of social services from private, nonprofit or public social agencies on the condition that they are earned or matched by other funds;

[1973, c. 38, Pt. B, §1 (NEW) .]

3. To provide social services to residents who do not qualify for social services paid for under national legislation, especially Titles IV or Title VI, or their successors or amendments or additions thereto, of the United States Social Security Act, as amended, and XVI of the Social Security Act or their successors;

[1975, c. 90, §C, §5 (AMD) .]

4. To require the greater availability and more equitable distribution of certain priority social services throughout the State as a network of coordinated services in proportion to the need for such services in each part of the State;

[1973, c. 38, Pt. B, §1 (NEW) .]

5. To establish, through reorganization and reassignment of duties and functions, unified administration of state funded and federally funded social service programs so that the state operations will be integrated for programs which are similar in nature, client group or administration;

[1973, c. 38, Pt. B, §1 (NEW) .]

6. To require maximum coordination of programs and resources, especially full use of federal resources to the extent reasonably feasible within their limiting constraints, prior to obligation of state funds; and

[1973, c. 38, Pt. B, §1 (NEW) .]

7. To require proper accounting of expenditures and maximum program accountability and evaluation for all social services funded by state revenues.

[1973, c. 38, Pt. B, §1 (NEW) .]

SECTION HISTORY
P&SL 1973, c. 38, §B1 (NEW). P&SL 1975, c. 90, §§SEC.C,5 (AMD).
RR 1991, c. 2, §85 (COR).

§6104. DEFINITIONS

(REPEALED)

SECTION HISTORY
P&SL 1973, c. 38, §B1 (NEW). 1973, c. 793, §14 (RP).

Chapter 1503: PRIORITY SOCIAL SERVICES PROGRAM

§6105. PRIORITY SOCIAL SERVICES PROGRAM

There is established the "Priority Social Services Program." This program shall provide certain priority social services, with an emphasis placed on the development of human services in rural areas of Maine, to residents of the State by encouraging and assisting qualified community, regional and state level, private nonprofit and public nonstate government social agencies to develop greater capacity, to foster the development and provision of priority social services programs by entering into coordinated, cooperative agreements between the State of Maine and such agencies. The program shall begin effective July 1, 1973, except that prior to that date the Department of Health and Human Services is authorized to perform, within the limits of available funds, any and all actions necessary to initiate a properly administered program. [1975, c. 293, §4 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY
P&SL 1973, c. 38, §B1 (NEW). P&SL 1975, c. 90, §§SEC.C,3 (AMD). 1975, c. 293, §4 (AMD). 2003, c. 689, §B6 (REV).

§6106. OFFICE OF RESOURCE DEVELOPMENT

(REPEALED)

SECTION HISTORY
P&SL 1973, c. 38, §B1 (NEW). 1973, c. 793, §14 (RP).

§6107. POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
P&SL 1973, c. 38, §B1 (NEW). 1973, c. 793, §14 (RP).

§6108. ADMINISTRATION OF PRIORITY SOCIAL SERVICES FOR MAINE'S ELDERLY

The Department of Health and Human Services or its successors is designated as the organizational unit of State Government with sole responsibility for administrating, subject to the direction of the commissioner, so much of the Priority Social Services Program as relates directly to older people, such as, but not limited to, these types of social services: meals for older people, transportation for older people and health and home care needs for the elderly. [2011, c. 657, Pt. BB, §12 (AMD).]

Regarding priority social services for older people, the department has the powers and duty to: [2011, c. 657, Pt. BB, §12 (AMD).]

1. **Administer priority social services.** Administer priority social services in accordance with the intent, objectives and purposes of this Part and has, in any respects that relate to these priority social services, the powers and duties set forth in section 5310; and

[2011, c. 657, Pt. BB, §12 (AMD) .]

2. **Action to ensure consistency of priority social services.** Prepare, adopt, amend, rescind and administer policies, priorities, procedures and rules. The department and the Department of Administrative and Financial Services, Bureau of Human Resources, respectively, shall take, pertaining to their own policies, priorities, procedures and rules, such action as is necessary to ensure that such items pertinent to priority social services are consistent.

[2011, c. 657, Pt. BB, §12 (AMD) .]

SECTION HISTORY
P&SL 1973, c. 38, §B1 (NEW). P&SL 1973, c. 148, §B4 (AMD). 1973, c. 793, §16 (RPR). 1975, c. 293, §4 (AMD). 1977, c. 317, §1 (AMD). 1989, c. 329, §21 (AMD). 2003, c. 689, §B6 (REV). 2011, c. 657, Pt. BB, §12 (AMD).

§6109. STATE AGENCIES TO COOPERATE

(REPEALED)

SECTION HISTORY
P&SL 1973, c. 38, §B1 (NEW). 1973, c. 793, §14 (RP).

§6110. DESIGNATION OF PRIORITY SOCIAL SERVICES

The following types of social services are designated as priority social services for payment of expenditures from state funds appropriated to carry out the purposes of this chapter: [1981, c. 608, §1 (AMD).]

Homemaker -- Health Aide Services; [1975, c. 523, §1 (RPR).]

Developmental Day Care, including Family Day Care; [1975, c. 523, §1 (RPR).]

Services for Persons with Intellectual Disabilities or Autism; [2011, c. 542, Pt. A, §43 (AMD).]

Mental Health Services; [1975, c. 523, §1 (RPR).]

Transportation Services; [1975, c. 523, §1 (RPR).]

Meals for Older People; and [1981, c. 608, §1 (AMD).]

Health and Home Care Needs for the Elderly. [1977, c. 317, §2 (NEW).]

Any expenditure of funds for family day care shall not cause the amount which may be expended for developmental day care or any other type of service to decrease below the cumulative fiscal year to date amount expended as of April 1, 1975 for such developmental day care or such other type of service. [1975, c. 523, §1 (RPR).]

SECTION HISTORY
P&SL 1973, c. 38, §B1 (NEW). 1975, c. 523, §1 (RPR). 1977, c. 317, §2 (AMD). 1981, c. 608, §1 (AMD). 2011, c. 542, Pt. A, §43 (AMD).

§6111. COST SHARING OF EXPENDITURES

1. **Development of resources, cooperation and funding.** To encourage and assist development of more effective and more coordinated use of existing and new resources and interagency cooperation as well as combined, joint funding of social services; expenditures for priority social services shall be shared either by the beneficiary of each service to extent possible within the resources available to the beneficiary in accordance with subsection 2; or by the agency providing the social service; by available federal resources

as discussed in subsection 3; or by the State of Maine in total amount not to exceed that specified in each agreement and in a proportion not to exceed the percent of expenditures for each type of service specified in subsection 4.

[1975, c. 90, §C, §4 (RPR) .]

2. **Fees for services.** Private, nonprofit and public agencies operating social services as authorized and funded in part under the Priority Social Services Program may charge fees or accept contributions to the agency for beneficiaries for actual provision of priority social services. Fee charges will be in accordance with a graduated fee scale. This scale shall not require charges to lower income beneficiaries.

The Department of Health and Human Services may establish and enforce adherence to a graduated fee scale that applies uniformly throughout the State of each type of service and based upon a resident's ability to pay. Social agencies making charges for priority social services shall do so in accordance with the graduated fee scale established by the department.

[1975, c. 293, §4 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

3. **Use of federal government resources.** State funds appropriated for priority social services may be used to match appropriate federal funds, except those appropriated under the Social Services Block Grant, to continue or expand priority programs under this chapter.

[1981, c. 608, §2 (RPR) .]

4. **Maximum state share of cost.** State funds appropriated for priority social services may be used to pay a portion of expenditures under each agreement for each type of social service in an amount not to exceed the maximum percentage for state funds of 100% of the total expenditures for each type of priority social service as specified below. One hundred percent funding must be available for not more than 2 years consecutively or in total. State funds appropriated for priority social services may be used to pay a portion of expenditures under each agreement for each type of social service in an amount not to exceed the maximum percentage for state funds of the total expenditures for each type of priority social service as specified below when programs have been funded for a total of 2 years, consecutively or in total. The maximum percentage of state funds of the total expenditures for each type of service may not exceed:

75% for homemaker service;

75% for developmental day care, including family day care;

75% for services for persons with intellectual disabilities or autism;

75% for meals for older people;

75% for mental health services;

75% for transportation services;

75% for health and home care needs for the elderly.

[2011, c. 542, Pt. A, §44 (AMD) .]

5. **Maximum use of nonstate resources.** State funds paying a portion only of expenditures for priority social services are valid only when "earned" or "matched" by expenditure of nonstate resources, which may be cash or in-kind. The expenditure of such resource must be in an amount at least equal to the minimum percentage for nonstate resources of the total expenditures for each type of priority social services as specified below. The minimum percentage for nonstate resources of the total expenditures for each type of service is:

25% for homemaker service;

25% for developmental day care, including family day care;

25% for services for persons with intellectual disabilities or autism;

25% for meals for older people;

25% for mental health services;

25% for transportation services;

25% for health and home care needs for the elderly.

Nonstate resources authorized to qualify to earn or match state funds include private funds such as gifts, grants, fees for service or contributions; in-kind resources that are actual out-of-pocket expenditures; or actual loss of revenue related directly and essentially as an integral part of the operation of a priority social service; and public revenues such as municipal taxes, a municipal or county amount of federal revenue sharing funds, other appropriate federal resources and state revenue sharing funds and such other public resources as may be received by, generated by or available to a municipal or county government or other political subdivision or quasi-governmental bodies.

[2011, c. 542, Pt. A, §45 (AMD) .]

SECTION HISTORY
P&SL 1973, c. 38, §B1 (NEW). P&SL 1975, c. 90, §§SEC.C,4 (RPR). 1975, c. 293, §4 (AMD). 1975, c. 523, §2 (AMD). 1977, c. 317, §§3,4 (AMD). 1981, c. 608, §§2,3 (AMD). 2003, c. 689, §B6 (REV). 2011, c. 542, Pt. A, §§44, 45 (AMD).

§6112. DESIGNATION OF BENEFICIARIES

A resident of this State and members of his immediate family and household, who are eligible for social services as provided by Title XX of the Social Security Act by reason of income, shall also be qualified to be a beneficiary of priority social services in terms of income. [1977, c. 435, (RPR).]

SECTION HISTORY
P&SL 1973, c. 38, §B1 (NEW). 1973, c. 148, §3 (AMD). 1977, c. 435, (RPR).

§6113. INITIATION OF THE PROGRAM

1. **Administrative preparations.** Effective March 16, 1973, the department may immediately commence administrative preparations for initiation of the program no later than July 1, 1973.

[1981, c. 703, Pt. A, §32 (RPR) .]

2. As of July 1, 1973, all responsibilities and functions given to the Office of Resource Development, or to Services for Aging, by this Act shall be effectively held by those offices. To achieve this objective, it is the intent of Legislature that the department shall transfer position count to said offices from existing personal services count previously authorized. Personnel of said offices shall work in coordination and cooperation with other units of State Government.

[1973, c. 38, Pt. B, §1 (NEW) .]

3.

[1981, c. 703, Pt. A, §33 (RP) .]

SECTION HISTORY
P&SL 1973, c. 38, §B1 (NEW). 1973, c. 788, §100 (AMD). 1981, c. 703, §§A32,33 (AMD).

Chapter 1505: ADULT DAY CARE

§6201. LEGISLATIVE INTENT

1. **Findings.** The Legislature finds that:

A. Many adults with long-term care needs who are at risk of institutionalization are in need of the range of health and related services that can be provided more efficiently in an adult day care program within a long-term health care facility or at another community site; [1989, c. 347, §1 (AMD).]

B. Many spouses and families, who are caring for adults with long-term care needs who are at risk of placement in an institutional setting, are in need of assistance for extended hours on a regular or respite basis; [1989, c. 347, §1 (AMD).]

C. For many adults with long-term care needs, it may be less costly for the State to provide adult day care to supplement the care provided by the family than to provide 24-hour long-term care in institutional settings; and [1989, c. 347, §1 (AMD).]

D. [1989, c. 347, §1 (RP).]

E. Long-term health related care facilities and other community-based programs located throughout the State could respond to the adult day care needs of individuals and their families. [1989, c. 347, §1 (AMD).]

[1989, c. 347, §1 (AMD) .]

2. **Policy.** The Legislature declares that it is the policy of this State:

A. [1989, c. 347, §1 (AMD).]

B. To enhance the systems of in-home services by utilizing the resources available through long-term care facilities and community-based programs; [1989, c. 347, §1 (AMD).]

C. To assure that the recipients of adult day care services from long-term care facilities and other community-based programs, pursuant to this chapter, are the elderly and disabled adults who are at the greatest risk of being placed in a long-term care institutional setting; [1989, c. 347, §1 (AMD).]

D. [1989, c. 347, §1 (RP).]

E. To develop payment policies for long-term care facilities and community-based programs that will allow fair and equitable payments for services provided pursuant to this chapter; and [1989, c. 347, §1 (AMD).]

F. To establish a permanent program of adult day care, to be provided through both long-term care facilities and in community-based programs. [1989, c. 347, §1 (NEW).]

[1989, c. 347, §1 (AMD) .]

SECTION HISTORY
1983, c. 545, §1 (NEW). 1989, c. 347, §1 (AMD).

§6202. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1983, c. 545, §1 (NEW).]

1. **Adult day care.** "Adult day care" means an ongoing program of health, social, maintenance and rehabilitative services available to persons needing this level of service, as determined by an assessment of their functional abilities and need for health and social services.

[1989, c. 347, §2 (AMD) .]

2. **Adults with long-term care needs.** "Adults with long-term care needs" means adults who have physical or mental limitations which restrict their ability to carry out activities of daily living and impede their ability to live independently, or who are at risk of being placed, or who already have been placed in an institutional setting.

[1983, c. 545, §1 (NEW) .]

3. **Agreement.** "Agreement" means a contract, grant or other method of payment.

[1983, c. 545, §1 (NEW) .]

4. **Demonstrations.**

[1989, c. 347, §3 (RP) .]

4-A. **Community-based program.** "Community-based program" means a program of adult day care offered outside of a long-term health care facility and which meets the licensing and program standards of the Department of Health and Human Services.

[1989, c. 347, §4 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

5. **Department.**

[2011, c. 657, Pt. BB, §13 (RP) .]

6. **In-home services.**

[1989, c. 347, §6 (RP) .]

6-A. **Licensed adult day care program.** A "licensed adult day care program" means a program of adult day care which has been licensed by the Department of Health and Human Services according to section 8602.

[1989, c. 347, §7 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

7. **Long-term health care facilities.** "Long-term health care facilities" means intermediate care and skilled nursing facilities and units, licensed pursuant to chapter 405.

[1983, c. 545, §1 (NEW) .]

8. **Provider.** "Provider" means any facility or program which meets the licensing and program standards of the department.

[1989, c. 347, §8 (NEW) .]

SECTION HISTORY
1983, c. 545, §1 (NEW). 1989, c. 347, §§2-8 (AMD). 1989, c. 878, §B19 (AMD). 2003, c. 689, §B6 (REV). 2011, c. 657, Pt. BB, §13 (AMD).

§6203. RULES; AGREEMENTS

1. **Rules.** The department shall promulgate such rules as may be necessary for the effective administration of adult day care pursuant to this chapter, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375. In the development of these rules, the department shall consult with the Maine Committee on Aging, the associations representing care facilities and area agencies on aging.

[1989, c. 347, §9 (AMD) .]

2. **Agreements.** In order to provide adult day care and other services, the department may enter into agreements with long-term health care facilities and community-based programs, separate and distinct from any other agreements between the department and the same facility or programs.

Any facility or program providing adult day care pursuant to this chapter shall enter into an agreement with the department. Each agreement shall specify, among other things, the services to be provided, the fees for services, the method of payment, records to be maintained and the provisions for evaluating the services provided.

[1989, c. 329, §22 (AMD); 1989, c. 347, §9 (AMD); 1989, c. 878, Pt. A, §64 (RPR) .]

SECTION HISTORY
1983, c. 545, §1 (NEW). 1989, c. 329, §22 (AMD). 1989, c. 347, §9 (AMD). 1989, c. 878, §A64 (AMD).

§6204. SITES; OTHER SERVICES

(REPEALED)

SECTION HISTORY
1983, c. 545, §1 (NEW). 1989, c. 329, §23 (AMD). 1989, c. 347, §10 (RP). 1989, c. 878, §B20 (RP).

§6205. FEES

(REPEALED)

SECTION HISTORY
1983, c. 545, §1 (NEW). 1989, c. 347, §10 (RP).

§6206. ELIGIBILITY

(REPEALED)

SECTION HISTORY
1983, c. 545, §1 (NEW). 1989, c. 347, §10 (RP).

§6207. PAYMENT

(REPEALED)

SECTION HISTORY
1983, c. 545, §1 (NEW). 1989, c. 347, §10 (RP).

§6208. REPORT

A report of services provided pursuant to this chapter shall be included in the annual Maine Social Services Report. [1989, c. 347, §11 (RPR).]

SECTION HISTORY
1983, c. 545, §1 (NEW). 1989, c. 347, §11 (RPR).

§6209. FUNDS

1. **Distribution.** The department shall disburse funds, pursuant to this Subtitle, in a manner that ensures, to the extent practicable, equitable distribution of services among adults with long-term care needs and the various regions of the State.

[1989, c. 347, §12 (NEW) .]

2. **Fee scale.** The department shall develop, wherever practicable, sliding fee scales for adult day care services provided pursuant to this Subtitle.

[1989, c. 347, §12 (NEW) .]

SECTION HISTORY
1989, c. 347, §12 (NEW).

Part 3: DRUG ABUSE

Chapter 1601: ALCOHOLISM, INTOXICATION AND DRUG ABUSE PREVENTION, TREATMENT AND REHABILITATION

Subchapter 1: GENERAL PROVISIONS

§7101. SHORT TITLE

(REPEALED)

SECTION HISTORY
1973, c. 566, §1 (NEW). 1989, c. 934, §B1 (RP).

§7102. DECLARATION OF OBJECTIVES

(REPEALED)

SECTION HISTORY
1973, c. 566, §1 (NEW). 1981, c. 454, §1 (AMD). 1983, c. 464, §§1,2 (AMD). 1987, c. 735, §15 (AMD). 1989, c. 934, §B1 (RP).

§7103. DEFINITIONS

(REPEALED)

SECTION HISTORY
1973, c. 566, §1 (NEW). 1975, c. 204, §1 (AMD). 1975, c. 293, §4 (AMD). 1977, c. 78, §153 (AMD). 1979, c. 541, §A157 (AMD). 1983, c. 464, §§3,4 (AMD). 1987, c. 735, §§16-21 (AMD). 1989, c. 934, §B1 (RP).

Subchapter 2: ORGANIZATION

§7104. OFFICE OF ALCOHOLISM AND DRUG ABUSE PREVENTION

(REPEALED)

SECTION HISTORY
1973, c. 566, §1 (NEW). 1975, c. 293, §4 (AMD). 1983, c. 464, §5 (RPR). 1987, c. 735, §22 (RP).

§7105. DIRECTOR

(REPEALED)

SECTION HISTORY
1973, c. 566, §1 (NEW). 1983, c. 464, §6 (AMD). 1985, c. 785, §B99 (AMD). 1987, c. 735, §22 (RP).

§7106. POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1973, c. 566, §1 (NEW). 1977, c. 78, §§154,155 (AMD). 1977, c. 694, §372 (AMD). 1981, c. 454, §§2-4 (AMD). 1981, c. 468, §§1,2 (AMD). 1981, c. 703, §§A34-A38 (AMD). 1983, c. 464, §§7-11 (AMD). 1985, c. 688, (AMD). 1987, c. 735, §22 (RP).

Subchapter 3: ADVISORY COUNCIL

§7107. MAINE COUNCIL ON ALCOHOL AND DRUG ABUSE PREVENTION AND TREATMENT

(REPEALED)

SECTION HISTORY
1973, c. 566, §1 (NEW). 1977, c. 78, §156 (AMD). 1983, c. 464, §12 (AMD). 1983, c. 812, §136 (AMD). 1989, c. 503, §B94 (AMD). 1989, c. 934, §B1 (RP).

§7108. MEMBERSHIP

(REPEALED)

SECTION HISTORY
1973, c. 566, §1 (NEW). 1975, c. 771, §234 (AMD). 1977, c. 253, §§1,2 (AMD). 1983, c. 464, §13 (AMD). 1987, c. 735, §23 (AMD). 1989, c. 330, §§1,2 (AMD). 1989, c. 519, §§1,4 (AMD). 1989, c. 934, §B1 (RP).

§7109. MEETINGS, COMPENSATION, QUORUM

(REPEALED)

SECTION HISTORY
1973, c. 566, §1 (NEW). 1983, c. 812, §137 (AMD). 1989, c. 934, §B1 (RP).

§7110. POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1973, c. 566, §1 (NEW). 1981, c. 703, §A39 (AMD). 1983, c. 464, §14 (AMD). 1989, c. 934, §B1 (RP).

Subchapter 4: COOPERATING STATE AGENCIES, PROGRAMS AND TREATMENT

§7111. STATE GOVERNMENT COORDINATING COMMITTEE

(REPEALED)

SECTION HISTORY
1973, c. 566, §1 (NEW). 1975, c. 293, §4 (AMD). 1981, c. 703, §A40 (RP).

§7112. STATE AGENCIES TO COOPERATE

(REPEALED)

SECTION HISTORY
1973, c. 566, §1 (NEW). 1981, c. 454, §§5,6 (AMD). 1981, c. 493, §2 (AMD). 1983, c. 464, §§15-17 (AMD). 1987, c. 735, §§24,25 (AMD). 1989, c. 934, §B1 (RP).

§7113. STATE DRUG ABUSE STRATEGY

(REPEALED)

SECTION HISTORY
1973, c. 566, §1 (NEW). 1973, c. 788, §101 (AMD). 1983, c. 464, §18 (RP).

§7114. COMPREHENSIVE PROGRAM ON ALCOHOLISM AND DRUG ABUSE

(REPEALED)

SECTION HISTORY
1973, c. 566, §1 (NEW). 1987, c. 735, §26 (RP).

§7115. STANDARDS FOR PUBLIC AND PRIVATE ALCOHOL OR DRUG ABUSE TREATMENT FACILITIES; ENFORCEMENT PROCEDURES; PENALTIES

(REPEALED)

SECTION HISTORY
1973, c. 566, §1 (NEW). 1977, c. 413, (AMD). 1977, c. 694, §373 (AMD). 1987, c. 735, §27 (RP).

§7116. ACCEPTANCE FOR TREATMENT OF ALCOHOLICS AND INTOXICATED PERSONS; RULES

(REPEALED)

SECTION HISTORY
1973, c. 566, §1 (NEW). 1983, c. 363, §1 (AMD). 1987, c. 735, §28 (RP).

§7117. VOLUNTARY TREATMENT OF ALCOHOLICS

(REPEALED)

SECTION HISTORY
1973, c. 566, §1 (NEW). 1987, c. 735, §29 (RP).

§7118. TREATMENT AND SERVICES FOR INTOXICATED PERSONS AND PERSONS INCAPACITATED BY ALCOHOL

(REPEALED)

SECTION HISTORY
1973, c. 566, §1 (NEW). 1987, c. 735, §29 (RP).

§7119. EMERGENCY COMMITMENT OF AN INCAPACITATED OR INTOXICATED PERSON

(REPEALED)

SECTION HISTORY
1973, c. 566, §1 (NEW). 1987, c. 735, §29 (RP).

§7120. INVOLUNTARY COMMITMENT OF ALCOHOLICS OR INCAPACITATED PERSONS

(REPEALED)

SECTION HISTORY
1973, c. 566, §1 (NEW). 1987, c. 735, §29 (RP).

§7121. RECORDS

(REPEALED)

SECTION HISTORY
1973, c. 566, §1 (NEW). 1987, c. 735, §29 (RP).

§7122. VISITATION AND COMMUNICATION OF PATIENTS

(REPEALED)

SECTION HISTORY
1973, c. 566, §1 (NEW). 1987, c. 735, §29 (RP).

§7123. EMERGENCY SERVICE PATROL; ESTABLISHMENT; RULES

(REPEALED)

SECTION HISTORY
1973, c. 566, §1 (NEW). 1987, c. 735, §29 (RP).

§7124. PAYMENT FOR TREATMENT; FINANCIAL ABILITY OF PATIENTS

(REPEALED)

SECTION HISTORY
1973, c. 566, §1 (NEW). 1975, c. 204, §§2,3 (AMD). 1987, c. 735, §30 (RP).

§7125. CRIMINAL LAW LIMITATIONS

(REPEALED)

SECTION HISTORY
1981, c. 703, §A41 (NEW). 1987, c. 735, §31 (RP).

Subchapter 5: ALCOHOL AND DRUG PLANNING

§7131. ALCOHOL AND DRUG ABUSE PLANNING COMMITTEE

(REPEALED)

SECTION HISTORY
1983, c. 464, §19 (NEW). 1985, c. 295, §37 (AMD). 1987, c. 584, §§1,2 (AMD). 1987, c. 735, §§32-34 (AMD). 1989, c. 700, §A92 (AMD). 1989, c. 934, §B1 (RP).

§7132. POWERS AND DUTIES OF THE COMMITTEE

(REPEALED)

SECTION HISTORY
1983, c. 464, §19 (NEW). 1987, c. 735, §35 (AMD). 1989, c. 700, §A93 (AMD). 1989, c. 934, §B1 (RP).

§7133. PLANNING DIRECTOR

(REPEALED)

SECTION HISTORY
1983, c. 464, §19 (NEW). 1985, c. 785, §B100 (AMD). 1987, c. 735, §36 (AMD). 1989, c. 934, §B1 (RP).

Chapter 1602: OFFICE OF ALCOHOLISM AND DRUG ABUSE PREVENTION

Subchapter 1: DRIVER EDUCATION EVAULATION PROGRAMS

§7201. DEFINITIONS

(REPEALED)

SECTION HISTORY
1987, c. 536, §2 (NEW). 1987, c. 773, §§1-3 (AMD). 1989, c. 790, §5 (AMD). 1989, c. 934, §§B2,5 (AMD). 1991, c. 601, §29 (RP).

§7202. DIVISION OF DRIVER EDUCATION EVALUATION

(REPEALED)

SECTION HISTORY
1987, c. 536, §2 (NEW). 1987, c. 773, §11 (AMD). 1989, c. 790, §5 (AMD). 1991, c. 601, §29 (RP).

§7203. PROGRAM COMPONENTS

(REPEALED)

SECTION HISTORY
1987, c. 536, §2 (NEW). 1987, c. 773, §§4,11 (AMD). 1989, c. 790, §§1,2,5 (AMD). 1991, c. 516, §1 (AMD). 1991, c. 601, §29 (RP).

§7204. SEPARATION OF EVALUATION AND TREATMENT FUNCTIONS

(REPEALED)

SECTION HISTORY
1987, c. 536, §2 (NEW). 1987, c. 773, §§5,11 (RP). 1989, c. 790, §5 (AMD).

§7204-A. SEPARATION OF EVALUATION AND TREATMENT FUNCTIONS

(REPEALED)

SECTION HISTORY
1987, c. 773, §6 (NEW). 1989, c. 790, §5 (AMD). 1991, c. 601, §29 (RP).

§7205. CERTIFICATION; RECERTIFICATION

(REPEALED)

SECTION HISTORY
1987, c. 536, §2 (NEW). 1987, c. 773, §11 (AMD). 1989, c. 790, §5 (AMD). 1991, c. 601, §29 (RP).

§7206. FEES

(REPEALED)

SECTION HISTORY
1987, c. 536, §2 (NEW). 1987, c. 773, §§7,8,11 (AMD). 1989, c. 790, §§3,5 (AMD). 1991, c. 528, §J6 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §J6 (AMD). 1991, c. 601, §29 (RP).

§7207. BOARD OF APPEALS

(REPEALED)

SECTION HISTORY
1987, c. 536, §2 (NEW). 1987, c. 773, §11 (AMD). 1989, c. 503, §B95 (AMD). 1989, c. 503, §B96 (RP). 1989, c. 790, §5 (AMD). 1991, c. 601, §29 (RP).

§7208. SERVICE PROVIDER REPORT

(REPEALED)

SECTION HISTORY
1989, c. 790, §5 (AMD). 1991, c. 456, §1 (NEW). 1991, c. 601, §29 (RP).

§7209. CLIENT COMPLAINTS

(REPEALED)

SECTION HISTORY
1989, c. 790, §5 (AMD). 1991, c. 456, §1 (NEW). 1991, c. 601, §29 (RP).

Subchapter 2: OFFICE OF ALCOHOLISM AND DRUG ABUSE PREVENTION

§7221. OFFICE OF ALCOHOLISM AND DRUG ABUSE PREVENTION

(REPEALED)

SECTION HISTORY
1987, c. 735, §38 (NEW). 1989, c. 790, §5 (AMD). 1989, c. 934, §B3 (RP).

§7222. DEFINITIONS

(REPEALED)

SECTION HISTORY
1987, c. 735, §38 (NEW). 1989, c. 790, §5 (AMD). 1989, c. 934, §B3 (RP).

§7223. OFFICE ESTABLISHED

(REPEALED)

SECTION HISTORY
1987, c. 735, §38 (NEW). 1989, c. 790, §5 (AMD). 1989, c. 934, §B3 (RP).

§7224. DIRECTOR

(REPEALED)

SECTION HISTORY
1987, c. 735, §38 (NEW). 1989, c. 790, §5 (AMD). 1989, c. 934, §B3 (RP).

§7225. POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1987, c. 735, §38 (NEW). 1989, c. 790, §§4,5 (AMD). 1989, c. 934, §B3 (RP).

§7226. COMPREHENSIVE PROGRAM ON ALCOHOLISM AND DRUG ABUSE

(REPEALED)

SECTION HISTORY

1987, c. 735, §38 (NEW). 1989, c. 790, §5 (AMD). 1989, c. 934, §B3 (RP).

§7227. STANDARDS FOR PUBLIC AND PRIVATE ALCOHOL OR DRUG ABUSE TREATMENT FACILITIES; ENFORCEMENT PROCEDURES; PENALTIES

(REPEALED)

SECTION HISTORY
1987, c. 735, §38 (NEW). 1989, c. 790, §5 (AMD). 1989, c. 934, §B3 (RP).

§7228. ACCEPTANCE FOR TREATMENT OF ALCOHOLICS AND INTOXICATED PERSONS; RULES

(REPEALED)

SECTION HISTORY
1987, c. 735, §38 (NEW). 1989, c. 790, §5 (AMD). 1989, c. 934, §B3 (RP).

§7229. VOLUNTARY TREATMENT OF ALCOHOLICS

(REPEALED)

SECTION HISTORY
1987, c. 735, §38 (NEW). 1989, c. 790, §5 (AMD). 1989, c. 934, §B3 (RP).

§7230. TREATMENT AND SERVICES FOR INTOXICATED PERSONS AND PERSONS INCAPACITATED BY ALCOHOL

(REPEALED)

SECTION HISTORY
1987, c. 735, §38 (NEW). 1989, c. 502, §A79 (AMD). 1989, c. 790, §5 (AMD). 1989, c. 934, §B3 (RP).

§7231. EMERGENCY COMMITMENT OF AN INCAPACITATED OR INTOXICATED PERSON

(REPEALED)

SECTION HISTORY
1987, c. 735, §38 (NEW). 1989, c. 790, §5 (AMD). 1989, c. 934, §B3 (RP).

§7232. INVOLUNTARY COMMITMENT OF ALCOHOLICS OR INCAPACITATED PERSONS

(REPEALED)

SECTION HISTORY
1987, c. 735, §38 (NEW). 1989, c. 790, §5 (AMD). 1989, c. 934, §B3 (RP).

§7233. RECORDS

(REPEALED)

SECTION HISTORY
1987, c. 735, §38 (NEW). 1989, c. 790, §5 (AMD). 1989, c. 934, §B3 (RP).

§7234. VISITATION AND COMMUNICATION OF PATIENTS

(REPEALED)

SECTION HISTORY
1987, c. 735, §38 (NEW). 1989, c. 790, §5 (AMD). 1989, c. 934, §B3 (RP).

§7235. EMERGENCY SERVICE PATROL; ESTABLISHMENT; RULES

(REPEALED)

SECTION HISTORY
1987, c. 735, §38 (NEW). 1989, c. 790, §5 (AMD). 1989, c. 934, §B3 (RP).

§7236. PAYMENT FOR TREATMENT; FINANCIAL ABILITY OF PATIENTS

(REPEALED)

SECTION HISTORY
1987, c. 735, §38 (NEW). 1989, c. 790, §5 (AMD). 1989, c. 934, §B3 (RP).

§7237. CRIMINAL LAW LIMITATIONS

(REPEALED)

SECTION HISTORY
1987, c. 735, §38 (NEW). 1989, c. 790, §5 (AMD). 1989, c. 934, §B3 (RP).

Subchapter 2-A: OFFICE OF ALCOHOL AND DRUG ABUSE PREVENTION

§7241. OFFICE ESTABLISHED

(REPEALED)

SECTION HISTORY
1989, c. 790, §5 (AMD). 1989, c. 934, §B4 (NEW). 1991, c. 601, §29 (RP).

§7242. DEFINITIONS

(REPEALED)

SECTION HISTORY
1989, c. 790, §5 (AMD). 1989, c. 934, §B4 (NEW). 1991, c. 601, §29 (RP).

§7243. POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1989, c. 790, §5 (AMD). 1989, c. 934, §B4 (NEW). 1991, c. 601, §29 (RP).

§7244. DIRECTOR

(REPEALED)

SECTION HISTORY
1989, c. 790, §5 (AMD). 1989, c. 934, §B4 (NEW). 1991, c. 601, §29 (RP).

Chapter 1603: CONTROLLED SUBSTANCES PRESCRIPTION MONITORING

§7245. LEGISLATIVE INTENT

It is the intent of the Legislature that the prescription monitoring program established pursuant to this chapter serve as a means to promote the public health and welfare and to detect and prevent substance abuse. This chapter is not intended to interfere with the legitimate medical use of controlled substances. [2003, c. 483, §1 (NEW).]

SECTION HISTORY
2003, c. 483, §1 (NEW).

§7246. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2003, c. 483, §1 (NEW).]

1. **Controlled substance.** "Controlled substance" means a controlled substance included in schedules II, III or IV of 21 United States Code, Section 812 or 21 Code of Federal Regulations, Section 1308.

[2003, c. 483, §1 (NEW) .]

1-A. **Acute pain.** "Acute pain" means pain that is the normal, predicted physiological response to a noxious chemical or thermal or mechanical stimulus. "Acute pain" typically is associated with invasive procedures, trauma and disease and is usually time-limited.

[2015, c. 488, §1 (NEW) .]

1-B. **Administer.** "Administer" means an action to apply a prescription drug directly to a person by any means by a licensed or certified health care professional acting within that professional's scope of practice. "Administer" does not include the delivery, dispensing or distribution of a prescription drug for later use.

[2015, c. 488, §1 (NEW) .]

1-C. **Chronic pain.** "Chronic pain" means pain that persists beyond the usual course of an acute disease or healing of an injury. "Chronic pain" may or may not be associated with an acute or chronic pathologic process that causes continuous or intermittent pain over months or years.

[2015, c. 488, §1 (NEW) .]

2. **Dispenser.** "Dispenser" means a pharmacist who is licensed or registered under Title 32 or a licensed health care professional with authority to dispense or administer prescription drugs.

[2003, c. 483, §1 (NEW) .]

3. **Fund.** "Fund" means the Controlled Substances Prescription Monitoring Program Fund established in section 7247.

[2003, c. 483, §1 (NEW) .]

4. **Office.**

[2011, c. 657, Pt. AA, §65 (RP) .]

5. **Prescriber.** "Prescriber" means a licensed health care professional with authority to prescribe controlled substances and a veterinarian licensed under Title 32, chapter 71-A with authority to prescribe controlled substances.

[2015, c. 488, §2 (AMD) .]

6. **Prescription monitoring information.** "Prescription monitoring information" means information submitted to and maintained by the program.

[2003, c. 483, §1 (NEW) .]

7. **Program.** "Program" means the Controlled Substances Prescription Monitoring Program established under section 7248.

[2003, c. 483, §1 (NEW) .]

SECTION HISTORY
2003, c. 483, §1 (NEW). 2003, c. 689, §B6 (REV). 2011, c. 657, Pt. AA, §65 (AMD). 2015, c. 488, §§1, 2 (AMD).

§7247. CONTROLLED SUBSTANCES PRESCRIPTION MONITORING PROGRAM FUND

The Controlled Substances Prescription Monitoring Program Fund is established within the department to be used by the commissioner to fund or assist in funding the program. Any balance in the fund does not lapse but is carried forward to be expended for the same purposes in succeeding fiscal years. The fund must be deposited with and maintained and administered by the department. The commissioner may accept funds into the fund from any source, public or private, including grants or contributions of money or other things of value, that the commissioner determines necessary to carry out the purposes of this chapter. Money received by the department to establish and maintain the program must be used for the expenses of administering this chapter. [2011, c. 657, Pt. AA, §66 (AMD).]

SECTION HISTORY
2003, c. 483, §1 (NEW). 2011, c. 380, Pt. WW, §1 (AMD). 2011, c. 657, Pt. AA, §66 (AMD).

§7248. CONTROLLED SUBSTANCES PRESCRIPTION MONITORING PROGRAM

1. **Establishment of monitoring program.** Contingent upon the receipt of funds pursuant to section 7247 sufficient to carry out the purposes of this chapter, the Controlled Substances Prescription Monitoring Program is established. No later than January 2, 2004, to implement the program, the department shall establish an electronic system for monitoring any controlled substance that is dispensed to a person in the State by a dispenser.

[2011, c. 657, Pt. AA, §67 (AMD) .]

2. **Contract for services.** The department may contract with a vendor to establish and maintain the program pursuant to rules adopted by the department.

[2011, c. 657, Pt. AA, §67 (AMD) .]

3. **Information available.** The program must rapidly provide information in an electronic format to prescribers and dispensers.

[2003, c. 483, §1 (NEW) .]

SECTION HISTORY
2003, c. 483, §1 (NEW). 2011, c. 657, Pt. AA, §67 (AMD).

§7249. REPORTING OF PRESCRIPTION MONITORING INFORMATION

1. **Information required.** Each dispenser shall submit to the department, by electronic means or other format specified in a waiver granted by the department, specific items of information regarding dispensed controlled substances determined by the office from the following list:

A. The dispenser identification number; [2003, c. 483, §1 (NEW).]

B. The date the prescription was filled; [2003, c. 483, §1 (NEW).]

C. The prescription number; [2003, c. 483, §1 (NEW).]

D. Whether the prescription is new or is a refill; [2003, c. 483, §1 (NEW).]

E. The National Drug Code (NDC) for the drug dispensed; [2003, c. 483, §1 (NEW).]

F. The quantity dispensed; [2003, c. 483, §1 (NEW).]

G. The dosage; [2003, c. 483, §1 (NEW).]

H. The patient identification number; [2003, c. 483, §1 (NEW).]

I. The patient name; [2003, c. 483, §1 (NEW).]

J. The patient address; [2003, c. 483, §1 (NEW).]

K. The patient date of birth; [2003, c. 483, §1 (NEW).]

L. The prescriber identification number; [2003, c. 483, §1 (NEW).]

M. The date the prescription was issued by the prescriber; and [2003, c. 483, §1 (NEW).]

N. The department-issued serial number if the department chooses to establish a serial prescription system. [2011, c. 657, Pt. AA, §68 (AMD).]

[2011, c. 657, Pt. AA, §68 (AMD) .]

2. **Frequency.** Each dispenser shall submit the information required under subsection 1 as frequently as specified by the department.

[2011, c. 657, Pt. AA, §68 (AMD) .]

3. **Waiver.** The department may grant a waiver of the electronic submission requirement under subsection 1 to any dispenser for good cause, including financial hardship, as determined by the department. The waiver must state the format and frequency with which the dispenser is required to submit the required information.

[2011, c. 657, Pt. AA, §68 (AMD) .]

4. **Immunity from liability.** A dispenser or prescriber is immune from liability for disclosure of information if the disclosure was made pursuant to and in accordance with this chapter.

[2015, c. 488, §3 (AMD) .]

5. **Participation requirements.**

[2013, c. 587, §1 (RP) .]

SECTION HISTORY
2003, c. 483, §1 (NEW). 2011, c. 477, Pt. K, §1 (AMD). 2011, c. 657, Pt. AA, §68 (AMD). 2013, c. 587, §1 (AMD). 2015, c. 488, §3 (AMD).

§7250. ACCESS TO PRESCRIPTION MONITORING INFORMATION AND CONFIDENTIALITY

1. **Confidentiality.** Except as provided in this section, prescription monitoring information submitted to the department is confidential and is not a public record as defined in Title 1, section 402, subsection 3.

[2011, c. 657, Pt. AA, §69 (AMD) .]

2. **Review of information.** If the prescription monitoring information surpasses thresholds as established by the department, the department shall notify the prescriber, the dispenser and, if the department determines it to be necessary, the professional licensing entity and provide all relevant prescription monitoring information to those persons and entities through an established letter of notification.

[2011, c. 657, Pt. AA, §69 (AMD) .]

3. **Permissible disclosure of information.** The department may provide prescription monitoring information for public research, policy or education purposes as long as all information reasonably likely to reveal the patient or other person who is the subject of the information has been removed.

[2011, c. 657, Pt. AA, §69 (AMD) .]

4. **Access to information.** The following persons may access prescription monitoring information:

A. A prescriber, insofar as the information relates to a patient under the prescriber's care; [2003, c. 483, §1 (NEW).]

B. A dispenser, insofar as the information relates to a customer of the dispenser seeking to have a prescription filled; [2003, c. 483, §1 (NEW).]

C. The executive director, or a board investigator as designated by each board, of the state boards of licensure of podiatric medicine, dentistry, pharmacy, medicine, osteopathy, veterinary medicine, nursing or other boards representing health care disciplines whose licensees are prescribers, as required for an investigation, with reasonable cause; [2003, c. 483, §1 (NEW).]

D. A patient to whom a prescription is written, insofar as the information relates to that patient; [2009, c. 196, §1 (AMD); 2009, c. 298, §1 (AMD).]

E. Department personnel or personnel of any vendor or contractor, as necessary for establishing and maintaining the program's electronic system; [2011, c. 657, Pt. AA, §69 (AMD).]

F. The Office of Chief Medical Examiner for the purpose of conducting an investigation or inquiry into the cause, manner and circumstances of death in a medical examiner case as described in section 3025. Prescription monitoring information in the possession or under the control of the Office of Chief Medical Examiner is confidential and, notwithstanding section 3022, may not be disseminated. Information that is not prescription monitoring information and is separately acquired following access to prescription monitoring information pursuant to this paragraph remains subject to protection or dissemination in accordance with section 3022; [2011, c. 218, §1 (AMD).]

(Paragraph F as enacted by PL 2009, c. 298, §3 is REALLOCATED TO TITLE 22, SECTION 7250, SUBSECTION 4, PARAGRAPH G)

G. The office that administers the MaineCare program pursuant to chapter 855 for the purposes of managing the care of its members, monitoring the purchase of controlled substances by its members, avoiding duplicate dispensing of controlled substances and providing treatment pattern data under subsection 6; [2015, c. 488, §4 (AMD).]

H. Another state or a Canadian province pursuant to subsection 4-A; [2015, c. 488, §5 (AMD).]

I. Staff members of a licensed hospital who are authorized by the chief medical officer of the hospital, insofar as the information relates to a patient receiving care in the hospital's emergency department or receiving inpatient services from the hospital; and [2015, c. 488, §6 (NEW).]

J. Staff members of a pharmacist who are authorized by the pharmacist on duty, insofar as the information relates to a customer seeking to have a prescription filled. [2015, c. 488, §6 (NEW).]

[2015, c. 488, §§4-6 (AMD) .]

4-A. **Information sharing with other states and Canadian provinces.** The department may provide prescription monitoring information to and receive prescription monitoring information from another state or a Canadian province that has prescription monitoring information provisions consistent with this chapter and has entered into a prescription monitoring information sharing agreement with the department. The department may enter into a prescription monitoring information sharing agreement with another state or a Canadian province to establish the terms and conditions of prescription monitoring information sharing and interoperability of information systems and to carry out the purposes of this subsection. For purposes of this subsection, "another state" means any state other than Maine and any territory or possession of the United States, but does not include a foreign country.

[2015, c. 488, §7 (AMD) .]

5. **Purge of information.** The department shall purge from the program all information that is more than 6 years old.

[2011, c. 657, Pt. AA, §69 (AMD) .]

6. **Treatment pattern data.** The department may provide to a prescriber who treats a member under the MaineCare program prescription monitoring information on the prescriber and other prescribers that is de-identified as to prescriber and patient and that indicates treatment patterns in comparison among peers. If the department has shared with a prescriber treatment pattern data under this subsection, the department shall allow the prescriber time to align the prescriber's prescribing patterns with the patterns of the peers of the prescriber. The department may take appropriate actions with regard to a prescriber who is unable to achieve treatment pattern alignment as provided in this subsection.

[2011, c. 657, Pt. O, §4 (NEW) .]

SECTION HISTORY
2003, c. 483, §1 (NEW). RR 2009, c. 1, §§14-16 (COR). 2009, c. 196, §§1-3 (AMD). 2009, c. 298, §§1-3 (AMD). 2011, c. 218, §§1-4 (AMD). 2011, c. 657, Pt. AA, §69 (AMD). 2011, c. 657, Pt. O, §§3, 4 (AMD). 2015, c. 488, §§4-7 (AMD).

§7251. UNLAWFUL ACTS AND PENALTIES

1. **Failure to submit information.** A dispenser who knowingly fails to submit prescription monitoring information to the department as required by this chapter commits a civil violation for which a fine of $250 per incident, not to exceed $5,000 per calendar year, may be adjudged and is subject to discipline by the Maine Board of Pharmacy pursuant to Title 32, chapter 117, subchapter 4 or by the applicable professional licensing entity.

[2015, c. 488, §8 (AMD) .]

2. **Unlawful disclosure or use of information.** A person who intentionally or knowingly uses or discloses prescription monitoring information in violation of this chapter, unless otherwise authorized by law, is guilty of a Class C crime.

[2003, c. 483, §1 (NEW) .]

SECTION HISTORY
2003, c. 483, §1 (NEW). 2011, c. 657, Pt. AA, §70 (AMD). 2015, c. 488, §8 (AMD).

§7252. RULEMAKING

The department may adopt rules necessary to implement the provisions of this chapter. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.
[2011, c. 657, Pt. AA, §71 (AMD).]

SECTION HISTORY
2003, c. 483, §1 (NEW). 2011, c. 657, Pt. AA, §71 (AMD).

§7253. PRESCRIBERS AND DISPENSERS REQUIRED TO CHECK PRESCRIPTION MONITORING INFORMATION

1. **Prescribers.** On or after January 1, 2017, upon initial prescription of a benzodiazepine or an opioid medication to a person and every 90 days for as long as that prescription is renewed, a prescriber shall check prescription monitoring information for records related to that person.

[2015, c. 488, §9 (NEW) .]

2. **Dispensers.** On or after January 1, 2017, a dispenser shall check prescription monitoring information prior to dispensing a benzodiazepine or an opioid medication to a person under any of the following circumstances:

A. The person is not a resident of this State; [2015, c. 488, §9 (NEW).]

B. The prescription is from a prescriber with an address outside of this State; [2015, c. 488, §9 (NEW).]

C. The person is paying cash when the person has prescription insurance on file; or [2015, c. 488, §9 (NEW).]

D. According to the pharmacy prescription record, the person has not had a prescription for a benzodiazepine or an opioid medication in the previous 12-month period. [2015, c. 488, §9 (NEW).]

A dispenser shall notify the program and withhold a prescription until the dispenser is able to contact the prescriber of that prescription if the dispenser has reason to believe that the prescription is fraudulent or duplicative.

[2015, c. 488, §9 (NEW) .]

3. **Exception; hospital setting and facilities.** When a licensed or certified health care professional directly orders or administers a benzodiazepine or opioid medication to a person in an emergency room setting, an inpatient hospital setting, a long-term care facility or a residential care facility, the requirements to check prescription monitoring information established in this section do not apply.

[2015, c. 488, §9 (NEW) .]

4. **Violation.** A person who violates this section commits a civil violation for which a fine of $250 per incident, not to exceed $5,000 per calendar year, may be adjudged.

[2015, c. 488, §9 (NEW) .]

5. **Rulemaking.** Notwithstanding section 7252, the department may adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A to implement this section.

[2015, c. 488, §9 (NEW) .]

SECTION HISTORY
2015, c. 488, §9 (NEW).

§7254. EXEMPTION FROM OPIOID MEDICATION LIMITS UNTIL JANUARY 2017; RULEMAKING

1. **Exemption until January 2017.** In addition to the exceptions established in Title 32, section 2210, subsection 2; section 2600-C, subsection 2; section 3300-F, subsection 2; section 3657, subsection 2; and section 18308, subsection 2, a licensed health care professional may prescribe opioid medication in an amount greater than the morphine milligram equivalents limited by Title 32, sections 2210, 2600-C, 3300-F, 3657 and 18308 as long as it is medically necessary and the need is documented in the patient's chart.

This subsection is repealed January 1, 2017 or on the effective date of the rules establishing exceptions to prescriber limits as provided in subsection 2, whichever is later. The Commissioner of Health and Human Services shall notify the Secretary of State, Secretary of the Senate, Clerk of the House of Representatives and Revisor of Statutes of this effective date when this effective date is determined.

[2015, c. 488, §9 (NEW) .]

2. **Rulemaking.** Notwithstanding section 7252, no later than January 1, 2017, the department shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A to establish reasonable exceptions to prescriber limits in Title 32, sections 2210, 2600-C, 3300-F, 3657 and 18308, including for chronic pain and acute pain. The rules must take into account clinically appropriate exceptions and include prescribers in the rule-making process including the drafting of draft rules and changes after the public hearing process to the extent permitted by Title 5, chapter 375.

[2015, c. 488, §9 (NEW) .]

SECTION HISTORY
2015, c. 488, §9 (NEW).

Chapter 1604: INTERSTATE PRESCRIPTION MONITORING PROGRAM COMPACT

§7261. PURPOSE - ARTICLE 1

The purpose of the interstate prescription monitoring program compact, referred to in this chapter as "the compact," is to provide a mechanism for state prescription monitoring programs to securely share prescription data to improve public health and safety. The compact is intended to: [2011, c. 217, §1 (NEW).]

1. **Enhance state prescription monitoring programs.** Enhance the ability of state prescription monitoring programs, in accordance with state laws, to provide an efficient and comprehensive tool for:

A. Practitioners to monitor patients and support treatment decisions; [2011, c. 217, §1 (NEW).]

B. Law enforcement officials to conduct diversion investigations when authorized by state law; [2011, c. 217, §1 (NEW).]

C. Regulatory agencies to conduct investigations or other appropriate reviews when authorized by state law; and [2011, c. 217, §1 (NEW).]

D. Other uses of prescription drug data authorized by state law for purposes of curtailing drug abuse and diversion; and [2011, c. 217, §1 (NEW).]

[2011, c. 217, §1 (NEW) .]

2. **Provide technology infrastructure.** Provide a technology infrastructure to facilitate secure data transmission.

[2011, c. 217, §1 (NEW) .]

SECTION HISTORY
2011, c. 217, §1 (NEW).

§7262. DEFINITIONS - ARTICLE 2

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2011, c. 217, §1 (NEW).]

1. **Authentication.** "Authentication" means the process of verifying the identity and credentials of a person before authorizing access to prescription data.

[2011, c. 217, §1 (NEW) .]

2. **Authorized.** "Authorized" means the granting of access privileges to prescription data.

[2011, c. 217, §1 (NEW) .]

3. **Bylaws.** "Bylaws" means those bylaws established by the interstate commission pursuant to section 7268 for its governance or for directing or controlling its actions and conduct.

[2011, c. 217, §1 (NEW) .]

4. **Commissioner.** "Commissioner" means the voting representative appointed by each member state pursuant to section 7266.

[2011, c. 217, §1 (NEW) .]

5. **Interstate commission or commission.** "Interstate commission" or "commission" means the Interstate Prescription Monitoring Program Commission created pursuant to section 7266.

[2011, c. 217, §1 (NEW) .]

6. **Member state.** "Member state" means any state that has adopted a prescription monitoring program and has enacted the enabling compact legislation.

[2011, c. 217, §1 (NEW) .]

7. **Practitioner.** "Practitioner" means a person licensed, registered or otherwise permitted to prescribe or dispense a prescription drug.

[2011, c. 217, §1 (NEW) .]

8. **Prescription data.** "Prescription data" means data transmitted by a prescription monitoring program that contains patient, prescriber, dispenser and prescription drug information.

[2011, c. 217, §1 (NEW) .]

9. **Prescription drug.** "Prescription drug" means any drug required to be reported to a state prescription monitoring program and includes but is not limited to substances listed in the federal Controlled Substances Act.

[2011, c. 217, §1 (NEW) .]

10. **Prescription monitoring program.** "Prescription monitoring program" means a program that collects, manages, analyzes and provides prescription data under the auspices of a state.

[2011, c. 217, §1 (NEW) .]

11. **Requestor.** "Requestor" means a person authorized by a member state who has initiated a request for prescription data.

[2011, c. 217, §1 (NEW) .]

12. **Rule.** "Rule" means a written statement by the interstate commission promulgated pursuant to section 7267 that is of general applicability; implements, interprets or prescribes a policy or provision of the compact; or is an organizational, procedural or practice requirement of the commission and has the force and effect of statutory law in a member state. "Rule" includes the amendment, repeal or suspension of an existing rule.

[2011, c. 217, §1 (NEW) .]

13. **State.** "State" means any state, commonwealth, district or territory of the United States.

[2011, c. 217, §1 (NEW) .]

14. **Technology infrastructure.** "Technology infrastructure" means the design, deployment and use of both individual technology-based components and the systems of such components to facilitate the transmission of information and prescription data among member states.

[2011, c. 217, §1 (NEW) .]

15. **Transmission.** "Transmission" means the release, transfer, provision or disclosure of information or prescription data among member states.

[2011, c. 217, §1 (NEW) .]

SECTION HISTORY
2011, c. 217, §1 (NEW).

§7263. AUTHORIZED USES AND RESTRICTIONS ON PRESCRIPTION DATA - ARTICLE 3

1. **Authority of member state.** Under the compact a member state:

A. Retains its authority and autonomy over its prescription monitoring program and prescription data in accordance with its laws, rules and policies; [2011, c. 217, §1 (NEW).]

B. May provide, restrict or deny prescription data to a requestor of another state in accordance with the member state's laws, rules and policies; [2011, c. 217, §1 (NEW).]

C. May provide, restrict or deny prescription data received from another state to a requestor within that state; and [2011, c. 217, §1 (NEW).]

D. Has the authority to determine which requestors are authorized. [2011, c. 217, §1 (NEW).]

[2011, c. 217, §1 (NEW) .]

2. **Restrictions on prescription data.** Prescription data obtained by a member state pursuant to this compact has the following restrictions.

A. It must be used solely for purposes of providing the prescription data to a requestor. [2011, c. 217, §1 (NEW).]

B. It may not be stored in the member state's prescription monitoring program database, except for stored images, nor in any other database. [2011, c. 217, §1 (NEW).]

[2011, c. 217, §1 (NEW) .]

3. **Limit on categories of requestors.** A member state may limit the categories of requestors of another member state that will receive prescription data.

[2011, c. 217, §1 (NEW) .]

4. **Requestor authentication.** The commission shall promulgate rules establishing standards for requestor authentication.

A. Every member state shall authenticate requestors according to the rules established by the commission. [2011, c. 217, §1 (NEW).]

B. A member state may authorize its requestors to request prescription data from another member state only after such requestor has been authenticated. [2011, c. 217, §1 (NEW).]

C. A member state that becomes aware of a requestor who violated the laws or rules governing the appropriate use of prescription data shall notify the state that transmitted the prescription data. [2011, c. 217, §1 (NEW).]

[2011, c. 217, §1 (NEW) .]

SECTION HISTORY
2011, c. 217, §1 (NEW).

§7264. TECHNOLOGY AND SECURITY - ARTICLE 4

1. **Security requirements.** The commission shall establish security requirements through rules for the transmission of prescription data.

[2011, c. 217, §1 (NEW) .]

2. **Open standards for technology infrastructure.** The commission shall foster the adoption of open standards for the technology infrastructure that are vendor-neutral and technology-neutral.

[2011, c. 217, §1 (NEW) .]

3. **Acquisition and operation of technology infrastructure.** The commission is responsible for acquisition and operation of the technology infrastructure.

[2011, c. 217, §1 (NEW) .]

SECTION HISTORY
2011, c. 217, §1 (NEW).

§7265. FUNDING - ARTICLE 5

1. **Interstate commission responsible for funding compact.** The interstate commission, through its member states, is responsible for providing for the payment of the reasonable expenses for establishing, organizing and administering the operations and activities of the compact.

[2011, c. 217, §1 (NEW) .]

2. **Interstate commission may collect dues from member states.** The interstate commission may levy on and collect annual dues from each member state to cover the cost of operations and activities of the interstate commission and its staff, which must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual dues amount must be allocated in an equitable manner and may consist of a fixed fee component as well as a variable fee component based

upon a formula to be determined by the interstate commission, which shall promulgate a rule binding upon all member states. Such a formula must take into account factors including but not limited to the total number of practitioners or licensees within a member state. Fees established by the interstate commission may be recalculated and assessed on an annual basis.

[2011, c. 217, §1 (NEW) .]

3. **Interstate commission may accept nonstate funding.** Notwithstanding subsections 1 and 2 and any other provision of law, the interstate commission may accept nonstate funding, including grants, awards and contributions to offset, in whole or in part, the costs of the annual dues required under subsection 2.

[2011, c. 217, §1 (NEW) .]

4. **Interstate commission may not incur obligations prior to securing funds.** The interstate commission may not incur obligations of any kind prior to securing the funds adequate to meet the same. The interstate commission may not pledge the credit of any of the member states, except by and with the authority of the member states.

[2011, c. 217, §1 (NEW) .]

5. **Interstate commission to keep accurate accounts.** The interstate commission shall keep accurate accounts of all receipts and disbursements subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the interstate commission must be audited annually by a certified or licensed public accountant, and the report of the audit must be included in and become part of the annual report of the interstate commission.

[2011, c. 217, §1 (NEW) .]

SECTION HISTORY
2011, c. 217, §1 (NEW).

§7266. INTERSTATE COMMISSION - ARTICLE 6

The member states hereby create the Interstate Prescription Monitoring Program Commission to govern the compact. The interstate commission is composed of the member states and not a 3rd-party group or federal agency. The activities of the commission are the formation of public policy and are a discretionary state function. [2011, c. 217, §1 (NEW).]

1. **Body corporate.** The commission is a body corporate and joint agency of the member states and has all the responsibilities, powers and duties set forth herein and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact.

[2011, c. 217, §1 (NEW) .]

2. **Composition.** The commission consists of one voting representative from each member state who is that member state's appointed commissioner and who is empowered to determine statewide policy related to matters governed by this compact. The commissioner must be a policy maker within the agency that houses the member state's prescription monitoring program.

[2011, c. 217, §1 (NEW) .]

3. **Nonvoting advisor.** In addition to the commissioner, a member state shall appoint a nonvoting advisor who is a representative of the member state's prescription monitoring program.

[2011, c. 217, §1 (NEW) .]

4. **Members of interested organizations.** In addition to the voting representatives and nonvoting advisor of each member state, the commission may include persons who are not voting representatives, but who are members of interested organizations as determined by the commission.

[2011, c. 217, §1 (NEW) .]

5. **Each member state entitled to one vote.** Each member state represented at a meeting of the commission is entitled to one vote. A majority of the member states constitutes a quorum for the transaction of business, unless a larger quorum is required by the bylaws. A representative may not delegate a vote to another member state. In the event a commissioner is unable to attend a meeting of the commission, the appropriate appointing authority may delegate voting authority to another person from that member state for a specified meeting. The bylaws may provide for meetings of the commission to be conducted by electronic communication.

[2011, c. 217, §1 (NEW) .]

6. **Meetings.** The commission shall meet at least once each calendar year. The chair of the commission may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings.

[2011, c. 217, §1 (NEW) .]

7. **Executive committee.** The commission shall establish an executive committee, which must include officers, members and others as determined by the bylaws. The executive committee has the power to act on behalf of the commission, with the exception of rulemaking. During periods when the commission is not in session the executive committee shall oversee the administration of the compact, including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as determined necessary.

[2011, c. 217, §1 (NEW) .]

8. **Committee structure.** The commission shall maintain a committee structure for governance in areas including but not limited to policy, compliance, education and technology and shall include specific opportunities for stakeholder input.

[2011, c. 217, §1 (NEW) .]

9. **Records available to public.** The commission's bylaws and rules must establish conditions and procedures under which the commission shall make its information and official records available to the public for inspection or copying. The commission may exempt from disclosure information or official records that would adversely affect personal privacy rights or proprietary interests.

[2011, c. 217, §1 (NEW) .]

10. **Public notice of meetings; meetings open to public.** The commission shall provide public notice of all meetings and all meetings must be open to the public, except as set forth in the rules or as otherwise provided in the compact. The commission may close a meeting, or portion of a meeting, when it determines by a 2/3 vote of the members present that discussions at the open meeting would be likely to:

A. Relate solely to the commission's internal personnel practices and procedures; [2011, c. 217, §1 (NEW).]

B. Concern matters specifically exempted from disclosure by federal and state statute; [2011, c. 217, §1 (NEW).]

C. Concern trade secrets or commercial or financial information that is privileged or confidential; [2011, c. 217, §1 (NEW).]

D. Involve accusing a person of a crime or formally censuring a person; [2011, c. 217, §1 (NEW).]

E. Concern information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy; [2011, c. 217, §1 (NEW).]

F. Concern investigative records compiled for law enforcement purposes; or [2011, c. 217, §1 (NEW).]

G. Specifically relate to the commission's participation in a civil action or other legal proceeding. [2011, c. 217, §1 (NEW).]

[2011, c. 217, §1 (NEW) .]

11. **Requirements for meeting closed to public.** For a meeting or portion of a meeting closed pursuant to subsection 10, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exemptive provision. The commission shall keep minutes that must fully and clearly describe all matters discussed in a meeting and must provide a full and accurate summary of actions taken and the reasons for those actions, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action must be identified in these minutes. All minutes and documents of a closed meeting must remain under seal, subject to release by a majority vote of the commission.

[2011, c. 217, §1 (NEW) .]

SECTION HISTORY
2011, c. 217, §1 (NEW).

§7267. POWERS AND DUTIES OF THE INTERSTATE COMMISSION - ARTICLE 7

The commission has the following powers and duties: [2011, c. 217, §1 (NEW).]

1. **Oversee and maintain technology infrastructure.** To oversee and maintain the administration of the technology infrastructure;

[2011, c. 217, §1 (NEW) .]

2. **Promulgate rules; take all necessary actions to effect goals.** To promulgate rules and take all necessary actions to effect the goals, purposes and obligations as enumerated in this compact, as long as no member state is required to create an advisory committee. The rules have the force and effect of statutory law and are binding in the member states to the extent and in the manner provided in this compact;

[2011, c. 217, §1 (NEW) .]

3. **Establish process for notification of changes to state law or policies.** To establish a process for a member state to notify the commission of changes to that member state's prescription monitoring program statutes, regulations or policies. This subsection applies only to changes that affect the administration of the compact;

[2011, c. 217, §1 (NEW) .]

4. **Issue advisory opinions.** To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the compact and the commission's bylaws, rules and actions;

[2011, c. 217, §1 (NEW) .]

5. **Enforce compliance with compact provisions.** To enforce compliance with the compact provisions, the rules promulgated by the interstate commission and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process;

[2011, c. 217, §1 (NEW) .]

6. **Establish and maintain offices.** To establish and maintain one or more offices;

[2011, c. 217, §1 (NEW) .]

7. **Purchase and maintain insurance and bonds.** To purchase and maintain insurance and bonds;

[2011, c. 217, §1 (NEW) .]

8. **Provide for personnel or services.** To borrow, accept, hire or contract for personnel or services;

[2011, c. 217, §1 (NEW) .]

9. **Establish and appoint committees.** To establish and appoint committees including but not limited to an executive committee as required by section 7266, subsection 7;

[2011, c. 217, §1 (NEW) .]

10. **Appoint officers, employees and agents.** To elect or appoint officers, attorneys, employees, agents or consultants and to fix their compensation, define their duties and determine their qualifications and to establish the interstate commission's personnel policies and programs relating to conflicts of interest, rates of compensation and qualifications of personnel;

[2011, c. 217, §1 (NEW) .]

11. **Seek and accept donations.** To seek and accept donations and grants of money, equipment, supplies, materials and services and to use or dispose of them;

[2011, c. 217, §1 (NEW) .]

12. **Own or lease property.** To lease, purchase, accept contributions or donations of or otherwise to own, hold, improve or use any real, personal or mixed property;

[2011, c. 217, §1 (NEW) .]

13. **Sell or exchange property.** To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any real, personal or mixed property;

[2011, c. 217, §1 (NEW) .]

14. **Establish budget.** To establish a budget and make expenditures;

[2011, c. 217, §1 (NEW) .]

15. **Adopt seal and bylaws.** To adopt a seal and bylaws governing the management and operation of the interstate commission;

[2011, c. 217, §1 (NEW) .]

16. **Report.** To report annually to the legislatures, governors and attorneys general of the member states concerning the activities of the interstate commission during the preceding year. These reports must also include any recommendations that may have been adopted by the interstate commission and must be made publicly available;

[2011, c. 217, §1 (NEW) .]

17. **Coordinate education.** To coordinate education, training and public awareness regarding the compact and its implementation and operation;

[2011, c. 217, §1 (NEW) .]

18. **Maintain books and records.** To maintain books and records in accordance with the bylaws;

[2011, c. 217, §1 (NEW) .]

19. **Perform necessary or appropriate functions.** To perform such functions as may be necessary or appropriate to achieve the purposes of the compact; and

[2011, c. 217, §1 (NEW) .]

20. **Provide for dispute resolution.** To provide for dispute resolution among member states.

[2011, c. 217, §1 (NEW) .]

SECTION HISTORY
2011, c. 217, §1 (NEW).

§7268. ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION - ARTICLE 8

1. **Bylaws.** The interstate commission shall, by a majority of the members present and voting, within 12 months after the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

A. Establishing the fiscal year of the interstate commission; [2011, c. 217, §1 (NEW).]

B. Establishing an executive committee and such other committees as may be necessary for governing any general or specific delegation of authority or function of the interstate commission; [2011, c. 217, §1 (NEW).]

C. Providing procedures for calling and conducting meetings of the interstate commission and ensuring reasonable notice of each meeting; [2011, c. 217, §1 (NEW).]

D. Establishing the titles and responsibilities of the officers and staff of the interstate commission; and [2011, c. 217, §1 (NEW).]

E. Providing a mechanism for concluding the operations of the interstate commission and the return of surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations. [2011, c. 217, §1 (NEW).]

[2011, c. 217, §1 (NEW) .]

2. **Officers.** The interstate commission shall, by a majority vote of the members present, elect annually from among its members a chair, a vice-chair and a treasurer, each of whom has such authority and duties as may be specified in the bylaws. The chair or, in the chair's absence or disability, the vice-chair shall preside at all meetings of the interstate commission. The officers elected serve without compensation or remuneration from the interstate commission, except that, subject to the availability of budgeted funds, the officers must be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the interstate commission.

[2011, c. 217, §1 (NEW) .]

3. **Executive committee and staff.** The following provisions govern the executive committee and staff.

A. The executive committee has such authority and duties as may be set forth in the bylaws, including but not limited to:

(1) Managing the affairs of the interstate commission in a manner consistent with the bylaws and purposes of the interstate commission;

(2) Overseeing an organizational structure within, and appropriate procedures for, the interstate commission to provide for the administration of the compact; and

(3) Planning, implementing and coordinating communications and activities with other state, federal and local government organizations in order to advance the purpose of the interstate commission. [2011, c. 217, §1 (NEW).]

B. The executive committee may, subject to the approval of the interstate commission, appoint or retain an executive director for such period upon terms and conditions and for compensation as the interstate commission may consider appropriate. The executive director serves as secretary to the interstate commission, but is not a member of the interstate commission. The executive director shall hire and supervise other persons as may be authorized by the interstate commission. [2011, c. 217, §1 (NEW).]

[2011, c. 217, §1 (NEW) .]

4. **Liability.** The interstate commission's executive director and the commission's employees are immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error or omission that occurred or that such person had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities, except that such person is not protected from suit or liability for damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of such person.

A. The liability of the interstate commission's executive director and employees or interstate commission representatives, acting within the scope of that person's employment or duties for acts, errors or omissions occurring within the person's state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees and agents. The interstate commission is considered to be an instrumentality of the states for the purposes of any such action. This subsection may not be construed to protect the person from suit or liability for damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of that person. [2011, c. 217, §1 (NEW).]

B. The interstate commission shall defend the executive director and its employees and, subject to the approval of the attorney general or other appropriate legal counsel of the member state represented by an interstate commission representative, shall defend the interstate commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities, as long as the actual or alleged act, error or omission did not result from intentional or willful and wanton misconduct on the part of such person. [2011, c. 217, §1 (NEW).]

C. To the extent not covered by the state involved, member state or the interstate commission, the representatives or employees of the interstate commission must be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities, as long as the actual or alleged act, error or omission did not result from intentional or willful and wanton misconduct on the part of such persons. [2011, c. 217, §1 (NEW).]

[2011, c. 217, §1 (NEW) .]

SECTION HISTORY
2011, c. 217, §1 (NEW).

§7269. RULE-MAKING FUNCTIONS OF THE INTERSTATE COMMISSION - ARTICLE 9

1. **Rule-making authority.** The interstate commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding this subsection, in the event the interstate commission exercises its rule-making authority in a manner that is beyond the scope of the purposes of this compact or the powers granted under this compact, such an action by the interstate commission is invalid and has no force or effect. Any rules promulgated by the commission do not override the State's authority to govern prescription drugs or each member state's prescription monitoring program.

[2011, c. 217, §1 (NEW) .]

2. **Rule-making procedure.** Rules must be made pursuant to a rule-making process that substantially conforms to the "Model State Administrative Procedure Act," of 1981 Act, Uniform Laws Annotated, Vol. 15, p. 1 (2000) as amended, as may be appropriate to the operations of the interstate commission.

[2011, c. 217, §1 (NEW) .]

3. **Judicial review.** Not later than 30 days after a rule is promulgated, any person may file a petition for judicial review of the rule as long as the filing of such a petition does not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the interstate commission consistent with applicable law and may not find the rule to be unlawful if the rule represents a reasonable exercise of the interstate commission's authority.

[2011, c. 217, §1 (NEW) .]

SECTION HISTORY
2011, c. 217, §1 (NEW).

§7270. OVERSIGHT, ENFORCEMENT AND DISPUTE RESOLUTION - ARTICLE 10

1. **Oversight.** The following provisions govern the oversight of the compact.

A. The executive, legislative and judicial branches of state government in each member state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated under this compact have standing as statutory law but do not override the State's authority to govern prescription drugs or the State's prescription monitoring program. [2011, c. 217, §1 (NEW).]

B. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact that may affect the powers, responsibilities or actions of the interstate commission. [2011, c. 217, §1 (NEW).]

C. The interstate commission is entitled to receive all service of process in any proceeding under paragraph B and has standing to intervene in the proceeding for all purposes. Failure to provide service of process to the interstate commission renders a judgment or order void as to the interstate commission, this compact or promulgated rules. [2011, c. 217, §1 (NEW).]

[2011, c. 217, §1 (NEW) .]

2. **Default, technical assistance, suspension and termination.** If the interstate commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the bylaws or promulgated rules, the interstate commission shall provide written notice to the defaulting state and other member states of the nature of the default, the means of curing the default and any action taken by the interstate commission. The interstate commission shall specify the conditions by which the defaulting state must cure its default. The interstate commission shall provide remedial training and specific technical assistance regarding the default.

A. If the defaulting state fails to cure the default, the defaulting state must be terminated from the compact upon an affirmative vote of a majority of the member states and all rights, privileges and benefits conferred by this compact are terminated from the effective date of termination. A cure of the default does not relieve the defaulting state of obligations or liabilities incurred during the period of the default. [2011, c. 217, §1 (NEW).]

B. Suspension or termination of membership in the compact may be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate must be given by the interstate commission to the governor of the defaulting state, the majority and minority leaders of the defaulting state's legislature and each of the member states. [2011, c. 217, §1 (NEW).]

C. A defaulting state that has been suspended or terminated is responsible for all dues, obligations and liabilities incurred through the effective date of suspension or termination, including obligations the performance of which extends beyond the effective date of suspension or termination. [2011, c. 217, §1 (NEW).]

D. The interstate commission may not bear costs relating to any state that has been found to be in default or that has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state. [2011, c. 217, §1 (NEW).]

E. The defaulting state may appeal the action of the interstate commission by petitioning the United States District Court for the District of Columbia or the federal district where the interstate commission has its principal offices. The prevailing party must be awarded all costs of such litigation including reasonable attorney's fees. [2011, c. 217, §1 (NEW).]

[2011, c. 217, §1 (NEW) .]

3. **Dispute resolution.** The following provisions govern dispute resolution.

A. The interstate commission shall attempt, upon the request of a member state, to resolve disputes that are subject to the compact and that may arise among member states. [2011, c. 217, §1 (NEW).]

B. The interstate commission shall promulgate rules providing for both mediation and binding dispute resolution as appropriate. [2011, c. 217, §1 (NEW).]

[2011, c. 217, §1 (NEW) .]

4. **Enforcement.** The following provisions govern enforcement of the compact.

A. The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact. [2011, c. 217, §1 (NEW).]

B. The interstate commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its principal offices, to enforce compliance with the provisions of the compact and its promulgated rules and bylaws against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary the prevailing party must be awarded all costs of such litigation including reasonable attorney's fees. [2011, c. 217, §1 (NEW).]

C. The remedies in this subsection are not the exclusive remedies of the interstate commission. The interstate commission may avail itself of any other remedies available under state law or the regulation of a profession. [2011, c. 217, §1 (NEW).]

[2011, c. 217, §1 (NEW) .]

SECTION HISTORY
2011, c. 217, §1 (NEW).

§7271. MEMBER STATES, EFFECTIVE DATE AND AMENDMENT - ARTICLE 11

1. **Eligibility for membership in compact.** Any state that has enacted prescription monitoring program legislation through statute or regulation is eligible to become a member state of this compact.

[2011, c. 217, §1 (NEW) .]

2. **Effective upon enactment by at least 6 states.** The compact becomes effective and binding upon legislative enactment of the compact into law by no fewer than 6 states. Thereafter it becomes effective and binding on a state upon enactment of the compact into law by that state. The governors of nonmember states or their designees must be invited to participate in the activities of the interstate commission on a nonvoting basis prior to adoption of the compact by all states.

[2011, c. 217, §1 (NEW) .]

3. **Amendments.** The interstate commission may propose amendments to the compact for enactment by the member states. An amendment may not become effective and binding upon the interstate commission and the member states until it is enacted into law by unanimous consent of the member states.

[2011, c. 217, §1 (NEW) .]

SECTION HISTORY
2011, c. 217, §1 (NEW).

§7272. WITHDRAWAL AND DISSOLUTION - ARTICLE 12

1. **Withdrawal.** The following provisions govern withdrawal from the compact.

A. Once effective, the compact continues in force and remains binding upon each member state except that a member state may withdraw from the compact by specifically repealing the statute that enacted the compact into law. [2011, c. 217, §1 (NEW).]

B. Withdrawal from this compact must be by the enactment of a statute repealing the compact, but may not take effect until one year after the effective date of that statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other member state. [2011, c. 217, §1 (NEW).]

C. The withdrawing state shall immediately notify the chair of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other member states of the withdrawing state's intent to withdraw within 60 days of its receipt of notice. [2011, c. 217, §1 (NEW).]

D. The withdrawing state is responsible for all dues, obligations and liabilities incurred through the effective date of withdrawal, including obligations the performance of which extends beyond the effective date of withdrawal. [2011, c. 217, §1 (NEW).]

E. Reinstatement following withdrawal of a member state occurs upon the withdrawing state's reenacting the compact or upon such later date as determined by the interstate commission. [2011, c. 217, §1 (NEW).]

[2011, c. 217, §1 (NEW) .]

2. **Dissolution of the compact.** The following provisions govern dissolution of the compact.

A. This compact dissolves effective upon the date of the withdrawal or default of the member state that reduces the membership in the compact to one member state. [2011, c. 217, §1 (NEW).]

B. Upon the dissolution of this compact, the compact becomes void and is of no further force or effect, and the business and affairs of the interstate commission must be concluded and surplus funds must be distributed in accordance with the bylaws. [2011, c. 217, §1 (NEW).]

[2011, c. 217, §1 (NEW) .]

SECTION HISTORY
2011, c. 217, §1 (NEW).

§7273. SEVERABILITY AND CONSTRUCTION - ARTICLE 13

1. **Severable.** The provisions of this compact are severable, and if any phrase, clause, sentence or provision is determined unenforceable, the remaining provisions of the compact are enforceable.

[2011, c. 217, §1 (NEW) .]

2. **Liberally construed.** The provisions of this compact must be liberally construed to effectuate its purposes.

[2011, c. 217, §1 (NEW) .]

3. **Concurrent applicability.** Nothing in this compact may be construed to prohibit the applicability of other interstate compacts to which the states are members.

[2011, c. 217, §1 (NEW) .]

SECTION HISTORY
2011, c. 217, §1 (NEW).

§7274. BINDING EFFECT OF COMPACT AND OTHER LAWS - ARTICLE 14

1. **Other laws.** Nothing in this compact prevents the enforcement of any other law of a member state that is not inconsistent with this compact. All member states' laws conflicting with this compact are superseded to the extent of the conflict.

[2011, c. 217, §1 (NEW) .]

2. **Binding effect of compact.** All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the member states.

A. All agreements between the interstate commission and the member states are binding in accordance with their terms. [2011, c. 217, §1 (NEW).]

B. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, the provision is ineffective to the extent of the conflict with the constitutional provision in question in that member state. [2011, c. 217, §1 (NEW).]

[2011, c. 217, §1 (NEW) .]

SECTION HISTORY
2011, c. 217, §1 (NEW).

Subtitle 5: IN-HOME AND COMMUNITY SUPPORT SERVICES FOR ADULTS WITH LONG-TERM CARE NEEDS

Chapter 1621: GENERAL PROVISIONS

§7301. LEGISLATIVE INTENT

1. **Findings.** The Legislature finds that:

A. In-home and community support services have not been sufficiently available to many adults with long-term care needs; [1981, c. 511, §1 (NEW).]

B. Many adults with long-term care needs are at risk of being or already have been placed in institutional settings, because in-home and community support services or funds to pay for these services have not been available to them; [1981, c. 511, §1 (NEW).]

C. In some instances placement of adults with long-term care needs in institutional settings can result in emotional and social problems for these adults and their families; [2009, c. 279, §2 (AMD).]

D. For many adults with long-term care needs, it is less costly for the State to provide in-home and community support services than it is to provide care in institutional settings; [2009, c. 279, §2 (AMD).]

E. The majority of adults with long-term care needs have indicated a preference to remain in their own homes and in community settings rather than having their needs met in institutional settings; [2009, c. 279, §2 (NEW).]

F. For many adults with long-term care needs and their families, the process to identify and secure appropriate services may be confusing and difficult to navigate; and [2009, c. 279, §2 (NEW).]

G. A sustainable system of long-term care to meet the needs of citizens must emphasize in-home and community support services that capitalize upon personal and family responsibility. [2009, c. 279, §2 (NEW).]

[2009, c. 279, §2 (AMD) .]

2. **Policy.** The Legislature declares that it is the policy of this State, with regard to in-home and community support services:

A. To increase the availability of long-term care services that are consumer-driven, optimize individual choice and autonomy and maximize physical health, mental health, functional well-being and independence for adults with long-term care needs through high-quality services and supports in settings that reflect the needs and choices of consumers and that are delivered in the most flexible, innovative and cost-effective manner; [2009, c. 279, §2 (AMD); 2009, c. 420, §1 (AMD).]

B. That the priority recipients of in-home and community support services, pursuant to this subtitle, must be adults with long-term care needs who are at the greatest risk without needed in-home and community support services; [2009, c. 279, §2 (AMD); 2009, c. 420, §1 (AMD).]

C. That a variety of agencies, facilities and individuals must be encouraged to provide in-home and community support services and to increase the percentages of adults with long-term care needs receiving in-home and community support services provided by persons who are employed as personal care assistants or direct support aides or by other providers. For the purposes of this paragraph, "direct support aide" means a personal care worker or direct support worker who provides a range of services, including personal daily living supports, health supports and community supports, to adults with long-term care needs; [2009, c. 546, §1 (AMD).]

D. To promote and encourage public and private partnerships among a variety of agencies, facilities and individuals; [2009, c. 279, §2 (NEW); 2009, c. 420, §1 (NEW).]

E. To support the roles of family caregivers and a qualified workforce in the effort to streamline and facilitate access to high-quality services in the least restrictive and most integrated settings; and [2009, c. 279, §2 (NEW); 2009, c. 420, §1 (NEW).]

F. To establish the most efficient and cost-effective system for delivering a broad array of long-term care services. [2009, c. 546, §2 (RPR).]

[2009, c. 546, §§1, 2 (AMD) .]

SECTION HISTORY
1981, c. 511, §1 (NEW). 2009, c. 279, §2 (AMD). 2009, c. 420, §1 (AMD). 2009, c. 546, §§1, 2 (AMD).

§7302. DEFINITIONS

As used in this subtitle, unless the context otherwise indicates, the following terms have the following meanings. [1981, c. 511, §1 (NEW).]

1. **Adults with long-term care needs.** "Adults with long-term care needs" means adults who have physical or mental limitations which restrict their ability to carry out activities of daily living and impede their ability to live independently, or who are at risk of being, or who already have been, placed inappropriately in an institutional setting.

[1981, c. 511, §1 (NEW) .]

1-A. **Activities of daily living.** "Activities of daily living" means activities as defined in federal and state rules including those essential to a person's daily living including: eating and drinking; bathing and hygiene; dressing, including putting on and removing prostheses and clothing; toileting, including toilet or bedpan use, ostomy or catheter care, clothing changes and cleaning related to toileting; locomotion or moving between locations within a room or other areas, including with the use of a walker or wheelchair; transfers or moving to and from a bed, chair, couch, wheelchair or standing position; and bed mobility or positioning a person's body while in bed, including turning from side to side.

[2009, c. 279, §3 (NEW) .]

2. **Agreement.** "Agreement" means a contract, grant or other method of payment.

[1981, c. 511, §1 (NEW) .]

3. **Commissioner.** "Commissioner" means the Commissioner of Health and Human Services.

[1981, c. 511, §1 (NEW); 2003, c. 689, Pt. B, §7 (REV) .]

3-A. **Consumer.** "Consumer" means a person eligible for services under this subtitle.

[2009, c. 279, §3 (NEW) .]

3-B. **Consumer assessment.** "Consumer assessment" means an evaluation of the functional capacity of an individual to live independently given appropriate supports with activities of daily living and instrumental activities of daily living or through the provision of information about service options that are available to meet the individual's needs.

[2009, c. 279, §3 (NEW) .]

4. **Department.** "Department" means the Department of Health and Human Services.

[1981, c. 511, §1 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

5. **In-home and community support services.** "In-home and community support services" means health and social services and other assistance required to enable adults with long-term care needs to remain in their places of residence. These services include, but are not limited to, self-directed care services; medical and diagnostic services; professional nursing; physical, occupational and speech therapy; dietary and nutrition services; home health aide services; personal care assistance services; companion and attendant services; handyman, chore and homemaker services; respite care; hospice care; counseling services; transportation; small rent subsidies; various devices that lessen the effects of disabilities; and other appropriate and necessary social services.

[2009, c. 652, Pt. A, §32 (RPR) .]

6. **Institutional settings.** "Institutional settings" means residential care facilities, licensed pursuant to chapter 1664; intermediate care and skilled nursing facilities and units and hospitals, licensed pursuant to chapter 405; and state institutions for individuals who have a mental illness or who have intellectual disabilities or autism or other related conditions.

[2011, c. 542, Pt. A, §46 (AMD) .]

6-A. **Instrumental activities of daily living.** "Instrumental activities of daily living" means the activities as defined in federal and state rules including those essential, nonmedical tasks that enable the consumer to live independently in the community, including light housework, preparing meals, taking medications, shopping for groceries or clothes, using the telephone, managing money and other similar activities.

[2009, c. 279, §3 (NEW) .]

7. **Personal care assistance services.** "Personal care assistance services" means services required by an adult with long-term care needs to achieve greater physical independence, which may be self-directed and include, but are not limited to:

A. Routine bodily functions, such as bowel or bladder care; [1981, c. 511, §1 (NEW).]

B. Dressing; [1981, c. 511, §1 (NEW).]

C. Preparation and consumption of food; [1981, c. 511, §1 (NEW).]

D. Moving in and out of bed; [1981, c. 511, §1 (NEW).]

E. Routine bathing; [1981, c. 511, §1 (NEW).]

F. Ambulation; and [1981, c. 511, §1 (NEW).]

G. Activities of daily living and instrumental activities of daily living. [2009, c. 279, §3 (AMD).]

[2009, c. 279, §3 (AMD) .]

8. **Personal care assistant.** "Personal care assistant" means an individual who has completed a training course of at least 40 hours, which includes, but is not limited to, instruction in basic personal care procedures, such as those listed in subsection 7, first aid and handling of emergencies; or an individual who meets competency requirements, as determined by the department or its designee; or, if providing service to a consumer receiving self-directed attendant services under chapter 1622, a person approved by the consumer or the consumer's surrogate as being able to competently assist in the fulfillment of the personal

care assistance services outlined in the consumer's plan of care. Nothing in Title 32, chapter 31, may be interpreted to require that a personal care assistant be licensed under that chapter or supervised by a person licensed under that chapter.

[2009, c. 279, §3 (AMD) .]

9. **Provider.** "Provider" means any entity, agency, facility or individual who offers or plans to offer any in-home or community support services or institutionally based long-term care services.

[2009, c. 279, §3 (AMD) .]

9-A. **Qualified providers.** "Qualified providers" means community-based agencies or a network of agencies with the organizational and administrative capacity to administer and monitor an array of in-home and community support services that will promote choice and portability with an emphasis on coordinating and implementing the services in the consumer's plan of care.

[2009, c. 279, §3 (NEW) .]

9-B. **Self-directed care services.** "Self-directed care services" means services procured and directed by the consumer or the consumer's surrogate that allow the consumer to reenter or remain in the community and to maximize independent living opportunities. "Self-directed care services" includes the hiring, firing, training and supervision of personal care assistants to assist with activities of daily living and instrumental activities of daily living.

[2009, c. 279, §3 (NEW) .]

10. **Severe disability.** "Severe disability" means a disability that results in persons having severe, chronic physical, sensory or cognitive limitations that restrict their ability to carry out activities of daily living and to live independently.

[2009, c. 279, §3 (AMD) .]

11. **Surrogate.** "Surrogate" means an unpaid agent of a consumer designated to assist with the management of the tasks associated with in-home and community support services.

[2009, c. 279, §3 (NEW) .]

SECTION HISTORY
1981, c. 511, §1 (NEW). 1987, c. 845, §1 (AMD). 1989, c. 332, (AMD). 2001, c. 596, §B10 (AMD). 2001, c. 596, §B25 (AFF). 2003, c. 689, §§B6,7 (REV). 2009, c. 279, §3 (AMD). 2009, c. 420, §2 (AMD). 2009, c. 652, Pt. A, §32 (AMD). 2011, c. 542, Pt. A, §46 (AMD).

§7303. PROGRAMS; RULES

1. **Programs required.** The department shall establish and administer, pursuant to this subtitle, programs of in-home and community support services for adults with long-term care needs, by itself or in cooperation with the Federal Government.

An adult with long-term care needs, who applies for services under any such program, is entitled to receive the services, provided that the department has determined that the adult is eligible and provided that sufficient funds are available pursuant to this subtitle to pay for the services.

[1981, c. 511, §1 (NEW) .]

2. **Rules.** The department shall promulgate such rules, including rules that specify the criteria to be used in ranking proposals, as may be necessary for the effective administration of any programs of in-home and community support services pursuant to this subtitle, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375. In the development of such rules, the department shall consult with consumers, representatives of consumers or providers of in-home and community support services.

[1981, c. 511, §1 (NEW) .]

SECTION HISTORY
1981, c. 511, §1 (NEW).

§7304. DELIVERY OF SERVICES

1. **Staff; providers.** In order to provide in-home and community support services, the department may use its own staff and its designees and enter into agreements with providers.

[1981, c. 511, §1 (NEW) .]

2. **Agreement.** Each agreement shall specify, among other things, the types of in-home and community support services to be provided, the cost of the services, the method of payment and the criteria to be used for evaluating the provisions of services.

[1981, c. 511, §1 (NEW) .]

3. **Proposals.** The department shall solicit proposals from providers who would like to provide in-home and community support services, pursuant to this subtitle. Providers shall submit proposals in such form and manner as may be required by the department. The department shall select proposals according to rankings based on the criteria developed pursuant to section 7303, subsection 2.

[1981, c. 511, §1 (NEW) .]

SECTION HISTORY
1981, c. 511, §1 (NEW).

§7305. FUNDS

1. **Federal and private funds.** The department may apply for and use any federal or private funds and other support which become available to carry out any program of in-home and community support services.

[1981, c. 511, §1 (NEW) .]

2. **Fee scale.** The department shall develop, whenever practicable, sliding fee scales for in-home and community support services provided pursuant to this subtitle.

[1991, c. 2, §86 (COR) .]

3. **Vouchers.** The department may, through the use of vouchers, make payments directly to adults with long-term care needs to enable them to purchase in-home and community support services pursuant to this subtitle.

[1981, c. 511, §1 (NEW) .]

4. **Distribution.** The department shall disburse funds, pursuant to this subtitle, in a manner that ensures, to the extent practicable, equitable distribution of services among adults with long-term care needs and among the various regions of the State.

[1981, c. 511, §1 (NEW) .]

SECTION HISTORY
1981, c. 511, §1 (NEW). RR 1991, c. 2, §86 (COR).

§7306. DEMONSTRATION PROJECTS

The department may initiate demonstration projects to test new ways of providing in-home and community support services, including, but not limited to, projects which test the ability of hospitals, skilled nursing facilities or intermediate care facilities to provide these services. [1981, c. 511, §1 (NEW).]

SECTION HISTORY
1981, c. 511, §1 (NEW).

§7307. RELATIVES AS PROVIDERS

The department may not refuse to pay a relative of an adult with long-term care needs for the provision of in-home and community support services or personal care assistance services if the relative is qualified to provide the service and the payment is not prohibited by federal law or regulation. [1989, c. 714, (NEW).]

SECTION HISTORY
1989, c. 714, (NEW).

§7308. RESPITE CARE FUND

The department shall administer the Respite Care Fund for the purpose of providing short-term respite care for persons with Alzheimer's disease and other dementias. This respite care may include short-term in-home care, nursing or residential care facility stays, hospital or adult day care or home modifications. The department also may use the fund to carry out the purposes of the National Family Caregiver Support Program. [2001, c. 487, §1 (AMD).]

SECTION HISTORY
1989, c. 875, §E42 (NEW). 2001, c. 487, §1 (AMD).

§7309. IN-HOME PROVIDERS

(REPEALED)

A landlord may not charge a tenant additional rent or utilities for a person who provides in-home and community support services to the tenant. A landlord may request a letter from the Department of Health and Human Services to verify a tenant's eligibility for the use of in-home or community support services. This section is repealed January 1, 2009. [2007, c. 387, §1 (NEW).]

SECTION HISTORY
2007, c. 387, §1 (NEW). MRSA T. 22, §7309 (RP).

Chapter 1622: COORDINATED IN-HOME AND COMMUNITY SUPPORT SERVICES FOR THE ELDERLY AND ADULTS WITH DISABILITIES

§7311. PROGRAM ESTABLISHED

By July 1, 2010, the department shall establish a coordinated program, referred to in this chapter as "the program," of in-home and community support services that are available under state-funded and MaineCare-funded programs for adults with long-term care needs who are eligible for services from qualified providers pursuant to this subtitle. The program must have a unified system for intake and eligibility determination for all consumers, regardless of diagnosis, type of disability or demographic factors, including age, using the multidisciplinary teams pursuant to section 7323, consumer assessment and the development of plans of care that take into consideration the consumer's living arrangement, informal supports and services provided by other public or private funding sources to ensure nonduplication of services for consumers. [2009, c. 279, §4 (NEW).]

SECTION HISTORY
2009, c. 279, §4 (NEW).

§7312. RULES

The department shall adopt rules as necessary for the effective administration of the program pursuant to this chapter, in accordance with the Maine Administrative Procedure Act. In the development of such rules, the department shall consult with consumers, representatives of consumers and providers. Rules adopted pursuant to this section are major substantive rules as defined by Title 5, chapter 375, subchapter 2-A. [2009, c. 279, §4 (NEW).]

SECTION HISTORY
2009, c. 279, §4 (NEW).

Chapter 1622-A: CONSOLIDATION OF LONG-TERM CARE SERVICES

§7316. CONSOLIDATION OF LONG-TERM CARE SERVICES

Beginning July 1, 2012, all long-term care services provided directly or indirectly under the MaineCare program or other state-funded programs by the department under this Title must be combined into one program, referred to in this chapter as "the program," with a single set of rules, coordinated criteria for assessment and qualifications and a single budget. [2011, c. 422, §1 (NEW).]

SECTION HISTORY
2011, c. 422, §1 (NEW).

§7317. IN-HOME AND COMMUNITY SUPPORT SERVICES; NURSING FACILITY SERVICES

In-home and community support services and nursing facility services must be provided under the program, giving priority to expenditures that serve first those consumers with the greatest needs and the lowest service costs in accordance with the provisions of this section. [2011, c. 422, §1 (NEW).]

1. **Intake and eligibility assessment.** The department shall develop for the program a single system for intake and eligibility determination for all consumers, regardless of diagnosis, type of disability or age or other demographic factors, using the multidisciplinary teams designated by the commissioner pursuant to section 7323. The intake process, application and forms must be standardized despite differences in the criteria for eligibility for services under different provisions of the MaineCare program state plan or federally approved waiver under Medicaid or under state-funded services.

[2011, c. 422, §1 (NEW) .]

2. **Needs assessment.** The department shall assess a consumer for benefits determination periodically, as appropriate to the consumer, based on assessments of functional, health care and financial needs performed by an agency that is available to the consumer for case management services but that does not directly or indirectly provide in-home and community support services or nursing facility services. The assessment of the consumer's functional, health care and financial needs for in-home and community support services and nursing facility services must include a medical evaluation conducted by the consumer's primary care provider or health care specialist, as appropriate, and an evaluation by the department of the requirements for personal care assistant services and the hours of service necessary to maintain the consumer in a home-based or community-based setting.

[2011, c. 422, §1 (NEW) .]

3. **Benefits determination; service delivery model selection.** Once the needs assessment under subsection 2 has been completed for a consumer, the department shall determine the benefits that are available for the consumer and the consumer may choose which services to purchase. The consumer may select service delivery through the following models: the model in which the consumer directs the consumer's care and employs the persons who provide care, with or without a surrogate or unpaid representative to assist the consumer; the agency model in which an agency directs the consumer's care and employs the persons who provide care; and the residential care model or nursing facility care model. If a consumer does not indicate a preference of service delivery model, the department shall assign the consumer to a self-directed model of in-home and community support services unless self-direction is determined to be inappropriate for the consumer.

[2011, c. 422, §1 (NEW) .]

4. **Plan of care.** The department shall develop and authorize a plan of care for each consumer determined to be eligible under this chapter or Title 34-B, chapter 5, subchapter 3, article 2. The plan of care must be based on the needs assessment under subsection 2 and must be designed to meet the needs of the consumer identified in the assessment, giving consideration to the consumer's living arrangement and informal supports and, to avoid duplication of services, services provided by other private and public funding sources.

[2011, c. 422, §1 (NEW) .]

5. **Transitional facilities and services.** The program must provide a consumer with transitional facilities and services to assist with changing functional needs and health care status.

[2011, c. 422, §1 (NEW) .]

6. **Nursing facility diversion.** The program must include a nursing facility diversion component to encourage the use of facilities and services consistent with the consumer's needs assessment under subsection 2 and as chosen by the consumer under subsection 3.

[2011, c. 422, §1 (NEW) .]

7. **Reimbursement.** The program must provide reimbursement for skilled nursing care and in-home and community support services based on a uniform rate-setting process that is consistent across types of care and services, that reduces administrative costs and that is realistic regarding access to care and services. The process must set aside a fixed percentage of the rate for wages and benefits of the direct-care workers.

[2011, c. 422, §1 (NEW) .]

8. **Implementation.** In implementing the program the department shall:

A. Establish best practices training standards in a common module-based format with standard designations for direct-care workers; [2011, c. 422, §1 (NEW).]

B. Create structures for service delivery that apply to all types of payors; [2011, c. 422, §1 (NEW).]

C. Promote the use of assistive technology; [2011, c. 422, §1 (NEW).]

D. Integrate the delivery of skilled nursing care and personal care and services; [2011, c. 422, §1 (NEW).]

E. Establish a system to designate qualified providers who must:

(1) Provide the full range of services in the self-directed and agency models under subsection 3;

(2) Have the organizational and administrative capacity to administer and monitor a complete range of in-home and community support services, including, but not limited to, serving as a resource regarding service options, coordinating and implementing consumer services, ensuring the services are delivered, providing skills training, responding to questions and problems, performing administrative services, ensuring compliance with policies and performing utilization review functions; and

(3) Submit proposals for coordinated in-home and community support services in response to a solicitation for proposals to qualified provider agencies from the department, in the form and manner required by the department as specified in rules. Rules adopted pursuant to this subparagraph are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A; [2011, c. 422, §1 (NEW).]

F. Promote consumer choice by investing in needed care and services that consumers choose; and [2011, c. 422, §1 (NEW).]

G. Develop expanded financing options to encourage private investment in residential care and nursing facilities. [2011, c. 422, §1 (NEW).]

[2011, c. 422, §1 (NEW) .]

SECTION HISTORY
2011, c. 422, §1 (NEW).

Chapter 1623: IN-HOME AND COMMUNITY SUPPORT SERVICES FOR THE ELDERLY AND OTHER ADULTS AT RISK OF INAPPROPRIATE PLACEMENT IN INSTITUTIONAL SETTINGS

§7321. PROGRAM ESTABLISHED

The department shall establish and administer a program of in-home and community support services for adults with long-term care needs who are eligible for these services pursuant to section 7322. [1981, c. 511, §1 (NEW).]

SECTION HISTORY
1981, c. 511, §1 (NEW).

§7322. ELIGIBILITY

An adult with long-term care needs is eligible for in-home and community support services under this chapter if the department or its designee determines that the adult: [1981, c. 511, §1 (NEW).]

1. **Inappropriate placement.** Is at risk of being or already has been placed inappropriately in an institutional setting;

[1981, c. 511, §1 (NEW) .]

2. **Need for services.** Has a need for in-home and community support services; and

[1981, c. 511, §1 (NEW) .]

3. **Income and support.** Has no or insufficient personal income or other support from public services, family members and neighbors.

[1981, c. 511, §1 (NEW) .]

SECTION HISTORY
1981, c. 511, §1 (NEW).

§7323. MULTIDISCIPLINARY TEAMS

1. **Team designation.** The commissioner shall designate several multidisciplinary teams throughout the State to assist the department with evaluations of adults with long-term care needs.

[1981, c. 511, §1 (NEW) .]

2. **Membership.** Each multidisciplinary team must include at least one social services' professional or health care professional and, whenever possible, the adult with long-term care needs and a family or designated representative.

[1997, c. 734, §3 (AMD) .]

3. **Duties.** For each adult with long-term care needs evaluated by a multidisciplinary team, the team shall assist the department to:

A. Determine the eligibility of the adult for in-home and community support services; [1981, c. 511, §1 (NEW).]

B. Develop a plan of services for the adult, in cooperation with the probable providers of the services, whenever such providers are not members of the team; [1981, c. 511, §1 (NEW).]

C. Arrange for the provision of the needed services; [1981, c. 511, §1 (NEW).]

D. Reevaluate the adult periodically to determine his continuing need for the services; and [1981, c. 511, §1 (NEW).]

E. Consult when possible with the adult's attending physician, if any. [1981, c. 511, §1 (NEW).]

[1981, c. 511, §1 (NEW) .]

SECTION HISTORY
1981, c. 511, §1 (NEW). RR 1991, c. 2, §87 (COR). 1997, c. 734, §3 (AMD).

Chapter 1625: PERSONAL CARE ASSISTANCE SERVICES FOR SEVERELY PHYSICALLY DISABLED ADULTS

§7341. PROGRAM ESTABLISHED

(REPEALED)

SECTION HISTORY
1981, c. 511, §1 (NEW). 1993, c. 708, §I2 (RP).

§7342. ELIGIBILITY

(REPEALED)

SECTION HISTORY
1981, c. 511, §1 (NEW). 1985, c. 34, §4 (AMD). 1987, c. 845, §2 (AMD). 1993, c. 410, §I15 (AMD). 1993, c. 708, §I2 (RP).

§7343. EVALUATION TEAMS

(REPEALED)

SECTION HISTORY
1981, c. 511, §1 (NEW). 1987, c. 845, §3 (AMD). 1993, c. 708, §I2 (RP).

Subtitle 6: FACILITIES FOR CHILDREN AND ADULTS

Chapter 1661: GENERAL PROVISIONS

§7701. DEFINITIONS

1. **Children.** As used in this subtitle, the word "children" means persons who are not related by blood or marriage to, or who have not been legally adopted by, the licensee or administrator of any facility, defined in section 8101, 8201 or 8301-A, that provides services to these children.

[1997, c. 494, §4 (AMD); 1997, c. 494, §15 (AFF) .]

2. **Facility.** As used in this subtitle, the word "facility" means any of the places defined in section 8001, 8101, 8201 or 8301-A, subsection 1-A, paragraph B.

[2001, c. 645, §2 (AMD) .]

3. **Abuse or neglect.** For purposes of section 7703, "abuse or neglect," in the case of children refers to the definition found in section 4002, subsection 1. In the case of adults, "abuse" and "neglect" refers to the definitions found in section 3472, subsections 1 and 11, and also incorporates exploitation, as defined in section 3472, subsection 9.

[1985, c. 437, §3 (NEW) .]

4. **Division.** As used in section 7707, "division" means the Department of Health and Human Services, Division of Licensing and Regulatory Services.

[2015, c. 278, §1 (NEW) .]

5. **Reportable incident.** As used in section 7707, "reportable incident" means:

A. A child's death that occurs while the child is in the care of an entity required to report under section 7707, subsection 1; and [2015, c. 278, §1 (NEW).]

B. An injury or trauma to a child that occurs while the child is in the care of an entity required to report under section 7707, subsection 1 and results in the transportation of the child to a hospital by emergency medical services personnel. [2015, c. 278, §1 (NEW).]

[2015, c. 278, §1 (NEW) .]

SECTION HISTORY
1975, c. 719, §6 (NEW). 1985, c. 437, §3 (AMD). 1989, c. 502, §A80 (AMD). 1997, c. 494, §§4,5 (AMD). 1997, c. 494, §15 (AFF). 2001, c. 645, §2 (AMD). 2015, c. 278, §1 (AMD).

§7702. VIOLATION; PENALTY

(REPEALED)

SECTION HISTORY
1975, c. 719, §6 (NEW). 1981, c. 309, §1 (AMD). 1983, c. 691, §1 (AMD). 1987, c. 389, §1 (AMD). 1987, c. 774, §3 (AMD). 1997, c. 494, §6 (AMD). 1997, c. 494, §15 (AFF). 1999, c. 363, §2 (RP).

§7702-A. VIOLATIONS; PENALTIES

1. **Criminal penalties.** Except as otherwise provided by law, a person who violates any provision of this subtitle commits a Class E crime.

[1999, c. 363, §3 (NEW) .]

2. **Civil penalties.** The following penalties apply to the following violations:

A. A person who violates section 7703 or 8603 or rules adopted pursuant to those sections commits a civil violation for which a fine of not more than $500 may be adjudged. [2003, c. 452, Pt. K, §27 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A person who violates rules governing child-to-staff ratios adopted under section 8302-A, subsection 1, paragraph A or subsection 2, paragraph G commits a civil violation for which a fine of not more than $500 per incident or $500 per number of children above the limitation set by rule, or both, may be adjudged. [2003, c. 452, Pt. K, §27 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. K, §27 (RPR); 2003, c. 452, Pt. X, §2 (AFF) .]

3. **Licensure provisions.** A person who violates the following sections or rules adopted pursuant to those sections is subject to the sanctions provided for under the rules of licensure applicable to the facility, child care facility or family child care provider:

A. Section 7801, subsection 1, paragraph A; [1999, c. 363, §3 (NEW).]

B. Section 8301-A; or [1999, c. 363, §3 (NEW).]

C. Section 8302-A, subsection 1, paragraphs B to J and subsection 2, paragraphs A to F and H to K. [2015, c. 497, §1 (AMD).]

[2015, c. 497, §1 (AMD) .]

4. **Dedicated funds.** Fines and forfeitures adjudged under this section are payable to the Purchased Social Services Other Special Revenue account.

[1999, c. 363, §3 (NEW) .]

SECTION HISTORY
1999, c. 363, §3 (NEW). 2003, c. 452, §K27 (AMD). 2003, c. 452, §X2 (AFF). 2005, c. 530, §6 (AMD). 2015, c. 497, §1 (AMD).

§7702-B. OPERATING WITHOUT A LICENSE OR CERTIFICATE; VIOLATIONS; PENALTIES

1. **License or certificate required.** A person, firm, partnership, association, corporation or other entity may not, without first obtaining a license:

A. Manage or operate a long-term care facility as defined in chapter 1666-B; [2007, c. 324, §5 (NEW).]

B. Operate a child care facility as defined in section 8301-A, subsection 1-A, paragraph B; or [2007, c. 324, §5 (NEW).]

C. Operate as a family child care provider as defined in section 8301-A, subsection 1-A, paragraph C. [2007, c. 324, §5 (NEW).]

[2007, c. 324, §5 (NEW) .]

2. **Civil penalties.** A person, firm, partnership, association, corporation or other entity who violates subsection 1 commits a civil violation and is subject to a civil penalty of not less than $500 nor more than $10,000 per day. Each day of violation constitutes a separate offense.

[2007, c. 324, §5 (NEW) .]

3. **Injunctive relief.** Notwithstanding any other remedies provided by law, the Office of the Attorney General may seek an injunction to require compliance with the provisions of subsection 1.

[2007, c. 324, §5 (NEW) .]

4. **Enforcement.** The Office of the Attorney General may file a complaint with the District Court seeking civil penalties or injunctive relief or both for violations of subsection 1.

[2007, c. 324, §5 (NEW) .]

5. **Jurisdiction.** The District Court has jurisdiction pursuant to Title 4, section 152 for violations of subsection 1.

[2007, c. 324, §5 (NEW) .]

6. **Burden of proof.** The burden is on the department to prove, by a preponderance of the evidence, that the alleged violations of subsection 1 occurred.

[2007, c. 324, §5 (NEW) .]

7. **Right of entry.** To inspect the premises of a long-term care facility, child care facility or family child care provider that the department knows or believes is being operated without a license or certificate, the department may enter only with the permission of the owner or person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court, authorizing entry and inspection.

[2007, c. 324, §5 (NEW) .]

8. **Administrative inspection warrant.** The department and a duly designated officer or employee of the department have the right to enter upon and into the premises of an unlicensed long-term care facility or child care facility or an uncertified family child care provider with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court at a reasonable time and, upon demand, have the right to inspect and copy any books, accounts, papers, records and other documents in order to determine the state of compliance with subsection 1. Pursuant to the Maine Rules of Civil Procedure, Rule 80E the department's right of entry and inspection may extend to any premises and documents of a person, firm, partnership, association, corporation or other entity that the department has reason to believe is operating without a license or a certificate.

[2007, c. 324, §5 (NEW) .]

9. **Noninterference.** An owner or person in charge of an unlicensed long-term care facility or child care facility or an uncertified family child care provider may not interfere with or prohibit the interviewing by the department of residents or consumers of services.

[2007, c. 324, §5 (NEW) .]

10. **Violation of injunction.** A person, firm, partnership, association, corporation or other entity that violates the terms of an injunction issued under this section shall pay to the State a fine of not less than $500 nor more than $10,000 for each violation. Each day of violation constitutes a separate offense. In an action

brought by the Office of the Attorney General against a person, firm, partnership, association, corporation or other entity for violating the terms of an injunction under this section, the District Court may make the necessary orders or judgments regarding violation of the terms of the injunction.

In an action under this section, when a permanent injunction has been issued, the District Court may order the person, firm, partnership, association, corporation or other entity against which the permanent injunction is issued to pay to the General Fund the costs of the investigation of that person, firm, partnership, association, corporation or other entity by the Office of the Attorney General and the costs of suit, including attorney's fees.

[2007, c. 324, §5 (NEW) .]

11. **Rules.** 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.

[2007, c. 324, §5 (NEW) .]

SECTION HISTORY
2007, c. 324, §5 (NEW).

§7703. RECORDS; DISCLOSURE

1. **Records.** Except as otherwise provided by law and this section, any records that are made, acquired or retained by the department in connection with its responsibilities under this subtitle shall be available to the public.

[1983, c. 691, §2 (NEW) .]

2. **Confidential information.** Except as provided in subsections 3 and 4, confidential information may not be released without a court order or a written release from the person about whom the confidential information has been requested. The following information is confidential:

A. Information that identifies, directly or indirectly, a recipient of services of the facility, a client of the facility or the client's family or custodian, except when the family member or custodian is an owner or operator of the facility; [2007, c. 324, §6 (AMD).]

B. Notwithstanding sections 3474 and 4008, any information gathered in the course of an investigation of neglect or abuse, except a statement indicating whether or not a report of abuse or neglect has been received, the nature of the alleged abuse or neglect and the conclusion reached by the department, if any; [1983, c. 691, §2 (NEW).]

C. Information that identifies, directly or indirectly, a reference, complainant or reporter of suspected abuse or neglect; [2007, c. 324, §6 (AMD).]

D. Information pertaining to the adoption of an individual; [2007, c. 324, §6 (AMD).]

E. Information about the private life of a person, other than an owner, operator or employee of a facility, in which there is no legitimate public interest and that would be offensive to a reasonable person, if disclosed, except as provided in paragraph F; [2007, c. 324, §6 (AMD).]

F. Information about the private life of a person who has applied for a license or approval or is or has been licensed or approved as an adult foster home, licensed pursuant to chapter 1663, and family foster home as defined in section 8101, subsection 3, in which there is no legitimate public interest and that would be offensive to a reasonable person, if disclosed; and [2007, c. 324, §6 (AMD).]

G. Information that identifies, directly or indirectly, a reference, complainant or reporter of suspected licensing violations. [2007, c. 324, §6 (NEW).]

Within the department, confidential information must be available to and used by appropriate departmental personnel and legal counsel in carrying out their various functions. Nothing in this section may prevent the release of statistical information regarding the population of the facility by diagnosis or other classification, as long as it does not directly or indirectly identify the clients or recipients of services of the facility.

[2007, c. 324, §6 (AMD) .]

3. **Optional disclosure of confidential information.** Relevant information made confidential by subsection 2 may be released to the following:

A. An agency investigating a report of child or adult abuse or neglect when the investigation is authorized by law or by an agreement with the department; [1983, c. 691, §2 (NEW).]

B. A physician treating a child or adult whom he reasonably suspects may be abused or neglected; [1983, c. 691, §2 (NEW).]

C. A person, the parent or guardian of a minor, or the guardian of an incapacitated adult named in a record, provided that the identity of any reference, complainant, reporter of suspected abuse or neglect or other person is protected when appropriate; [1983, c. 691, §2 (NEW).]

D. A person having the legal responsibility or authorization to educate, care for, evaluate, treat or supervise a client or recipient of services of the facility. This shall include a member of a treatment team or group convened to plan for or treat a person named in a record, provided that the identity of any reference, complainant, reporter of suspected abuse or neglect or other person is protected, when appropriate; [1983, c. 691, §2 (NEW).]

E. Any person engaged in bona fide research, provided that no personally identifying information is made available, unless it is essential to the research and the commissioner or his designee gives prior approval. If the researcher desires to contact a subject of a record, the subject's consent shall be obtained by the department prior to the contact; [1983, c. 691, §2 (NEW).]

F. Any agency involved in approving homes for the placement of children, provided that the identity of any reference, complainant, reporter of suspected abuse or neglect or other person is protected, when appropriate; [1983, c. 691, §2 (NEW).]

G. An individual seeking to place a child or adult in a particular facility with protection for the identity of any reference, complainant, reporter of suspected abuse or neglect or other person, when appropriate; [1987, c. 714, §8 (AMD).]

H. An owner or operator of a facility which is the subject of a record, provided that the identity of any reference, complainant, reporter of suspected abuse or neglect or other person is protected, when appropriate; or [1987, c. 714, §8 (AMD).]

I. Persons and organizations pursuant to Title 5, section 9057, subsection 6, and pursuant to chapter 857. [1987, c. 714, §9 (NEW).]

[1987, c. 714, §§8, 9 (AMD) .]

4. **Mandatory disclosure of confidential information.** The department shall disclose relevant information in the records made confidential by subsection 2 to the following persons:

A. The guardian ad litem of a child or adult named in a record who is reported to be abused or neglected; [1983, c. 691, §2 (NEW).]

B. A law enforcement agency investigating a report of child or adult abuse or neglect or the commission of a crime by an owner, operator or employee of a facility against a client or recipient of services of the facility; [1985, c. 437, §4 (AMD).]

C. A court on its finding that access to those records may be necessary for the determination of any issue before the court. Access shall be limited to in camera inspection, unless the court determines that public disclosure of the information is necessary for the resolution of an issue pending before it; [1983, c. 691, §2 (NEW).]

D. A grand jury on its determination that access to those records is necessary in the conduct of its official business; [1983, c. 691, §2 (NEW).]

E. An appropriate state executive or legislative official with responsibility for adult or child protection services in carrying out his official functions, provided that no personally identifying information may be made available unless necessary to his functions; [1983, c. 691, §2 (NEW).]

F. The Protection and Advocacy Agency for the Developmentally Disabled in Maine in connection with investigations conducted in accordance with Title 5, chapter 511. The determination of what information and records are relevant to the investigation must be made by agreement between the department and the agency; and [2005, c. 683, Pt. B, §18 (AMD).]

G. The Commissioner of Education, when the information concerns teachers and other professional personnel issued certificates under Title 20-A. [1989, c. 700, Pt. A, §94 (AMD).]

[2005, c. 683, Pt. B, §18 (AMD) .]

5. **Dissemination of confidential information.** Information released pursuant to subsections 3 and 4 shall be used solely for the purpose for which it was provided and shall not be further disseminated.

[1983, c. 691, §2 (NEW) .]

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

[2007, c. 324, §7 (NEW) .]

SECTION HISTORY
1983, c. 691, §2 (NEW). 1985, c. 437, §4 (AMD). 1987, c. 714, §§8,9 (AMD). 1989, c. 502, §A81 (AMD). 1989, c. 700, §A94 (AMD). 2001, c. 596, §B11 (AMD). 2001, c. 596, §B25 (AFF). 2005, c. 683, §B18 (AMD). 2007, c. 324, §§6, 7 (AMD).

§7704. PROCESSING FEE

Beginning October 1, 2010, a facility, health care provider or program subject to the licensing or certification processes of chapter 1663, 1664, 1667, 1669, 1671 or 1673; a nursery school subject to chapter 1675; an adult day care program subject to chapter 1679; or a hospice provider subject to chapter 1681 shall pay a processing fee not to exceed $10 to the department for the reissuance of a license or certificate when the licensee or certificate holder made changes that require the reissuance of a license or certificate. [2009, c. 590, §4 (NEW).]

The department may adopt rules necessary to implement this section. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 590, §4 (NEW).]

§7704. Criminal background checks

(As enacted by PL 2009, c. 621, §6 is REALLOCATED TO TITLE 22, SECTION 7706)

SECTION HISTORY
RR 2009, c. 2, §61 (RAL). 2009, c. 590, §4 (NEW). 2009, c. 621, §6 (NEW).

§7705. TRANSACTION FEE FOR ELECTRONIC RENEWAL OF LICENSE

The department may collect a transaction fee from providers renewing their licenses electronically under this subtitle. The fee may not exceed the cost of providing the electronic license renewal service. The department may adopt rules necessary to implement this section. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 590, §5 (NEW).]

SECTION HISTORY
2009, c. 590, §5 (NEW).

§7706. CRIMINAL BACKGROUND CHECKS

(REALLOCATED FROM TITLE 22, SECTION 7704)

Beginning October 1, 2010, a facility or health care provider subject to the licensing or certification processes of chapter 1663, a nursery school subject to chapter 1675 or a hospice provider subject to chapter 1681, prior to hiring an individual who will work in direct contact with a consumer, or who has direct access to a consumer's property, personally identifiable information, financial information or resources, shall obtain a comprehensive background check in accordance with applicable federal and state laws. The comprehensive background check must include, at a minimum, criminal history record information from the Department of Public Safety, State Bureau of Identification. The entity seeking to employ the individual shall pay for the criminal background check required by this section. [2015, c. 196, §13 (AMD); 2015, c. 299, §21 (AMD).]

The department may adopt rules necessary to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 2, §61 (RAL).]

SECTION HISTORY
RR 2009, c. 2, §61 (RAL). 2015, c. 196, §13 (AMD). 2015, c. 299, §21 (AMD).

§7707. REPORTABLE INCIDENTS

1. **Reporting requirements.** A child care facility licensed pursuant to section 8301-A, subsection 2; a family child care provider certified pursuant to section 8301-A, subsection 3; and a nursery school licensed pursuant to section 8402 shall report reportable incidents in accordance with this section.

[2015, c. 278, §2 (NEW) .]

2. **Notification by next business day.** An entity required to report pursuant to subsection 1 shall submit a division-approved reportable incident form to the division by the next business day after a reportable incident occurred. The form must include at least the following information:

A. The date of the reportable incident; [2015, c. 278, §2 (NEW).]

B. The time the reportable incident occurred; [2015, c. 278, §2 (NEW).]

C. The name of the entity; [2015, c. 278, §2 (NEW).]

D. The name of the entity's contact person; [2015, c. 278, §2 (NEW).]

E. A description of the reportable incident; [2015, c. 278, §2 (NEW).]

F. The condition of the child; [2015, c. 278, §2 (NEW).]

G. The name of the child; [2015, c. 278, §2 (NEW).]

H. The action taken by the entity; and [2015, c. 278, §2 (NEW).]

I. The involvement of a fire or police department, emergency medical services or other entity. [2015, c. 278, §2 (NEW).]

[2015, c. 278, §2 (NEW) .]

3. **Rules.** The department may adopt rules necessary to implement the reporting of reportable incidents. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2015, c. 278, §2 (NEW) .]

SECTION HISTORY
2015, c. 278, §2 (NEW).

Chapter 1663: LICENSES

§7801. LICENSE OR APPROVAL REQUIRED

1. **License required.** Except as provided in subsection 3 or section 7805, a person, firm, corporation or association may not operate any of the following without having, subject to this Subtitle and to the rules adopted by the department under this Subtitle, a written license from the department:

A. A residential care facility; [1993, c. 661, §2 (AMD).]

A-1. In accordance with subparagraphs (1) and (2), an assisted housing program either directly or by contract providing to its residents any of the following services: personal care assistance, the administration of medication or nursing services.

(1) An assisted housing program may directly provide to its residents meals, housekeeping and chore assistance, case management and personal care assistance delivered on the site of congregate housing without obtaining a separate license to do so.

(2) An assisted housing program licensee may hold at any one time only one license under this subsection. A qualified assisted housing program may obtain a license for a different category under this subsection, upon application and surrender of the previous license; [2001, c. 2, Pt. A, §36 (COR).]

B. A drug treatment center; [1983, c. 386, §1 (RPR).]

C. A children's home; [1983, c. 386, §1 (RPR).]

D. A child placing agency; [1983, c. 386, §1 (RPR).]

E. A child care facility licensed under section 8301-A, subsection 2; or [2001, c. 645, §3 (AMD).]

F. [2001, c. 645, §4 (RP).]

G. An adult day care program. [1987, c. 389, §4 (NEW).]

[2001, c. 2, Pt. A, §36 (COR); 2001, c. 645, §§3, 4 (AMD) .]

2. **Approval.**

[1985, c. 770, §4 (RP) .]

3. **Residential care facilities.** A residential care facility providing care to no more than 2 residents is not required to obtain a license under subsection 1, unless the license is required for the residential care facilities to receive payment from available state funds. The department may issue 2-year licenses and conduct modified surveys for compliance of those facilities as long as the facilities have relatively deficiency-free surveys with no history of health or safety violations.

[1993, c. 661, §3 (AMD) .]

4. **Boarding homes.**

[1993, c. 661, §4 (RP) .]

5. **Residents under age of 18 years.** Notwithstanding any age requirement, a person who is 17 years of age or older may be a resident in an adult foster home or boarding home without the home being required to be licensed as a children's home under chapter 1669 if the department determines that such a placement is in the best interests of that person.

[1989, c. 355, §1 (NEW) .]

6. **National accreditation.** A person, firm, corporation or association operating a program or facility described under subsection 1 that receives and maintains accreditation from a national accrediting body approved by the department must be deemed in compliance with comparable state licensing rules upon its submission to the department of written evidence of compliance including, but not limited to, national accreditation approval, reports, findings and responses. The department may review compliance under this subsection in response to a complaint against the program or facility.

[2011, c. 145, §2 (NEW) .]

SECTION HISTORY
1975, c. 719, §6 (NEW). 1983, c. 386, §1 (RPR). 1985, c. 770, §4 (AMD). 1987, c. 389, §§2-4 (AMD). 1989, c. 355, §1 (AMD). 1993, c. 661, §§2-4 (AMD). 1995, c. 670, §B5 (AMD). 1995, c. 670, §D5 (AFF). 1999, c. 392, §2 (AMD). RR 2001, c. 2, §A36 (COR). 2001, c. 596, §B12 (AMD). 2001, c. 596, §B25 (AFF). 2001, c. 645, §§3,4 (AMD). 2011, c. 145, §2 (AMD).

§7802. ISSUANCE OF LICENSE OR APPROVAL

1. **Types of license or approval.** The department shall issue the following types of licenses.

A. A provisional license or approval shall be issued by the department to an applicant who:

(1) Has not previously operated the facility for which the application is made or is licensed or approved but has not operated during the term of that license or approval;

(2) Complies with all applicable laws and rules, except those which can only be complied with once clients are served by the applicant; and

(3) Demonstrates the ability to comply with all applicable laws and rules by the end of the provisional license or approval term. [1983, c. 386, §2 (NEW).]

B. The department shall issue a full license or approval to an applicant who complies with all applicable laws and rules. [1983, c. 386, §2 (NEW).]

C. A conditional license or approval may be issued by the department when the individual or agency fails to comply with applicable law and rules and, in the judgment of the commissioner, the best interest of the public would be so served by issuing a conditional license or approval. The conditional license or approval shall specify when and what corrections must be made during the term of the conditional license or approval. [1983, c. 386, §2 (NEW).]

D. A temporary license to operate a family foster home may be issued on a one-time basis when a preliminary evaluation of the home by the department has determined that the applicants are capable of providing foster care, in accordance with applicable laws and rules relating to minimum standards of health, safety and well-being, except that it is not possible to obtain a fire safety inspection in accordance with section 8103 prior to licensure and there are no obvious fire safety violations and, in the judgment of the commissioner, the best interest of the public will be so served by issuing a temporary license. [1985, c. 706, §1 (NEW).]

E. A 2-year full license may be issued by the department for a residential care facility or a congregate housing service program as long as it is in substantial compliance with licensing rules and has no history of health or safety violations. [2001, c. 263, §1 (RPR).]

[2001, c. 263, §1 (AMD) .]

1-A. **Consolidation of functions.** All staff performing general licensing functions within the Office of Child and Family Services, including the out-of-home abuse and neglect investigating team when investigating pursuant to section 5005, subsection 3, paragraph C, shall be consolidated as a single organizational unit.

[1989, c. 400, §13 (AMD); 2013, c. 368, Pt. CCCC, §7 (REV) .]

2. **Term of license or approval; compliance visits.**

A. The provisional license or approval shall be issued for a minimum period of 3 months or a longer period, as deemed appropriate by the department, not to exceed 12 consecutive months. [1983, c. 386, §2 (NEW).]

B. The terms of full licenses or approvals are as follows.

(1) Except as provided in subparagraphs (2) to (7), the term of all full licenses and approvals issued pursuant to this chapter is for one year or the remaining period of a conditional or provisional license that has been issued for less than one year.

(2) The term of a children's residential care facility license is for 2 years.

(3) The term of a drug treatment center license is for 2 years.

(4) The term of a family foster home or specialized foster home license is for 2 years.

(5) The term of a child care facility license issued under section 8301-A, subsection 2 is for 2 years.

(6) The term of a home day care certificate issued under section 8301-A, subsection 3 is for 2 years.

(7) The term of an adult day care program license pursuant to chapter 1679 is for either one or 2 years at the discretion of the department. [2015, c. 267, Pt. RR, §1 (AMD).]

C. The conditional license shall be issued for a specific period, not to exceed one year, or the remaining period of the previous full license, whichever the department determines appropriate based on the laws and rules violated. [1983, c. 386, §2 (NEW).]

C-1. The term of a temporary family foster home license shall be for a specific period not to exceed 120 days. [1985, c. 706, §2 (NEW).]

D. The department shall inspect for continued compliance with applicable laws and rules prior to the expiration of the license or approval. [2001, c. 263, §2 (AMD).]

E. Residential care facilities and congregate housing services programs for which a license has been issued must be periodically inspected for continued compliance with applicable laws and rules under the rules to be established by the department. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [2001, c. 263, §3 (NEW).]

[2015, c. 267, Pt. RR, §1 (AMD) .]

3. **Failure to comply with applicable laws and rules.** In taking action pursuant to this subsection, the department shall notify the licensee of the opportunity to request an administrative hearing or shall file a complaint with the District Court in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

A. When an applicant fails to comply with applicable law and rules, the department may refuse to issue or renew the license or approval. [1983, c. 386, §2 (NEW).]

B. If, at the expiration of a full or provisional license or approval, at the expiration of a temporary family foster home license or during the term of a full license or approval, the facility fails to comply with applicable law and rules and, in the judgment of the commissioner, the best interest of the public would be served, the department may issue a conditional license or approval, or change a full license or approval to a conditional license or approval. Failure by the conditional licensee to meet the conditions specified by the department shall permit the department to void the conditional license or approval or refuse to issue a full license or approval. The conditional license or approval shall be void when the department has delivered in hand or by certified mail a written notice to the licensee or, if the licensee cannot be reached for service in hand or by certified mail, has left written notice thereof at the agency or facility. For the purposes of this subsection the term "licensee" means the person, firm, corporation or association to whom a conditional license or approval has been issued. [1985, c. 706, §3 (AMD).]

C. Whenever, upon investigation, conditions are found which, in the opinion of the department, immediately endanger the health or safety of persons living in or attending a facility, the department may request the District Court for an emergency suspension pursuant to Title 4, section 184, subsection 6. [1999, c. 547, Pt. B, §42 (AMD); 1999, c. 547, Pt. B, §80 (AFF).]

D. Any license or approval issued under this subtitle may be suspended or revoked for violation of applicable law and rules, committing, permitting, aiding or abetting any illegal practices in the operation of the facility or conduct or practices detrimental to the welfare of persons living in or attending the facility.

When the department believes that a license or approval should be suspended or revoked, it shall file a complaint with the District Court as provided in the Maine Administrative Procedure Act, Title 5, chapter 375. [1983, c. 386, §2 (NEW); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AMD).]

[1999, c. 547, Pt. B, §§42, 78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

4. **Subsequent application for a full license or approval.** Subsequent to any of the following actions, a subsequent application for a full license or approval may be considered by the department when the deficiencies identified by the department have been corrected:

A. Issuance of a conditional license or approval; [1983, c. 386, §2 (NEW).]

B. Refusal to issue or renew a full license or approval; [1983, c. 386, §2 (NEW).]

C. Revocation or suspension of a full license or approval; [1985, c. 706, §4 (AMD).]

D. Refusal to issue a provisional license or approval; or [1985, c. 706, §4 (AMD).]

E. Expiration of a temporary family foster home license. [1985, c. 706, §5 (NEW).]

[1985, c. 706, §§4, 5 (AMD) .]

5. **Appeals.** Any person aggrieved by the department's decision to take any of the following actions, may request an administrative hearing, as provided by the Maine Administrative Procedure Act, Title 5, chapter 375:

A. Issue a conditional license or approval; [1983, c. 386, §2 (RPR).]

B. Amend or modify a license or approval; [1983, c. 386, §2 (RPR).]

C. Void a conditional license or approval; [1983, c. 386, §2 (RPR).]

D. Refuse to issue or renew a full license or approval; [1985, c. 706, §6 (AMD).]

E. Refuse to issue a provisional license or approval; or [1985, c. 706, §7 (AMD).]

F. Refuse to issue a temporary family foster home license. [1985, c. 706, §8 (NEW).]

[1985, c. 706, §§6-8 (AMD) .]

6. **Time limit on reapplication after denial or revocation.** The following time limit applies to a reapplication after denial or revocation.

A. When a license or certificate for a child care facility or a family child care provider has been denied or revoked on one occasion, the applicant or licensee may not reapply for a license or certificate for a child care facility or a family child care provider for a period of one year from the effective date of the denial or revocation decision if not appealed, or, if appealed, from the effective date of the commissioner's final decision or the reviewing court's order, whichever is later. [2007, c. 324, §9 (NEW).]

B. If a license or certificate for a child care facility or a family child care provider has been denied or revoked on 2 occasions, the applicant or licensee may not reapply for a license or certificate for a child care facility or a family child care provider for a period of 2 years from the effective date of the second denial or revocation decision if the decision is not appealed or, if appealed, from the effective date of the commissioner's final decision or the reviewing court's order, whichever is later. [2007, c. 324, §9 (NEW).]

C. If a license or certificate for a child care facility or a family child care provider has been denied or revoked on 3 occasions, the applicant or licensee may not receive another license or certificate for the care of children. [2007, c. 324, §9 (NEW).]

[2007, c. 324, §9 (NEW) .]

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

[2007, c. 324, §10 (NEW) .]

SECTION HISTORY
1975, c. 719, §6 (NEW). 1977, c. 694, §374 (AMD). 1983, c. 386, §2 (RPR). 1983, c. 602, §§1-4 (AMD). 1985, c. 706, §§1-8 (AMD). 1987, c. 511, Pt. B, §3 (AMD). 1989, c. 400, §§13, 14 (AMD). 1991, c. 69, §1 (AMD). 1993, c. 661, §5 (AMD). 1995, c. 670, Pt. B, §6 (AMD). 1995, c. 670, Pt. D, §5 (AFF). 1999, c. 547, Pt. B, §§42, 78 (AMD). 1999, c. 547, Pt. B, §80 (AFF). 1999, c. 599, §1 (AMD). 2001, c. 263, §§1-3 (AMD). 2005, c. 640, §1 (AMD). 2007, c. 324, §§8-10 (AMD). 2013, c. 179, §6 (AMD). 2013, c. 368, Pt. CCCC, §7 (REV). 2015, c. 267, Pt. RR, §1 (AMD).

§7803. SUSPENSION OR REVOCATION OF LICENSE

(REPEALED)

SECTION HISTORY
1975, c. 719, §6 (NEW). 1977, c. 694, §§375,376 (AMD). 1983, c. 386, §3 (RP).

§7804. RIGHT OF ENTRY

The department shall have the right of entry to any facility licensed under this subtitle, at any reasonable time in order to determine the state of compliance by the facility to applicable laws and rules. [1975, c. 719, §6 (NEW).]

To inspect any facility which the department knows or believes is operated without a license, the department may enter only with the permission of the owner or person in charge or with a search warrant from the District Court authorizing entry and inspection. [1975, c. 719, §6 (NEW).]

Any application for a license under this subtitle shall constitute permission for entry and inspection to verify compliance with applicable law and rules. [1975, c. 719, §6 (NEW).]

SECTION HISTORY
1975, c. 719, §6 (NEW).

§7805. TRIBALLY LICENSED FACILITIES

With respect to the placement care and funding of care of any Indian child as defined in the Indian Child Welfare Act, 25 United States Code, Section 1901, et seq., this Subtitle does not apply to any Indian foster family home, adoptive home or other facility licensed by a federally recognized Indian tribe in this State pursuant to that Act. [1999, c. 392, §3 (RPR).]

SECTION HISTORY
1975, c. 719, §6 (NEW). 1999, c. 392, §3 (RPR).

§7806. CONFIDENTIALITY GUIDELINES

As a condition of licensure under this subtitle, the department shall require entities described in section 7801, subsection 1, paragraphs A, A-1, B and C to develop policies for releasing nontreatment information about a resident to law enforcement agencies, schools, parents, guardians or other appropriate public agencies. The department shall establish by rule a model resident information confidentiality policy for entities subject to this section. Rules adopted under this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. [1997, c. 342, §3 (NEW).]

SECTION HISTORY
1997, c. 342, §3 (NEW).

§7807. LICENSE NOT REQUIRED

A license is not required to operate an independent housing with services program, as defined in section 7852. [2003, c. 449, §1 (NEW).]

SECTION HISTORY
2003, c. 449, §1 (NEW).

Chapter 1664: ASSISTED HOUSING PROGRAMS

§7851. ASSISTED HOUSING PROGRAMS

Assisted housing programs are authorized under this chapter in the following settings and subject to the following standards and licensure requirements. [2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF).]

1. **Standards.** Assisted housing programs further the independence of the resident and respect the privacy and personal choices of the resident, including the choice to continue to reside at home for so long as the assisted housing program, as it is fundamentally designed, is able to meet the needs of the resident. Assisted housing programs provided to residents must be consumer oriented and meet professional standards of quality.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

2. **Settings.** Assisted housing programs may be provided in the following settings:

A. Independent housing with services programs, as defined in section 7852, subsection 6; [2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF).]

B. Assisted living programs, as defined in section 7852, subsection 4; or [2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF).]

C. Residential care facilities, as defined in section 7852, subsection 14. [2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF).]

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

3. **Licensure requirements.** Independent housing with services programs are not subject to licensure. Licensure of assisted living programs is governed by section 7801, subsection 1. Licensure of residential care facilities is governed by section 7801, subsections 1 and 3.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

4. **Prohibited employment based on disqualifying offenses.** A licensed assisted housing program shall conduct a comprehensive background check for direct access personnel, as defined in section 1717, subsection 1, paragraph A-2, in accordance with state law and rules adopted by the department and is subject to the employment restrictions set out in section 1812-G and other applicable federal and state laws when hiring, employing or placing direct access personnel, including a certified nursing assistant or a direct care worker.

The department may adopt rules 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.

[2015, c. 494, Pt. A, §25 (RPR) .]

SECTION HISTORY
2001, c. 596, §A1 (NEW). 2001, c. 596, §B25 (AFF). 2003, c. 634, §6 (AMD). 2015, c. 196, §14 (AMD). 2015, c. 299, §22 (AMD). 2015, c. 494, Pt. A, §25 (AMD).

§7852. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF).]

1. **Activities of daily living.** "Activities of daily living" means tasks routinely performed by a person to maintain bodily functions, including bed mobility, transfers, locomotion, dressing, eating, toileting, bathing and personal hygiene.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

2. **Assisted housing program.** "Assisted housing program" means an independent housing with services program, an assisted living program or a program of housing and services provided by a residential care facility.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

3. **Assisted housing services.** "Assisted housing services" means the provision by an assisted housing program of housing, assistance with activities of daily living and instrumental activities of daily living, personal supervision, protection from environmental hazards, meals, diet care, care management and diversional or motivational activities.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

4. **Assisted living program.** "Assisted living program" means a program of assisted living services provided to residents in private apartments in buildings that include a common dining area, either directly by the provider or indirectly through contracts with persons, entities or agencies.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

5. **Assisted living services.** "Assisted living services" means the provision by an assisted housing program, either directly by the provider or indirectly through contracts with persons, entities or agencies, of assisted housing services, assisted housing services with the addition of medication administration or assisted housing services with the addition of medication administration and nursing services.

[2003, c. 688, Pt. C, §12 (AMD) .]

6. **Independent housing with services program.** "Independent housing with services program" means a program of assisted housing services provided to residents in private apartments in buildings that include a common dining area, either directly by the provider or indirectly through contracts with persons, entities or agencies.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

7. **Instrumental activities of daily living.** "Instrumental activities of daily living" includes, but is not limited to, preparing or receiving of a main meal, taking medication, using the telephone, handling finances, banking, shopping, routine housework, laundry and getting to appointments.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

8. **Life Safety Code.** "Life Safety Code" means the current edition of the National Fire Protection Association Life Safety Code 101.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

9. **Long-term care facility.** "Long-term care facility" means any assisted housing program licensed pursuant to chapter 1663 or this chapter and any nursing facility or unit licensed pursuant to chapter 405.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

10. **Mobile nonambulatory.** "Mobile nonambulatory," as applied to a resident of a residential care facility with 6 or fewer beds, means being able to transfer independently and able to evacuate a facility in less than 2 1/2 minutes with the assistance of another person throughout the evacuation procedure.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

11. **Nursing services.** "Nursing services" means services provided by professional nurses defined in Title 32, section 2102, subsection 2. "Nursing services" includes coordination and oversight of resident care services provided by unlicensed health care assistive personnel in assisted living programs.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

12. **Private apartment.** "Private apartment" means a private dwelling unit with an individual bedroom, an individual bathroom and an individual food preparation area.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

13. **Resident.** "Resident" means any person 18 years of age or older who is not related by blood or marriage to the owner or person in charge of the facility or building in which the resident lives and who receives assisted housing services.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

14. **Residential care facility.** "Residential care facility" means a house or other place that, for consideration, is maintained wholly or partly for the purpose of providing residents with assisted living services. Residential care facilities provide housing and services to residents in private or semi-private bedrooms in buildings with common living areas and dining areas. "Residential care facility" does not include a licensed nursing home or a supported living arrangement certified by the department.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF); 2003, c. 689, Pt. B, §6 (REV) .]

SECTION HISTORY
2001, c. 596, §A1 (NEW). 2001, c. 596, §B25 (AFF). 2003, c. 688, §C12 (AMD). 2003, c. 689, §B6 (REV).

§7853. RULES

The commissioner shall adopt rules for licensed assisted housing programs. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A, except that rules to establish categories of licensed assisted housing programs, including private nonmedical institutions, are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2003, c. 673, Pt. V, §2 (AMD); 2003, c. 673, Pt. V, §29 (AFF).]

1. **Consultation.** The rules must be developed in consultation with the long-term care ombudsman program established pursuant to section 5106, subsection 11-C, consumer representatives and providers of the type of assisted housing program to which the rules will apply.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

2. **Subject matter.** The rules must include, but are not limited to, administration, quality of care and treatment, if applicable, level and qualifications of staff, rights of residents, contracts, administration of medication, available public and private sources of payment, health and safety of residents and staff, community relations and licensing procedures.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

3. **Administration of medication rules.** In adopting the rules for administration of medication, the commissioner shall consider, among other factors, the general health of the persons likely to receive medication and the numbers of persons served and employed by the assisted housing program facility. The

department may require unlicensed personnel to have successfully completed a program of training and instruction, approved by the department for the administration of medication, that is not limited to in-service training.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

4. **Residential care rules.** The commissioner shall adopt rules for the various levels of residential care facilities. In addition to the subject matter of the rules listed in subsection 2, the rules must include criteria for placement of residents who qualify for services as minors, as adults and as persons with disabilities.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

5. **Assisted living program rules.** The commissioner shall adopt rules for assisted living programs. In addition to the subject matter of rules listed in subsection 2, the rules must recognize and promote the efficiencies inherent in providing services in the applicable setting with respect to staffing and other responsibilities, while ensuring quality of care and safety. The rules must set requirements and standards for services rendered in the applicable settings that recognize the differences between those settings and private homes served pursuant to chapter 419. The rules must permit staff in assisted living programs to be shared in accordance with section 1812-C, subsection 6-A and section 7914.

[2003, c. 449, §3 (AMD) .]

6. **Applicability of residents' rights rules.** Any rules adopted pursuant to this section pertaining to residents' rights are applicable to licensed assisted housing programs.

[2003, c. 449, §3 (AMD) .]

7. **Relationship to tax credit financing.** In adopting rules under this section, the department shall give due consideration to and shall avoid conflicts with the requirements of the federal Internal Revenue Code and regulations promulgated under the federal Internal Revenue Code and any other requirements imposed by the Internal Revenue Service when financing based on low-income housing tax credits is utilized for the housing component of assisted living programs.

[2003, c. 449, §4 (NEW) .]

SECTION HISTORY
2001, c. 596, §A1 (NEW). 2001, c. 596, §B25 (AFF). 2003, c. 449, §§2-4 (AMD). 2003, c. 673, §V2 (AMD). 2003, c. 673, §V29 (AFF).

§7854. FEES FOR LICENSURE

The department shall charge annual fees for licensure of residential care facilities and assisted living programs as follows: [2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF).]

1. **Fees for residential care facility.** Ten dollars per licensed bed for a residential care facility; and

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

2. **Fees for assisted living programs.** Two hundred dollars for an assisted living program.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

SECTION HISTORY
2001, c. 596, §A1 (NEW). 2001, c. 596, §B25 (AFF).

§7855. FIRE SAFETY INSPECTION FOR RESIDENTIAL CARE FACILITIES

1. **Inspection required.** A license may not be issued by the department to a residential care facility until the department has received from the Commissioner of Public Safety a written statement signed by one of the officials designated under Title 25, section 2360, 2391 or 2392 to make fire safety inspections. This statement must indicate that the residential care facility has complied with applicable fire safety provisions referred to in Title 25, section 2452.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

2. **Fees.** The department shall establish and pay reasonable fees to the Commissioner of Public Safety or a municipal official for each inspection under subsection 1.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

3. **Local regulations.** A local regulation that affects the life-safety requirements of a residential care facility and that is more stringent than those referred to in this section takes precedence.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

4. **Requirements for residential care facilities.** Residential care facilities must comply with the chapters of the National Fire Protection Association Life Safety Code relating to new and existing residential board and care occupancies adopted by the Commissioner of Public Safety. Residential care facilities must comply as follows.

A. A residential care facility that has one to 3 beds must comply with the one-family and 2-family dwelling chapter of the Life Safety Code. [2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF).]

A-1. A residential care facility with 4 to 6 beds whose residents have prompt evacuation capability, as defined in the Life Safety Code, must comply with the one-family and 2-family dwellings chapter of the Life Safety Code if that residential care facility was licensed under that chapter prior to October 1, 2002. [2003, c. 398, §1 (NEW).]

A-2. [2003, c. 510, Pt. G, §1 (NEW); 2003, c. 510, Pt. G, §3 (AFF); 2003, c. 599, §16 (AFF); T. 22, §7855, ¶ A-2 (RP).]

B. Except as provided in paragraph A-1, a residential care facility with 4 to 16 beds must comply with the sections of the Life Safety Code that apply to small facilities and with the chapter relating to new residential board and care occupancy if that facility is a facility that was constructed on or after July 25, 2002 or with the existing residential board and care occupancy chapter if that facility was licensed before July 25, 2002. [2003, c. 2, §80 (COR).]

C. A residential care facility with more than 16 beds must comply with the sections of the Life Safety Code that apply to large facilities and with the chapter relating to new residential board and care occupancy if that facility is a facility constructed on or after July 25, 2002 or with the chapter relating to existing residential board and care occupancy if that facility was licensed before July 25, 2002. [2003, c. 398, §1 (AMD).]

D. Notwithstanding any other provision of law or rule a residential care facility with 4 or fewer beds is not required to obtain certification from a design specialist to satisfy the requirements of this section or Title 5, section 4594-F. [2003, c. 398, §1 (NEW).]

[2003, c. 2, §80 (COR) .]

5. **Fire safety inspection and certificate of compliance required for licensure.** A fire safety inspection must be performed and a certificate of compliance must be provided to the department before a license to a residential care facility is issued. Inspections must be scheduled to coincide with the term of the license.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

6. **Timed drills.** Timed drills, as described in the applicable chapters of the National Fire Protection Association Life Safety Code, must be used to determine a residential care facility's capability to evacuate its residents, unless the facility has elected to complete evacuation scores in lieu of timed drills in accordance with the standards described in the National Fire Protection Association Life Safety Code 101A or when timed drills are not required pursuant to the Life Safety Code. When a new resident has participated in a timed drill in another residential care facility within the previous 2 months, the results of that drill may be used to determine evacuation capability in the resident's new facility for a period of up to 4 months. A person who violates or fails to comply with this subsection commits a civil violation for which a forfeiture of not more than $25 per bed for each occurrence of failure to comply may be adjudged.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

7. **Requirement for manual fire alarm activation may be waived.** For a residential care facility with 4 to 8 beds, the requirement for manual fire alarm activation may be waived at the discretion of the Commissioner of Public Safety.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

SECTION HISTORY
2001, c. 596, §A1 (NEW). 2001, c. 596, §B25 (AFF). RR 2003, c. 2, §80 (COR). 2003, c. 398, §1 (AMD). 2003, c. 510, §§G1,2 (AMD). 2003, c. 510, §G3 (AFF). 2003, c. 599, §16 (AFF). MRSA T.22 ., §7855/4/A2 (AMD).

§7856. FIRE SAFETY INSPECTION FOR ASSISTED LIVING PROGRAMS

In accordance with this section, the department shall adopt rules pursuant to Title 5, chapter 375 for the inspection of assisted living programs as defined in section 7852, subsection 4, by the Commissioner of Public Safety or the commissioner's designee and the fees for that inspection. Rules regarding fees adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.
[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF).]

1. **Permits; inspection.** Construction and renovation of assisted living programs require a construction permit from the Commissioner of Public Safety. Prior to licensure all assisted living programs must be inspected by the Commissioner of Public Safety or the commissioner's designee at the request of the department. All assisted living programs must be inspected upon performing renovations and must be reinspected every 2 years.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

2. **Certificate of compliance.** The Commissioner of Public Safety shall issue a certificate of compliance with the provisions of this section to the department.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

3. **Requirements.** All assisted living programs must be inspected using the chapter pertaining to new apartment buildings of the National Fire Protection Association Life Safety Code adopted by the Department of Public Safety, Office of the State Fire Marshal and must be protected throughout by a supervised, automatic sprinkler system approved by the Commissioner of Public Safety.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

SECTION HISTORY
2001, c. 596, §A1 (NEW). 2001, c. 596, §B25 (AFF).

§7857. PERSONAL FUNDS OF RESIDENTS

1. **Permission to manage personal funds.** An operator or agent of an assisted housing program may not manage, hold or deposit in a financial institution the personal funds of a resident of the facility unless the operator or agent has received written permission from:

A. The resident if the resident does not have a guardian, trustee or conservator; [2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF).]

B. The resident's guardian, trustee or conservator if that person exists and can be reached; or [2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF).]

C. The department if a guardian, trustee or conservator exists but can not be reached. [2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF).]

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

2. **Itemized accounting.** An operator or agent of an assisted housing program who, after receiving written permission pursuant to subsection 1, manages or holds the personal funds of a resident shall maintain an account for these funds, which must include for each resident a separate, itemized accounting for the use of that resident's personal funds with supporting documentation for every expenditure in excess of $2.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

3. **Depositing personal funds.** The department may require an operator or agent of an assisted housing program to deposit in a financial institution the personal funds of a resident if the resident has a guardian, trustee or conservator who can not be reached.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

4. **Use of personal funds by operator prohibited.** Under no circumstances may an operator or agent of an assisted housing program use the personal funds of a resident for the operating costs of the facility or for services or items that are reimbursed by a 3rd party. The personal funds of a resident may not be commingled with the business funds of the facility or with the personal funds or accounts of the owner, a member of the owner's family or an employee of the facility.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

SECTION HISTORY
2001, c. 596, §A1 (NEW). 2001, c. 596, §B25 (AFF).

§7858. CERTAIN RESIDENTIAL CARE PAYMENTS

The department shall: [2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF).]

1. **Facilities with 4 or fewer beds.** Reimburse all residential care facilities of up to 4 beds at a rate of at least $433 per month; and

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

2. **Facilities with 5 or 6 beds.** Reimburse all residential care facilities of 5 or 6 beds whose residents do not have severe mental or physical dysfunction or disability on a flat rate basis of at least $601 per month.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

SECTION HISTORY
2001, c. 596, §A1 (NEW). 2001, c. 596, §B25 (AFF).

§7859. RESIDENTS' RECORDS

Whenever there are pertinent and available health and other records about a person who seeks admission as a resident to a residential care facility, those records must be provided to the administrator of the facility at least 7 days prior to the date of admission, unless there are compelling reasons that make this impossible or impractical. If there are compelling reasons, including, but not limited to, emergency situations, the administrator must receive, by not later than the date of admission, a written note that: [2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF).]

1. **Reasons explained.** Explains the compelling reasons why the records could not be provided 7 days prior to the date of admission; and

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

2. **When records will be provided.** If the records have not yet been received, states by when the records will be provided.

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

This section may not be construed to mean that a resident who is not a client of the department is required, as a condition of admission, to provide records to the administrator of the residential care facility. [2003, c. 2, §81 (COR).]

SECTION HISTORY
2001, c. 596, §A1 (NEW). 2001, c. 596, §B25 (AFF). RR 2003, c. 2, §81 (COR).

§7860. SHARED STAFFING

The department shall permit shared staffing between residential care facilities and other levels of assisted housing on the same premises as long as there is a clear, documented audit trail and the staffing in the residential care facilities remains adequate to meet the needs of residents. Staffing to be shared may be based on the average number of hours used per week or month within the assisted housing program. For the purposes of this section, "shared staffing" means the use of licensed and unlicensed personnel who are employed, directly or under a contract, by a long-term care facility in more than one level of care provided by a single entity on the same premises. [2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF).]

SECTION HISTORY
2001, c. 596, §A1 (NEW). 2001, c. 596, §B25 (AFF).

§7861. ADMINISTRATION OF ASSISTED HOUSING PROGRAMS FUNDED BY THE STATE; ELIGIBLE CLIENTS

The Department of Health and Human Services, with advice from the Maine State Housing Authority, the Rural Housing Services or any other housing agency financing assisted housing programs, shall administer state-funded assisted housing programs. Administration must include, but is not limited to: [2011, c. 657, Pt. BB, §14 (AMD).]

1. **Rules; payment for assisted housing programs.** Adopting rules governing the services to be provided under assisted housing programs paid for with state funds. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A;

[2001, c. 596, Pt. A, §1 (NEW); 2001, c. 596, Pt. B, §25 (AFF) .]

2. **Compliance with standards and guidelines.** Reviewing the compliance of assisted housing programs with standards and guidelines established for the programs;

[2013, c. 582, §2 (AMD) .]

3. **Awarding of grants.** Awarding of grants, when available and necessary, to subsidize the cost of assisted housing programs for eligible clients.

For the purposes of this subsection, "eligible clients" means adults who have been determined through an approved assessment by the department to be functionally or cognitively impaired and in need of financial assistance to access assisted housing programs; and

[2013, c. 582, §2 (AMD) .]

4. **Residential care facility depreciation.** Calculating depreciation recapture for a residential care facility, as defined in section 7852, subsection 14, that is reimbursed by the department under the rules of reimbursement for room and board costs, including depreciation, when the facility is sold on or after July 1, 2013, using a methodology that provides percentage credits for buildings, fixed equipment and moveable equipment based on the number of years of operation of the residential care facility by the owner that is consistent with the following:

A. For the purposes of determining depreciation recapture for buildings and fixed equipment, the methodology must determine the number of years of operation by reference to the date on which the owner began operating with the original license; [2013, c. 582, §3 (NEW).]

B. For the purposes of determining depreciation recapture for moveable equipment, the methodology must enable percentage credits to reach 100% after the first 6 years of the assigned useful life; and [2013, c. 582, §3 (NEW).]

C. The methodology must treat as equivalent to the owner of the residential care facility any person or entity that owns or controls the entity that owns the residential care facility and any entity that is owned or controlled by the owner of the residential care facility. [2013, c. 582, §3 (NEW).]

[2013, c. 582, §3 (NEW) .]

SECTION HISTORY
2001, c. 596, §A1 (NEW). 2001, c. 596, §B25 (AFF). 2003, c. 689, §B6 (REV). 2011, c. 657, Pt. BB, §14 (AMD). 2013, c. 582, §§2, 3 (AMD).

§7862. CONTRACTS FOR ASSISTED LIVING SERVICES

All contracts or agreements executed by providers of assisted living services under this chapter and a consumer or the legal representative of the consumer are subject to the requirements of this section. [2003, c. 546, §1 (NEW).]

1. **Required contract provisions.** Each contract or agreement for assisted living services must contain the provisions designated as required in the standardized contract adopted by the department by rule pursuant to Public Law 1999, chapter 731, Part BBBB, section 5 and may contain additional provisions as allowed under subsection 2.

[2003, c. 546, §1 (NEW) .]

2. **Other contract provisions.** In addition to the provisions required under subsection 1, each contract or agreement for assisted living services may contain provisions that do not violate a state law or rule or federal law or regulation. A contract or agreement must be consistent with the rules adopted by the department applicable to the type of assisted living services provided.

[2003, c. 546, §1 (NEW) .]

3. **Rulemaking.** The commissioner shall adopt rules to implement this section. The rules must be developed in consultation with the long-term care ombudsman program established under section 5107-A, consumer representatives and providers of assisted living services. Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

[2003, c. 546, §1 (NEW) .]

SECTION HISTORY
2003, c. 546, §1 (NEW).

Chapter 1665: ASSISTED LIVING PROGRAMS

§7901. DEFINITIONS

(REPEALED)

SECTION HISTORY
1975, c. 719, §6 (NEW). 1979, c. 725, §1 (AMD). 1981, c. 196, §1 (AMD). 1981, c. 260, §2 (AMD). 1985, c. 770, §5 (RP).

§7901-A. DEFINITIONS

(REPEALED)

SECTION HISTORY
1985, c. 770, §6 (NEW). 1987, c. 304, §§1,2 (AMD). 1987, c. 769, §A80 (AMD). 1993, c. 661, §7 (AMD). 1995, c. 670, §D5 (AFF). 1995, c. 670, §A5 (RP).

§7901-B. ASSISTED LIVING PROGRAMS AND SERVICES AUTHORIZED

(REPEALED)

SECTION HISTORY

1995, c. 670, §A6 (NEW). 1995, c. 670, §D5 (AFF). 2001, c. 596, §B25 (AFF). 2001, c. 596, §A2 (RP).

§7901-C. DEFINITIONS

(REPEALED)

SECTION HISTORY
1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 1995, c. 670, §A6 (NEW). 1995, c. 670, §D5 (AFF). 2001, c. 354, §3 (AMD). 2001, c. 596, §B25 (AFF). 2001, c. 596, §A2 (RP).

§7902. RULES

(REPEALED)

SECTION HISTORY
1975, c. 719, §6 (NEW). 1977, c. 497, §4 (AMD). 1977, c. 694, §377 (AMD). 1985, c. 770, §7 (AMD). 1989, c. 355, §2 (AMD). 1993, c. 661, §8 (AMD). 1995, c. 670, §D5 (AFF). 1995, c. 670, §A7 (RP).

§7902-A. RULES

(REPEALED)

SECTION HISTORY
1995, c. 670, §A8 (NEW). 1995, c. 670, §D5 (AFF). 1997, c. 260, §1 (AMD). 2001, c. 596, §B25 (AFF). 2001, c. 596, §A2 (RP).

§7903. FEES FOR LICENSURE

(REPEALED)

SECTION HISTORY
1975, c. 719, §6 (NEW). 1985, c. 770, §8 (AMD). 1991, c. 528, §§J7,8 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §§J7,8 (AMD). 1993, c. 661, §9 (AMD). 1995, c. 670, §D5 (AFF). 1995, c. 670, §A9 (RPR). 2001, c. 596, §B25 (AFF). 2001, c. 596, §A2 (RP).

§7904. FIRE SAFETY INSPECTION

(REPEALED)

SECTION HISTORY
1975, c. 719, §6 (NEW). 1975, c. 770, §94 (AMD). 1981, c. 196, §§2,3 (AMD). 1985, c. 770, §9 (RP).

§7904-A. FIRE SAFETY INSPECTION FOR RESIDENTIAL CARE FACILITIES

(REPEALED)

SECTION HISTORY
1985, c. 770, §10 (NEW). 1987, c. 304, §§3,4 (AMD). 1993, c. 661, §10 (AMD). 1995, c. 670, §A10 (AMD). 1995, c. 670, §D5 (AFF). 1997, c. 728, §9 (AMD). 2001, c. 531, §§1-3 (AMD). 2001, c. 596, §B25 (AFF). 2001, c. 596, §A2 (RP). 2007, c. 466, Pt. A, §43 (RP).

§7904-B. FIRE SAFETY INSPECTION FOR CONGREGATE HOUSING SERVICES FACILITIES

(REPEALED)

SECTION HISTORY
1995, c. 670, §A11 (NEW). 1995, c. 670, §D5 (AFF). 1997, c. 728, §10 (AMD). 2001, c. 596, §B25 (AFF). 2001, c. 596, §A2 (RP).

§7905. PERSONAL FUNDS OF RESIDENTS

(REPEALED)

SECTION HISTORY
1975, c. 719, §6 (NEW). 1985, c. 770, §11 (AMD). 1991, c. 69, §§2,3 (AMD). 1993, c. 661, §11 (AMD). 2001, c. 596, §B25 (AFF). 2001, c. 596, §A2 (RP).

§7906. REIMBURSEMENTS TO SMALL BOARDING CARE FACILITIES

(REPEALED)

SECTION HISTORY
1975, c. 719, §6 (NEW). 1985, c. 770, §12 (RP).

§7906-A. REIMBURSEMENTS TO SMALL BOARDING HOMES FOR MENTALLY RETARDED PERSONS

(REPEALED)

SECTION HISTORY
1985, c. 770, §13 (NEW). 1993, c. 661, §12 (RP).

§7907. BOARDING CARE PAYMENTS

(REPEALED)

SECTION HISTORY
1977, c. 708, §1 (NEW). 1985, c. 791, §1 (RPR). 1989, c. 502, §§A82,A83 (AMD). 1991, c. 622, §M29 (AMD). 1993, c. 661, §13 (AMD). 2001, c. 596, §B25 (AFF). 2001, c. 596, §A2 (RP).

§7908. APPROVAL BY DEPARTMENT; RULES

(REPEALED)

SECTION HISTORY
1979, c. 725, §2 (NEW). 1985, c. 770, §14 (RP).

§7909. RESIDENTS' RECORDS

(REPEALED)

SECTION HISTORY
1981, c. 196, §4 (NEW). 1981, c. 493, §2 (AMD). 1993, c. 661, §14 (AMD). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). 2001, c. 596, §B25 (AFF). 2001, c. 596, §A2 (RP).

§7910. ASSESSMENT OF AND CARE PLANNING FOR ADULT BOARDING HOME AND FOSTER HOME RESIDENTS WHO RECEIVE STATE ASSISTANCE; RULES

(REPEALED)

SECTION HISTORY
1983, c. 844, §1 (NEW). 1993, c. 661, §15 (RP).

§7911. NONAMBULATORY AND MOBILE NONAMBULATORY RESIDENTS; TEMPORARILY DISABLED

(REPEALED)

SECTION HISTORY
1985, c. 770, §15 (NEW). 1993, c. 661, §16 (RP).

§7912. NONAMBULATORY AND MOBILE NONAMBULATORY RESIDENTS; PERMANENTLY DISABLED

(REPEALED)

SECTION HISTORY
1985, c. 770, §15 (NEW). 1985, c. 819, §§C3,4 (AMD). 1989, c. 19, §1 (RP).

§7912-A. NONAMBULATORY AND MOBILE NONAMBULATORY RESIDENTS; PERMANENTLY DISABLED

(REPEALED)

SECTION HISTORY
1989, c. 19, §2 (NEW). 1993, c. 661, §§17,18 (AMD). 1997, c. 728, §11 (AMD). 1999, c. 384, §1 (AMD). 2001, c. 531, §4 (RP). 2001, c. 596, §B25 (AFF). 2001, c. 596, §A2 (RP).

§7913. CONFLICT OF INTENT PROHIBITED

(REPEALED)

SECTION HISTORY
1985, c. 770, §15 (NEW). 1993, c. 661, §19 (RP).

§7914. SHARED STAFFING

(REPEALED)

SECTION HISTORY
1995, c. 670, §A12 (NEW). 1995, c. 670, §D5 (AFF). 2001, c. 596, §B25 (AFF). 2001, c. 596, §A2 (RP).

§7915. ADMINISTRATION OF CONGREGATE HOUSING SERVICES PROGRAMS FUNDED BY THE STATE; ELIGIBLE CLIENTS

(REPEALED)

SECTION HISTORY
1995, c. 670, §A12 (NEW). 1995, c. 670, §D5 (AFF). 1999, c. 384, §2 (AMD). 2001, c. 596, §B25 (AFF). 2001, c. 596, §A2 (RP).

§7916. CONTRACTS FOR ASSISTED LIVING SERVICES

(REPEALED)

SECTION HISTORY
2001, c. 279, §1 (NEW). 2001, c. 596, §B25 (AFF). 2001, c. 596, §A2 (RP).

Chapter 1666: PATIENTS' RIGHTS

§7921. INTENT

It is the intent of the Legislature to establish a mechanism for residents of long-term care facilities in this State to articulate their rights and to be responsible for the protection of those rights. [1981, c. 445, (NEW).]

SECTION HISTORY
1981, c. 445, (NEW).

§7922. DEFINITIONS

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [1981, c. 445, (NEW).]

1. **Long-term care facility.** "Long-term care facility" means any facility program of assisted living licensed pursuant to chapters 1663 and 1664, and any nursing facility or unit licensed pursuant to chapter 405.

[2001, c. 596, Pt. B, §13 (AMD); 2001, c. 596, Pt. B, §25 (AFF) .]

2. **Resident.** "Resident" means any person who lives in and receives services or care in a long-term care facility.

[1981, c. 445, (NEW) .]

SECTION HISTORY
1981, c. 445, (NEW). 1991, c. 69, §4 (AMD). 1993, c. 661, §20 (AMD). 1995, c. 670, §B7 (AMD). 1995, c. 670, §D5 (AFF). 2001, c. 596, §B13 (AMD). 2001, c. 596, §B25 (AFF).

§7923. RESIDENTS' COUNCIL

1. **Establishment; composition.** Each long-term care facility shall inform residents of their right to establish a council. This information must be given to all residents and a family member or designated representative for those residents on admission and must be posted prominently in the facility.

The administrator shall assist residents in establishing a residents' council, if the residents choose to establish one. If there is no council, at least once each year residents must be given the choice to establish one. A majority vote prevails.

The council shall draw up bylaws. The council may meet as often as specified in the bylaws, but at least quarterly. No employee or representative of the facility may be a member of the council. Family members may sit on the council, but may not be members.

[1991, c. 69, §5 (AMD) .]

2. **Responsibilities.** The council has, but is not limited to, the following responsibilities:

A. To review and make recommendations to strengthen the facility's policies and procedures relating to residents' rights; [1981, c. 445, (NEW).]

B. To establish procedures for informing all residents about their rights; [1981, c. 445, (NEW).]

C. To serve as a forum for obtaining and disseminating information, soliciting and adopting recommendations for facility programming and improvement, and early identification of and recommendations for orderly resolution of residents' problems; [1981, c. 445, (NEW).]

D. To inform the administrator about the opinions and concerns of the residents; [1981, c. 445, (NEW).]

E. To find ways of involving the families of residents in the facility; and [1981, c. 445, (NEW).]

F. To notify the Department of Health and Human Services and the long-term care ombudsman when they are constituted. [1999, c. 384, §3 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

Records of council meetings and decisions shall be prepared and disseminated by the council, which may request the assistance of the designated staff member and shall be kept on file in the facility, available at all times to residents and family members or designated representatives.

[1999, c. 384, §3 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

3. **Assistance.** Except as provided in this subsection, the administrator shall designate a staff member, not related to the administrator, to assist the residents' council. In small long-term care facilities in which no staff members are unrelated to the administrator or owner of the facility, the administrator may designate a staff member who is related to the administrator.

[1991, c. 69, §5 (AMD) .]

SECTION HISTORY
1981, c. 445, (NEW). 1991, c. 69, §5 (AMD). 1999, c. 384, §3 (AMD). 2003, c. 689, §B6 (REV).

§7924. REPORTING OF VIOLATIONS

1. **Alleged violations reported and investigated.** Any person who believes that any of those rules governing the licensure of long-term care facilities or the operation of assisted living programs and services authorized pursuant to section 7853 adopted by the department pertaining to residents' rights and conduct of resident care has been violated may report the alleged violation to the protection and advocacy agency designated pursuant to Title 5, section 19502; the long-term care ombudsman pursuant to section 5106, subsection 11-C and section 5107-A; and any other agency or person whom the commissioner may designate.

[2011, c. 657, Pt. EE, §1 (AMD) .]

2. **Professionals to report.** Any professional who provides health care, social services or mental health services or who administers a long-term care facility or program and who knows of or has reasonable cause to suspect that there has been a violation of any of those rules adopted by the department governing the licensure of long-term care facilities pertaining to residents' rights or conduct of resident care shall immediately report or cause a report to be made to an agency or person referred to in subsection 1.

[2005, c. 397, Pt. A, §25 (AMD) .]

3. **Written report of findings.** Any agency or person investigating a situation pursuant to subsection 1 or 2 shall submit a written report of the findings and results of the investigation to the administrator of the long-term care facility in which the residents' rights allegedly have been violated and to the commissioner.

[2005, c. 397, Pt. A, §26 (AMD) .]

4. **Immunity from liability.** No professional shall be held liable for any report or action taken pursuant thereto if the professional acted in good faith pursuant to this section.

[1981, c. 445, (NEW) .]

5. **Construction.** This section may not be construed to limit the powers or responsibilities of the long-term care ombudsman.

[1999, c. 384, §4 (AMD) .]

6. **Notice of program.** Each long-term care facility shall provide to each resident, guardian or personal representative, at the time of admission, information that the long-term care ombudsman program is a source of assistance with complaints and problems. At least 2 posters must be mounted in prominent places in each long-term care facility to inform residents about the services of the program. The posters must also include the department's current rules regarding the rights of residents of long-term care facilities.

[1989, c. 644, (NEW) .]

SECTION HISTORY
1981, c. 445, (NEW). 1989, c. 644, (AMD). RR 1995, c. 2, §45 (COR). 1997, c. 260, §2 (AMD). 1999, c. 384, §4 (AMD). 2001, c. 354, §3 (AMD). 2001, c. 596, §B14 (AMD). 2001, c. 596, §B25 (AFF). RR 2003, c. 2, §82 (COR). 2003, c. 689, §B6 (REV). 2005, c. 397, §§A24-26 (AMD). 2009, c. 1, Pt. S, §1 (AMD). 2011, c. 657, Pt. EE, §1 (AMD).

§7925. DISCHARGES AND TRANSFERS

Long-term care facilities which receive public funds may not discharge or transfer any person solely based on a change in their source of payment. [1981, c. 445, (NEW).]

SECTION HISTORY
1981, c. 445, (NEW).

Chapter 1666-A: APPOINTMENT OF RECEIVERS

§7931. POLICY

It is the purpose of this chapter to develop a mechanism by which the concept of receivership can be utilized for the protection of residents in long-term care facilities, clients of home health care providers, general and specialty hospitals, critical access hospitals, ambulatory surgical centers, hospice agencies and

end-stage renal disease units. It is the intent of the Legislature that receivership be a remedy of last resort when all other methods of remedy have failed or when the implementation of other remedies would be futile. [1999, c. 384, §5 (AMD).]

SECTION HISTORY
1983, c. 454, (NEW). 1995, c. 620, §4 (AMD). 1999, c. 384, §5 (AMD).

§7932. DEFINITIONS

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [1983, c. 454, (NEW).]

1. **Emergency.** "Emergency" means a situation, physical condition or one or more practices, methods or operations which presents imminent danger of death or serious physical or mental harm to residents, including, but not limited to, imminent or actual abandonment of an occupied facility.

[1983, c. 454, (NEW) .]

1-A. **Client.** "Client" means a person who receives services from a home health agency, long-term care facility, general and specialty hospital, critical access hospital, ambulatory surgical facility, hospice agency or end-stage renal disease unit.

[1999, c. 384, §6 (AMD) .]

1-B. **End-stage renal disease unit.** "End-stage renal disease unit" means a facility that provides specialized services to assist individuals who have been diagnosed as having an irreversible and permanent kidney disease that requires dialysis or kidney transplantation to maintain life.

[1999, c. 384, §7 (NEW) .]

2. **Facility.** "Facility" means any assisted living facility, residential care facility or assisted housing program subject to licensure pursuant to chapters 1663 and 1664, any nursing facility or unit subject to licensure pursuant to chapter 405 and any private psychiatric hospital subject to licensure pursuant to chapter 405.

[2001, c. 596, Pt. B, §15 (AMD); 2001, c. 596, Pt. B, §25 (AFF) .]

2-A. **General hospital.** "General hospital" means an acute health care facility with permanent inpatient beds planned, organized, operated and maintained to offer on a continuous basis facilities and services for the diagnosis and treatment of illness, injury and deformity that has a governing board and an organized medical staff, offering a continuous 24-hour professional nursing care plan to provide continuous 24-hour emergency treatment and that includes the following services or organizational units:

A. Administration; [1999, c. 384, §9 (NEW).]

B. Nursing services; [1999, c. 384, §9 (NEW).]

C. Emergency services; [1999, c. 384, §9 (NEW).]

D. Dietary service; [1999, c. 384, §9 (NEW).]

E. Medical record service; [1999, c. 384, §9 (NEW).]

F. Radiology service; [1999, c. 384, §9 (NEW).]

G. Pathology or clinical laboratory service; [1999, c. 384, §9 (NEW).]

H. Pharmaceutical service; [1999, c. 384, §9 (NEW).]

I. Hospital safety program; [1999, c. 384, §9 (NEW).]

J. Disaster plan; and [1999, c. 384, §9 (NEW).]

K. Inservice education. [1999, c. 384, §9 (NEW).]

"General hospital" does not mean a federally controlled or state-controlled institution, a community health center, an independent outpatient diagnostic or treatment center, a doctor's office, a college infirmary or an industrial dispensary.

[1999, c. 384, §9 (NEW) .]

3. **Habitual violation.** "Habitual violation" means a violation of state or federal law which, due to its repetition, presents a reasonable likelihood of serious physical or mental harm to residents.

[1983, c. 454, (NEW) .]

3-A. **Home health care provider.** "Home health care provider" means any business entity or subdivision of a business entity, whether public or private, proprietary or nonprofit, that is engaged in providing acute, restorative, rehabilitative, maintenance, preventive or health promotion services through professional nursing or another therapeutic service, such as physical therapy, home health aides, nurse assistants, medical social work, nutritionist services or personal care services, either directly or through contractual agreement, in a client's place of residence. This term does not apply to any sole practitioner providing private duty nursing services or other restorative, rehabilitative, maintenance, preventive or health promotion services in a client's place of residence or to municipal entities providing health promotion services in a client's place of residence. This term does not apply to a federally qualified health center or a rural health clinic as defined in 42 United States Code, Section 1395x, subsection (aa) (1993) that is delivering case management services or health education in a client's place of residence. Beginning October 1, 1991 "home health care provider" includes any business entity or subdivision of a business entity, whether public or private, proprietary or nonprofit, that is engaged in providing speech pathology services.

[1999, c. 384, §10 (AMD) .]

3-B. **Hospice agency.** "Hospice agency" means a public agency or private organization that is primarily engaged in providing specified services to terminally ill individuals and their families. The services provided are nursing care, physicians services, physical and speech therapy, home health aid, homemaker services, pastoral counseling, social work services, occupational therapy and dietary services in addition to bereavement counseling. The care may be provided as services to patients in institutions, as respite care, as routine home care or as continuous home care.

[1999, c. 384, §11 (NEW) .]

4. **Licensee.** "Licensee" means any person or any other legal entity, other than a receiver appointed under section 7933, who is licensed or required to be licensed to operate a facility.

[1983, c. 454, (NEW) .]

5. **Owner.** "Owner" means the holder of the title to the real estate in which the facility is maintained.

[1983, c. 454, (NEW) .]

6. **Resident.** "Resident" means any person who lives in and receives services or care in a long-term care facility.

[1983, c. 454, (NEW) .]

7. **Substantial violation.** "Substantial violation" means a violation of state or federal law that presents a reasonable likelihood of serious physical or mental harm to residents or clients.

[1999, c. 384, §12 (AMD) .]

8. **Transfer trauma.** "Transfer trauma" means the combination of medical and psychological reactions to abrupt physical transfer that may increase the risk of grave illness or death.

[1983, c. 454, (NEW) .]

9. **Ambulatory surgical facility.** "Ambulatory surgical facility" means a facility with the primary purpose of providing elective surgical care to a patient who is admitted to and discharged from the facility within the same day. In order to meet this primary purpose, a facility must at least administer anesthetic agents, maintain a sterile environment in a surgical suite and share a facility fee separate from the professional license. "Ambulatory surgical facility" does not include:

A. A facility that is licensed as part of a hospital; [1999, c. 384, §13 (NEW).]

B. A facility that provides services or accommodations for patients who stay overnight; [1999, c. 384, §13 (NEW).]

C. A facility existing for the primary purpose of performing terminations of pregnancies; or [1999, c. 384, §13 (NEW).]

D. The private office of a physician or dentist in individual or group practice, unless the office is certified as a Medicare ambulatory surgical center. [1999, c. 384, §13 (NEW).]

[1999, c. 384, §13 (NEW) .]

10. **Critical access hospital.** "Critical access hospital" means a hospital that must first be designated and approved by the State, as long as the State also has established an approved rural hospital flexibility program, and that meets the conditions in effect on March 1, 2004 for critical access hospital status under the federal Medicare program. In addition, it must also:

A. [2003, c. 673, Pt. HH, §2 (RP).]

B. Have a Medicare participation agreement as a hospital and be in compliance with the Medicare hospital conditions of participation when applying to become a critical access hospital; [2003, c. 673, Pt. HH, §2 (AMD).]

C. Be certified by the State prior to January 1, 2006 as being a necessary provider of health care services to residents in the area or be located more than a 35-mile drive from any other hospital or critical access hospital. In mountainous terrain or in areas with only secondary roads, the mileage criterion is 15 miles; [2003, c. 673, Pt. HH, §2 (AMD).]

D. Provide not more than 25 beds for acute hospital-level inpatient care:

(1) Except that a swing-bed facility is allowed to have up to 25 inpatient beds that can be used interchangeably for acute or skilled nursing facility care; and

(2) In addition to the 25-bed limit for acute inpatient care, a hospital may have distinct parts with 10 or fewer psychiatric inpatient beds or 10 or fewer inpatient rehabilitation beds, or both; and [2003, c. 673, Pt. HH, §2 (AMD).]

E. Agree to provide inpatient care for a period that does not exceed, as determined on an annual average basis, 96 hours per patient. [2003, c. 673, Pt. HH, §2 (AMD).]

F. [2003, c. 673, Pt. HH, §2 (RP).]

[2003, c. 673, Pt. HH, §2 (AMD) .]

SECTION HISTORY
1983, c. 454, (NEW). 1985, c. 770, §16 (AMD). 1995, c. 620, §5 (AMD). 1997, c. 610, §1 (AMD). 1999, c. 99, §1 (AMD). 1999, c. 384, §§6-13 (AMD). 2001, c. 596, §B15 (AMD). 2001, c. 596, §B25 (AFF). 2003, c. 673, §HH2 (AMD).

§7933. APPOINTMENT OF RECEIVER

1. **Grounds for appointment.** The following circumstances are grounds for the appointment of a receiver to operate a long-term care facility, home health care provider, general and specialty hospitals, critical access hospitals, ambulatory surgical centers, hospice agencies and end-stage renal disease units.

A. A long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit intends to close but has not arranged at least 30 days prior to closure for the orderly transfer of its residents or clients. [1999, c. 384, §14 (AMD).]

B. An emergency exists in a long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit that threatens the health, security or welfare of residents or clients. [1999, c. 384, §14 (AMD).]

C. A long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit is in substantial or habitual violation of the standards of health, safety or resident care established under state or federal regulations to the detriment of the welfare of the residents or clients. [1999, c. 384, §14 (AMD).]

This remedy is in addition to, and not in lieu of, the power of the department to revoke, suspend or refuse to renew a license under the Maine Administrative Procedure Act.

[1999, c. 384, §14 (AMD) .]

2. **Who may bring action.** The commissioner or acting commissioner may bring an action in Superior Court requesting the appointment of a receiver.

[2005, c. 397, Pt. A, §27 (AMD) .]

3. **Procedure for hearing.** The procedure for a hearing shall be as follows.

A. The court shall hold a hearing not later than 10 days after the action is filed, unless all parties agree to a later date. Notice of the hearing shall be served on both the owner and the licensee not less than 5 days before the hearing. If either the owner or the licensee cannot be served, the court shall specify the alternative notice to be provided. The department shall post notice, in a form approved by the court, in a conspicuous place in the facility, for not less than 3 days before the hearing. After the hearing, the court may appoint a receiver if it finds that any one of the grounds for appointment set forth is satisfied. [1983, c. 454, (NEW).]

B. A temporary receiver may be appointed with or without notice to the owner or licensee if it appears by verified complaint or affidavit that an emergency exists in the facility that must be remedied immediately to insure the health, safety and welfare of the residents. The temporary appointment of a receiver without notice to the owner or licensee may be made only if the court is satisfied that the petitioner has made a diligent attempt to provide reasonable notice under the circumstances. Upon

appointment of a temporary receiver, the department shall proceed forthwith to make service as provided in paragraph A, and a hearing must be held within 10 days, unless all parties agree to a later date. If the department does not proceed with the petition, the court shall dissolve the temporary receivership. On 2 days' notice to the receiver, all parties and the department, or on such shorter notice as the court may prescribe, the owner or licensee may appear and move the dissolution or modification of an order appointing a receiver that has been entered without notice, and in that event the motion may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require. [2011, c. 559, Pt. A, §25 (AMD).]

[2011, c. 559, Pt. A, §25 (AMD) .]

4. **Who may be appointed receiver.** The court may appoint any person deemed appropriate by the court to act as receiver, except any state employee. The court may remove a receiver for good cause.

[1983, c. 454, (NEW) .]

5. **Compensation of receiver.** The court shall set a reasonable compensation for the receiver and may require the receiver to furnish a bond with such surety as the court may require. Any expenditures shall be paid from the revenues of the facility.

[1983, c. 454, (NEW) .]

SECTION HISTORY
1983, c. 454, (NEW). 1995, c. 620, §6 (AMD). 1997, c. 610, §2 (AMD). 1999, c. 384, §14 (AMD). 2001, c. 354, §3 (AMD). 2005, c. 397, §A27 (AMD). 2011, c. 559, Pt. A, §25 (AMD).

§7934. POWERS AND DUTIES OF THE RECEIVER

1. **Powers and duties.** A receiver appointed pursuant to this chapter has such powers as the court may direct to operate the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit and to remedy the conditions that constituted grounds for the receivership, to protect the health, safety and welfare of the residents or clients and to preserve the assets and property of the residents or clients, the owner and the licensee. On notice and hearing, the court may issue a writ of possession in behalf of the receiver, for specified facility property.

The receiver shall make reasonable efforts to notify residents or clients and family that the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit is placed in receivership. The owner and licensee are divested of possession and control of the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit during the period of receivership under such conditions as the court specifies. With the court's approval, the receiver has specific authority to:

A. Remedy violations of federal and state regulations governing the operation of the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit; [1999, c. 384, §15 (AMD).]

B. Hire, direct, manage and discharge any employees, including the administrator of the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit; [1999, c. 384, §15 (AMD).]

C. Receive and expend in a reasonable and prudent manner the revenues of the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit due during the 30-day period preceding the date of appointment and becoming due thereafter; [1999, c. 384, §15 (AMD).]

D. Continue the business of the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit and the care of residents or clients; [1999, c. 384, §15 (AMD).]

E. Correct or eliminate any deficiency of the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit that endangers the safety or health of the residents or clients, if the total cost of the correction does not exceed $3,000. The court may order expenditures for this purpose in excess of $3,000 on application from the receiver; and [1999, c. 384, §15 (AMD).]

F. Exercise such additional powers and perform such additional duties, including regular accountings, as the court considers appropriate. [1995, c. 620, §7 (AMD).]

[1999, c. 384, §15 (AMD) .]

2. **Revenues of the facility.** Revenues of the facility must be handled as follows.

A. The receiver shall apply the revenues of the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit to current operating expenses and, subject to the following provisions, to debts incurred by the licensee prior to the appointment of the receiver. The receiver shall ask the court for direction in the treatment of debts incurred prior to appointment where such debts appear extraordinary, of questionable validity, or unrelated to the normal and expected maintenance and operation of the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit, or where payment of the debts will interfere with the purposes of the receivership. Priority must be given by the receiver to expenditures for current direct resident or client care. Revenues held by or owing to the receiver in connection with the operation of the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit are exempt from attachment and trustee process, including process served prior to the institution of receivership proceedings. [1999, c. 384, §15 (AMD).]

B. The receiver may correct or eliminate any deficiency of the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit that endangers the safety or health of the resident or client, if the total cost of the correction does not exceed $3,000. On application by the receiver, the court may order expenditures for this purpose in excess of $3,000. The licensee or owner may apply to the court to determine the reasonableness of any expenditure over $3,000 by the receiver. [1999, c. 384, §15 (AMD).]

C. In the event that the receiver does not have sufficient funds to cover expenses needed to prevent or remove jeopardy to the residents or clients, the receiver may petition the court for permission to borrow for these purposes. Notice of the receiver's petition to the court for permission to borrow must be given to the owner, the licensee and the department. The court may, after hearing, authorize the receiver to borrow money upon specified terms of repayment and to pledge security, if necessary, if the court determines that the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit should not be closed and that the loan is reasonably necessary to prevent or remove jeopardy or if it determines that the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit should be closed and that the expenditure is necessary to prevent or remove jeopardy to residents or clients for the limited period of time that they are awaiting transfer. The purpose of this provision

is to protect residents or clients and to prevent the closure of long-term care facilities, home health care providers, general hospitals, specialty hospitals, critical access hospitals, ambulatory surgical centers, hospice agencies or end-stage renal disease units that, under proper management, are likely to be viable operations. This section may not be construed as a method of financing major repair or capital improvements to facilities that have been allowed to deteriorate because the owner or licensee has been unable or unwilling to secure financing by conventional means. [1999, c. 384, §15 (AMD).]

[1999, c. 384, §15 (AMD) .]

3. **Avoidance of preexisting leases, mortgages and contracts.** A receiver may not be required to honor a lease, mortgage, secured transaction or other contract entered into by the owner or licensee of the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit if the court finds that:

A. The person seeking payment under the agreement has an ownership interest in the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit or was related to the licensee, the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit by a significant degree of common ownership or control at the time the agreement was made; or [1999, c. 384, §15 (AMD).]

B. The rental, price or rate of interest required to be paid under the agreement is in excess of a reasonable rental, price or rate of interest. [1983, c. 454, (NEW).]

If the receiver is in possession of real estate or goods subject to a lease, mortgage or security interest that the receiver is permitted to avoid and if the real estate or goods are necessary for the continued operation of the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit, the receiver may apply to the court to set a reasonable rental, price or rate of interest to be paid by the receiver during the term of the receivership. The court shall hold a hearing on the application within 15 days, and the receiver shall send notice of the application to any known owners and mortgagees of the property at least 10 days before the hearing. Payment by the receiver of the amount determined by the court to be reasonable is a defense to an action against the receiver for payment or for the possession of the subject goods or real estate by a person who received such notice.

Notwithstanding this subsection, there may not be a foreclosure or eviction during the receivership by any person if the foreclosure or eviction would, in view of the court, serve to defeat the purpose of the receivership.

[1999, c. 384, §15 (AMD) .]

4. **Closing of long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit.** The receiver may not close the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit without leave of the court. In ruling on the issue of closure, the court shall consider:

A. The rights and best interests of the residents or clients; [1995, c. 620, §7 (AMD).]

B. The availability of suitable alternative placements; [1983, c. 454, (NEW).]

C. The rights, interest and obligations of the owner and licensee; [1983, c. 454, (NEW).]

D. The licensure status of the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit; and [1999, c. 384, §15 (AMD).]

E. Any other factors that the court considers relevant. [1995, c. 620, §7 (AMD).]

When a long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit is closed, the receiver shall provide for the orderly transfer of residents or clients to mitigate transfer trauma.

[1999, c. 384, §15 (AMD) .]

SECTION HISTORY
1983, c. 454, (NEW). 1995, c. 620, §7 (AMD). 1999, c. 384, §15 (AMD).

§7935. TERMINATION OF RECEIVERSHIP

The receivership terminates when the court certifies that the conditions that prompted the appointment have been corrected or, in the case of a discontinuance of operation, when the residents or clients are safely relocated. The court shall review the necessity of the receivership at least semiannually. [1995, c. 620, §8 (AMD).]

A receivership may not be terminated in favor of the former or the new licensee, unless that person assumes all obligations incurred by the receiver and provides collateral or other assurances of payment considered sufficient by the court. [1995, c. 620, §8 (AMD).]

SECTION HISTORY
1983, c. 454, (NEW). 1995, c. 620, §8 (AMD).

§7936. LIABILITY OF RECEIVER

No person may bring suit against a receiver appointed under section 7933 without first securing leave of the court. Except in cases of gross negligence or intentional wrongdoing, the receiver is liable in his official capacity only and any judgment rendered shall be satisfied out of receivership assets. [1983, c. 454, (NEW).]

SECTION HISTORY
1983, c. 454, (NEW).

§7937. COURT ORDER TO HAVE EFFECT OF LICENSE

An order appointing a receiver under section 7933 has the effect of a license for the duration of the receivership. The receiver is responsible to the court for the conduct of the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit during the receivership, and a violation of regulations governing the conduct of the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit, if not promptly corrected, must be reported by the department to the court. [1999, c. 384, §16 (AMD).]

SECTION HISTORY
1983, c. 454, (NEW). 1995, c. 620, §8 (AMD). 1999, c. 384, §16 (AMD).

§7938. RULE-MAKING AUTHORITY TO IMPLEMENT RECEIVERSHIP LAW

The department may adopt regulations as necessary, pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, to implement this chapter. [1983, c. 454, (NEW).]

SECTION HISTORY
1983, c. 454, (NEW).

Chapter 1666-B: INTERMEDIATE SANCTIONS AND INCENTIVES FOR IMPROVING THE QUALITY OF CARE IN LONG-TERM CARE FACILITIES

§7941. POLICY

It is the purpose of this chapter to authorize the Department of Health and Human Services to impose intermediate sanctions in order to improve the quality of care in long-term care facilities and to establish programs to reward long-term care facilities that provide the highest quality care. These intermediate sanctions will also provide an alternative to taking action to close facilities, which may cause great distress to the residents of those facilities. [1987, c. 774, §4 (NEW); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY
1987, c. 774, §4 (NEW). 2003, c. 689, §B6 (REV).

§7942. DEFINITIONS

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [1987, c. 774, §4 (NEW).]

1. **Department.** "Department" means the Department of Health and Human Services.

[1987, c. 774, §4 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

2. **Directed plan of correction.** "Directed plan of correction" means a plan of correction issued by the department which directs a long-term care facility how to correct a deficiency or deficiencies of state licensing rules and when the correction must be made.

[1987, c. 774, §4 (NEW) .]

3. **Long-term care facility.** "Long-term care facility" means an assisted living program or residential care facility subject to licensure pursuant to chapters 1663 and 1664 and a nursing or intermediate care facility or unit subject to licensure pursuant to chapter 405.

[2003, c. 634, §7 (AMD) .]

4. **Person.** "Person" means any natural person, partnership, association or corporation or other entity, including any county, local or governmental unit.

[1987, c. 774, §4 (NEW) .]

5. **Plan of correction.** "Plan of correction" means a document executed by a long-term care facility in response to a statement of deficiencies issued by the department. A plan of correction shall describe with specificity how and when deficiencies of state licensing rules will be corrected.

[1987, c. 774, §4 (NEW) .]

6. **Resident.** "Resident" means any person who lives in and receives services or care in a long-term care facility.

[1987, c. 774, §4 (NEW) .]

7. **State licensing rules.** "State licensing rules" refers to the department's rules governing the licensing and functioning of nursing facilities, intermediate care facilities for persons with intellectual disabilities and assisted living programs or residential care facilities.

[2011, c. 542, Pt. A, §47 (AMD) .]

8. **Statement of deficiencies.** "Statement of deficiencies" means a document issued by the department which describes a long-term care facility's deficiencies in complying with state licensing rules.

[1987, c. 774, §4 (NEW) .]

SECTION HISTORY
1987, c. 774, §4 (NEW). 1993, c. 661, §21 (AMD). 1999, c. 99, §2 (AMD). 1999, c. 384, §§17,18 (AMD). 2001, c. 596, §B16 (AMD). 2001, c. 596, §B25 (AFF). 2003, c. 634, §§7,8 (AMD). 2003, c. 689, §B6 (REV). 2011, c. 542, Pt. A, §47 (AMD).

§7943. VIOLATIONS

1. **License required.** It is a violation of this chapter for a person to manage or operate a long-term care facility as defined in this chapter without first obtaining a license to manage or operate a long-term care facility.

[1993, c. 661, §22 (AMD) .]

2. **Interference or false information.** It shall be a violation of this chapter for any person to impede or interfere with the enforcement of laws or rules governing the licensing of long-term care facilities, or for any person to give any false information in connection with the enforcement of laws or rules.

[1987, c. 774, §4 (NEW) .]

3. **Correction of deficiencies.** It shall be a violation of this chapter to:

A. Fail to submit a plan of correction within 10 working days after receipt of a statement of deficiencies; and [1987, c. 774, §4 (NEW).]

B. Fail to take timely corrective action in accordance with a plan of correction or a directed plan of correction. Each failure to correct any deficiency may be considered a separate violation of this section. [1987, c. 774, §4 (NEW).]

[1987, c. 774, §4 (NEW) .]

4. **Protection of residents.** Notwithstanding subsection 3, the following conduct is deemed to be a violation of this chapter without regard to whether a plan of correction or directed plan of correction is followed by a facility:

A. Failure to comply with state licensing laws or rules when this failure poses an immediate threat of death or substantial probability of serious mental or physical harm to a resident. Each failure to comply with any law or rule may be considered a separate violation of this section; and [1987, c. 774, §4 (NEW).]

B. The occurrence of a repeated deficiency that poses a substantial risk to residents' health or safety or infringes upon residents' rights. For purposes of this section, a repeated deficiency is one that is found to exist in a long-term care facility during a current survey or investigation that has also been cited in a statement of deficiencies of that facility within the past 2 years. Each repeated deficiency may be considered a separate violation of this section. [1987, c. 774, §4 (NEW).]

[1987, c. 774, §4 (NEW) .]

5. **Compliance with federal requirements.** It shall be a violation of this chapter for any long-term care facility subject to the provisions of United States Code, Title 42, Section 1919 to fail to comply with the requirements of Section 1919, Subsections (b), (c) or (d). Each failure to comply with a requirement of United States Code, Title 42, Section 1919, Subsections (b), (c) or (d) may be considered a separate violation of this section.

[1987, c. 774, §4 (NEW) .]

SECTION HISTORY
1987, c. 774, §4 (NEW). 1993, c. 661, §22 (AMD).

§7944. INTERMEDIATE SANCTIONS

1. **Authorization.** The department is authorized to impose one or more of the following sanctions when a violation of this chapter occurs and the department determines that a sanction is necessary and appropriate to ensure compliance with state licensing rules or to protect the residents of long-term care facilities as defined in section 7852 or the general public.

A. The long-term care facility may be directed to stop all new admissions regardless of payment source or to admit only those residents the department approves until such time as it is determined that corrective action has been taken. [1987, c. 774, §4 (NEW).]

B. The department may direct a long-term care facility to correct any deficiencies in a manner and within a time frame that the department determines are appropriate to ensure compliance with state licensing rules or to protect the residents of the long-term care facility. [2007, c. 324, §11 (AMD).]

C. The department may impose a penalty upon a long-term care facility for a violation of this chapter. Each day of violation constitutes a separate offense. The minimum penalty for operating without a license is $500 per day. A penalty or a combination of penalties imposed on a facility may not be greater than a sum equal to $10 times the total number of residents residing in the facility per violation, up to a maximum of $10,000 for each instance in which the department issues a statement of deficiency to a long-term care facility. [2007, c. 324, §11 (AMD).]

D. The department may direct a long-term care facility to transfer residents in that facility to other locations in an emergency that threatens the health, safety or welfare of the residents of the facility and shall assist the facility in making arrangements for transfers. [1989, c. 747, §1 (NEW).]

The department may adopt rules as necessary for the implementation of this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 324, §11 (AMD) .]

2. **Schedule of penalties.** The department shall establish a schedule of penalties according to the nature of the violation. In establishing the schedule, the department shall consider, among other factors, the immediacy and probability of physical or mental harm to residents caused by a particular type of violation and whether the facility in question has repeated deficiencies or a substantial number of deficiencies.

[1987, c. 774, §4 (NEW) .]

3. **Reimbursement.** Nothing in this chapter may limit the authority of the department to adjust the reimbursement due facilities for residents as stated in the departmental regulations governing reimbursement.

[1987, c. 774, §4 (NEW) .]

SECTION HISTORY
1987, c. 774, §4 (NEW). 1989, c. 747, §1 (AMD). 1993, c. 661, §23 (AMD). 1999, c. 99, §3 (AMD). 2003, c. 634, §9 (AMD). 2007, c. 324, §11 (AMD).

§7945. INCENTIVES FOR HIGH QUALITY CARE

By January 1, 1989, the department shall establish programs to reward long-term care facilities that provide the highest quality care to residents, including, but not limited to, programs of public recognition. [1987, c. 774, §4 (NEW).]

SECTION HISTORY
1987, c. 774, §4 (NEW).

§7946. ENFORCEMENT AND APPEAL

1. **Procedure.** The department may impose any sanction in conformity with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, providing the long-term care facility the opportunity for an administrative hearing, or file a complaint with the Superior Court requesting the imposition of any sanction authorized by this chapter.

[1987, c. 774, §4 (NEW) .]

2. **Collection of penalties; interest.** Long-term care facilities that are fined pursuant to this chapter are required to pay the department the amount of the penalties. Penalties may be collected by the department by the offset of any reimbursement due the facility, or by any other method authorized by law. An appeal of the department's decision to penalize a long-term care facility stays the collection of any penalties. All penalties are to be assessed for each day that the facility is or was out of compliance and are to be collected with interest accruing at the rate set by Title 14, section 1602-C. An appeal of the department's decision to penalize a long-term care facility does not stay the assessment of any penalties or interest as long as the long-term care facility continues to be in violation of any requirement of section 7943.

[2003, c. 460, §12 (AMD) .]

3. **Reduction or delay of penalties.** The department may reduce the amount or delay the payment of a penalty when a facility is able to show that payment of the total amount due would result in inadequate funds to provide necessary services to residents. In making this determination, the department may consider, among other factors, the amount of any savings as calculated pursuant to the principles of reimbursement, overall profits or cash reserves and any extraordinary expenses experienced by the facility, as well as the necessity of providing an incentive to correct violations of this chapter.

[1987, c. 774, §4 (NEW) .]

4. **Income from penalties.** Any income from penalties must be placed in a special revenue account and be used by the department for purposes related to improving the quality of care for residents of long-term care facilities.

[2009, c. 621, §7 (AMD) .]

5. **No limitation on right of action.**

[1991, c. 637, §1 (RP) .]

SECTION HISTORY
1987, c. 774, §4 (NEW). 1989, c. 747, §2 (AMD). 1991, c. 637, §1 (AMD). 2003, c. 460, §12 (AMD). 2009, c. 621, §7 (AMD).

§7947. RULES

The department shall adopt rules for intermediate sanctions in conformity with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II. [1987, c. 774, §4 (NEW).]

SECTION HISTORY
1987, c. 774, §4 (NEW).

§7948. RIGHT OF ACTION

1. **Generally.** Any resident whose rights have been violated as described in this section may commence a civil action in the Superior Court on that resident's own behalf for injunctive and declaratory relief against any long-term care facility or provider of assisted living programs and services that is alleged to be in violation of any rule described in section 7853 or 7924 or in violation of the rights enumerated in 42 United States Code, Section 1396r, Subsection (c). In order to grant a preliminary or permanent injunction under this section, the Superior Court must find that:

A. The plaintiff will suffer irreparable injury if the injunction is not granted; [1991, c. 637, §2 (NEW).]

B. The irreparable injury outweighs any harm that granting the injunctive relief would inflict on the defendant; [1991, c. 637, §2 (NEW).]

C. The plaintiff has exhibited a likelihood of success on the merits of the case; and [1991, c. 637, §2 (NEW).]

D. The public interest will not be adversely affected by granting the injunction. [1991, c. 637, §2 (NEW).]

[2001, c. 596, Pt. B, §17 (AMD); 2001, c. 596, Pt. B, §25 (AFF) .]

2. **Right of action limited.** An action may not be commenced under this section until 15 days after the resident has given notice of the violation and an intention to bring suit under this chapter to the commissioner, the Attorney General and each party alleged to be violating the law or rule. The court may waive the 15-day notice requirement and issue a temporary restraining order when the plaintiff shows that the alleged violation presents an immediate threat to the plaintiff's health or safety.

[1991, c. 637, §2 (NEW) .]

3. **Parties may intervene.** In any action brought by the Attorney General or the commissioner under this chapter, any resident who has a right of action under this section may intervene if that resident has a direct interest that is or may be adversely affected by the action and the disposition of the action may impair or impede the resident's ability to protect that interest. The Attorney General and the commissioner may intervene in any action brought by a resident under this section. This subsection does not affect the ability of any party to take action under Title 5, section 9054.

[1991, c. 637, §2 (NEW) .]

4. **Service.** A copy of the complaint and other pleadings must be delivered to the commissioner and the Attorney General at the time of service on the defendant. Copies of all answers and other documents accompanying the answers must be delivered to the commissioner and the Attorney General at the time of service on the plaintiff.

[1991, c. 637, §2 (NEW) .]

5. **Dismissal of action.** The court may, on the motion of any party or on its own motion, dismiss any action brought under this section that alleges a de minimis violation of section 7924 or of 42 United States Code, Section 1396r, Subsection (c).

[1991, c. 637, §2 (NEW) .]

SECTION HISTORY
1991, c. 637, §2 (NEW). 1997, c. 260, §3 (AMD). 2001, c. 596, §B17 (AMD). 2001, c. 596, §B25 (AFF).

§7949. NO LIMITATION ON RIGHT OF ACTION

The remedies provided under section 7948 are in addition to those otherwise available under state or federal law and may not be construed as limiting any other remedies including any remedy available to an individual at common law. Exhaustion of any available administrative remedy is not required prior to commencement of an action under this section. [1991, c. 637, §2 (NEW).]

SECTION HISTORY
1991, c. 637, §2 (NEW).

Chapter 1667: DRUG TREATMENT CENTERS

§8001. DEFINITION OF DRUG TREATMENT CENTER

The term "drug treatment center," as used in this subtitle, shall mean a residential facility, not licensed as a medical care facility under chapter 405, for the care, treatment or rehabilitation of drug users, including alcohol users. [1975, c. 719, §6 (NEW).]

SECTION HISTORY
1975, c. 719, §6 (NEW).

§8002. RULES

1. **Rules promulgated.** The commissioner shall promulgate rules for drug treatment centers, which shall include but need not be limited to rules pertaining to administration, staffing, number of residents, quality of treatment programs, health and safety of staff and residents, community relations, the administration of medication and licensing procedures.

[1977, c. 497, §5 (AMD) .]

2. **Public hearing.**

[1977, c. 694, §378 (RP) .]

SECTION HISTORY

1975, c. 719, §6 (NEW). 1977, c. 497, §5 (AMD). 1977, c. 694, §378 (AMD).

§8003. FEES AND TERMS FOR LICENSES

License fees and terms for drug treatment centers are governed by this section. [2015, c. 267, Pt. RR, §2 (NEW).]

1. **Provisional license.** The application fee for a provisional license for a drug treatment center may not be less than $100 nor more than $280. The term of a provisional license is for one year.

[2015, c. 267, Pt. RR, §2 (NEW) .]

2. **Full license.** The application fee for a full license for a drug treatment center may not be less than $100 nor more than $280. The term of a full license is for 2 years.

[2015, c. 267, Pt. RR, §2 (NEW) .]

3. **Biennial renewal of a full license.** The fee for the biennial renewal of a full license for a drug treatment center may not be less than $70 nor more than $170.

[2015, c. 267, Pt. RR, §2 (NEW) .]

4. **Adding a service site to a license.** The processing fee to add a service site to an issued license for a drug treatment center may not be less than $35 nor more than $70.

[2015, c. 267, Pt. RR, §2 (NEW) .]

5. **Adding a service to a license.** The processing fee to add a service to an issued license for a drug treatment center may not be less than $70 nor more than $140.

[2015, c. 267, Pt. RR, §2 (NEW) .]

6. **Fee to replace a license.** A licensee under this section shall maintain a valid license. An issued license is not valid when the information on the license is no longer accurate. A processing fee not to exceed $10 must be paid to the department to secure a reissued license with accurate information. The fee applies to each license replaced. The reissued license must have the same expiration date as the replaced license.

[2015, c. 267, Pt. RR, §2 (NEW) .]

7. **Transaction fee for electronic renewal of license.** The transaction fee for the electronic renewal of a license for a drug treatment center may not be less than $25 nor more than $50. The transaction fee may not exceed the cost of providing the electronic renewal service.

[2015, c. 267, Pt. RR, §2 (NEW) .]

8. **Rules.** 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.

[2015, c. 267, Pt. RR, §2 (NEW) .]

SECTION HISTORY
1975, c. 719, §6 (NEW). 2015, c. 267, Pt. RR, §2 (RPR).

§8004. FIRE SAFETY

All procedures and other provisions included in section 7855, subsections 1 and 2 for residential care facilities also apply to drug treatment centers. [2001, c. 596, Pt. B, §18 (AMD); 2001, c. 596, Pt. B, §25 (AFF).]

SECTION HISTORY
1975, c. 719, §6 (NEW). 1989, c. 502, §A84 (AMD). 2001, c. 596, §B18 (AMD). 2001, c. 596, §B25 (AFF).

§8005. ADDITIONAL LICENSE NOT REQUIRED

No facility, except as provided for in section 8101, subsection 4, licensed as a drug treatment center shall be required to be licensed as a boarding care facility or a children's home. A drug treatment center, as part of its program, may provide a special education facility, pursuant to Title 20, chapter 404, for the benefit of any exceptional children, as defined by Title 20, section 3123, subsection 1, residing at the drug treatment center. [1981, c. 260, §3 (AMD).]

SECTION HISTORY
1975, c. 719, §6 (NEW). 1977, c. 428, (AMD). 1981, c. 260, §3 (AMD).

Chapter 1669: CHILDREN'S HOMES

§8101. DEFINITIONS

As used in this subtitle, unless the context otherwise indicates, the following terms have the following meanings. [1981, c. 260, §4 (RPR).]

1. **Children's home.** "Children's home" means any residence maintained exclusively or in part for the board and care of one or more children under the age of 18. "Children's home" does not include:

A. A facility established primarily to provide medical care; [1981, c. 260, §4 (NEW).]

B. A youth camp licensed under section 2495; or [2009, c. 211, Pt. B, §19 (AMD).]

C. A school established solely for educational purposes except as provided in subsection 4. [1981, c. 260, §4 (NEW).]

[2009, c. 557, §5 (AMD) .]

2. **Emergency children's shelter.** "Emergency children's shelter" means a facility that operates to receive children 24 hours a day and that limits placement to 30 consecutive days or less. For purposes of this section, the definition of "children" includes a person under 21 years of age. "Emergency children's shelter" does not mean a family foster home or specialized children's home. If emergency shelter is a service provided by a children's residential care facility, the service is restricted to a designated physical area of the facility.

[2013, c. 179, §7 (AMD) .]

3. **Family foster home.** "Family foster home" means a children's home, other than an Indian foster family home, that is a private dwelling where substitute parental care is provided within a family on a regular, 24-hour a day, residential basis. The total number of children in care may not exceed 6, including the family's legal children under 16 years of age, with no more than 2 of these children under the age of 2. "Family foster home" includes the home of a resource family whether the family provides foster care, kinship care, adoption or permanency guardianship services, as long as the home meets the requirements and standards for adoption of children in foster care. Family foster homes licensed by the Department of Health and Human Services or relatives' homes approved by the Department of Health and Human Services as meeting licensing standards

are eligible for insurance pursuant to Title 5, section 1728-A. In any action for damages against a family foster home provider insured pursuant to Title 5, section 1728-A, for damages covered under that policy, the claim for and award of those damages, including costs and interest, may not exceed $300,000 for any and all claims arising out of a single occurrence. When the amount awarded to or settled for multiple claimants exceeds the limit imposed by this section, any party may apply to the Superior Court for the county in which the governmental entity is located to allocate to each claimant that claimant's equitable share of the total, limited as required by this section. Any award by the court in excess of the maximum liability limit must be automatically abated by operation of this section to the maximum limit of liability. Nothing in this subsection may be deemed to make the operation of a family foster home a state activity nor may it expand in any way the liability of the State or foster parent.

[2011, c. 187, §1 (AMD) .]

3-A. **Indian foster family home.** "Indian foster family home" means a foster home licensed, approved or specified by the Indian child's tribe where substitute parental care is provided for an Indian child as defined in the Indian Child Welfare Act, 25 United States Code, Section 1901, et seq.

[1999, c. 392, §5 (NEW) .]

4. **Children's residential care facility.** "Children's residential care facility" means a children's facility that provides board and care for one or more children on a regular, 24-hour a day, residential basis. For purposes of this section, the definition of "children" includes a person under 21 years of age. A children's residential care facility does not mean a family foster home, a specialized children's home or an emergency children's shelter. The term includes, but is not limited to:

A. [2007, c. 324, §13 (RP).]

B. An approved treatment facility under Title 5, section 20003, subsection 3; [2007, c. 324, §13 (AMD).]

C. A drug treatment center under section 8001; [2013, c. 179, §7 (AMD).]

D. [2007, c. 324, §13 (RP).]

E. A residential facility under Title 34-B, section 1431; and [2013, c. 179, §7 (AMD).]

F. A children's residential treatment facility with secure capacity. [2013, c. 179, §7 (NEW).]

[2013, c. 179, §7 (AMD) .]

4-A. **Shelter for homeless children.** "Shelter for homeless children" means a facility designed to provide for the overnight lodging and supervision of children 10 years of age or older for no more than 30 consecutive overnights. For purposes of this section, the definition of "children" includes a person under 21 years of age.

[2013, c. 179, §7 (AMD) .]

4-B. **Children's residential treatment facility with secure capacity.** "Children's residential treatment facility with secure capacity" means a children's residential care facility that provides a mental health intensive treatment program to a child whose diagnostic assessment indicates that the persistent pattern of the child's mental health presents a likely threat of harm to self or others and requires treatment in a setting that prevents the child from leaving the program. For purposes of this section, the definition of "children" includes a person under 21 years of age.

[2013, c. 179, §7 (AMD) .]

5. **Specialized children's home.** "Specialized children's home" means a children's home where care is provided to no more than 4 moderately to severely handicapped children by a caretaker who is specifically educated and trained to provide for the particular needs of each child placed. The total number of children in a specialized children's home may not exceed 4, including the caretaker's legal children under 16 years of age, with no more than 2 children under the age of 2.

[1981, c. 260, §4 (NEW) .]

SECTION HISTORY
1975, c. 719, §6 (NEW). 1981, c. 260, §4 (RPR). 1983, c. 629, §1 (AMD). 1987, c. 778, §2 (AMD). 1989, c. 270, §15 (AMD). 1995, c. 301, §1 (AMD). 1999, c. 392, §§4,5 (AMD). 2003, c. 689, §B6 (REV). 2007, c. 324, §§12-15 (AMD). 2009, c. 211, Pt. B, §19 (AMD). 2009, c. 557, §5 (AMD). 2011, c. 186, Pt. A, §1 (AMD). 2011, c. 187, §1 (AMD). 2013, c. 179, §7 (AMD).

§8102. RULES

1. **Rules.** The department shall adopt rules for the various levels of children's residential care facilities, including, but not limited to, facilities that are private nonmedical institutions, in conformity with the Maine Administrative Procedure Act, Title 5, chapter 375. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The rules must be designed to protect the health, safety, well-being and development of children and must include, but are not limited to:

A. The number and qualifications of staff; [1981, c. 260, §4 (RPR).]

B. Rights and responsibilities of parents, children and staff; [1981, c. 260, §4 (RPR).]

C. The nature, provision, documentation and management of programs of care or treatment; and [1981, c. 260, §4 (RPR).]

D. The physical environment. [1981, c. 260, §4 (RPR).]

[2013, c. 179, §8 (AMD) .]

2. **Different classes.**

[1981, c. 260, §4 (RP) .]

3. **Public hearing.**

[1977, c. 694, §379 (RP) .]

SECTION HISTORY
1975, c. 719, §6 (NEW). 1977, c. 497, §6 (AMD). 1977, c. 694, §379 (AMD). 1981, c. 260, §4 (RPR). 2003, c. 673, §V3 (AMD). 2003, c. 673, §V29 (AFF). 2013, c. 179, §8 (AMD).

§8103. FIRE SAFETY; INSPECTIONS FOR CHILDREN'S HOMES

1. **Procedures.**

[2003, c. 599, §10 (RP) .]

1-A. **Inspection required.** Except as provided in subsection 2, the department may not issue a license to operate to a children's home until the department has received from the Commissioner of Public Safety a written statement signed by one of the officials designated under Title 25, section 2360, 2391 or 2392 to make fire safety inspections. This statement must indicate that the children's home has complied with applicable fire safety provisions referred to in Title 25, section 2452.

[2003, c. 411, §1 (NEW) .]

2. **Temporary license.** The department may issue a temporary license to operate a family foster home, as defined by section 8101, subsection 3, without complying with the requirement to receive a written, signed statement under subsection 1-A prior to issuing the license as long as a preliminary evaluation of the home reveals no obvious fire safety violations.

[2003, c. 411, §1 (AMD) .]

3. **Fees.** The department shall establish and pay reasonable fees to the Commissioner of Public Safety for each inspection required pursuant to subsection 1-A.

[2003, c. 411, §1 (NEW) .]

4. **Requirements for facilities with 17 or more beds.** A children's home that has a capacity of 17 or more beds must comply with the Life Safety Code of the National Fire Protection Association, Residential Board and Care Occupancies sections for large facilities as adopted by the Commissioner of Public Safety.

[2003, c. 411, §1 (NEW) .]

5. **Requirements for children's home with more than 3 but fewer than 17 beds.** A children's home that has a capacity of more than 3 but fewer than 17 beds must comply with the Life Safety Code of the National Fire Protection Association, Residential Board and Care Occupancies sections for small facilities as adopted by the Commissioner of Public Safety. In addition, automatic emergency lights must be provided in the number and location required by the Commissioner of Public Safety.

[2003, c. 411, §1 (NEW) .]

6. **Requirements for children's home with 6 or fewer beds.** Notwithstanding subsection 5, the department may consider a children's home that has 6 or fewer residents, all of whom can evacuate the home without the assistance of another person in 3 minutes or less, to be in compliance with the one-family and 2-family dwelling requirements of the Life Safety Code of the National Fire Protection Association as adopted by the Commissioner of Public Safety. Facilities having 3 or fewer residents must meet the requirements of the one-family and 2-family dwelling chapter of the Life Safety Code of the National Fire Protection Association as adopted by the Commissioner of Public Safety.

[2003, c. 411, §1 (NEW) .]

7. **Local regulations.** Nothing in this section prevents a locality from imposing requirements for children's homes more stringent than those required in this section.

[2003, c. 411, §1 (NEW) .]

SECTION HISTORY
1975, c. 719, §6 (NEW). 1985, c. 706, §9 (RPR). 1989, c. 502, §A85 (AMD). 1997, c. 728, §12 (AMD). 2001, c. 515, §1 (AMD). 2001, c. 596, §B19 (AMD). 2001, c. 596, §B25 (AFF). 2003, c. 411, §1 (AMD). 2003, c. 510, §A18 (AMD). 2003, c. 599, §10 (AMD).

§8104. INTERAGENCY LICENSING

1. **Interagency licensing method.** The Commissioner of Education and the Commissioner of Health and Human Services, or their designees, shall jointly establish a method for interagency licensing of residential child care facilities subject wholly or partly to licensing by both of the departments. The method must provide for the following:

A. Development of common licensing rules; [1981, c. 260, §5 (NEW).]

B. Periodic review of licensing rules; [1981, c. 260, §5 (NEW).]

C. Delegation of departmental responsibilities; and [1981, c. 260, §5 (NEW).]

D. Determination of licensing fees. [1981, c. 260, §5 (NEW).]

[2005, c. 397, Pt. A, §28 (AMD) .]

2. **Licensing authority.** For the purposes of this section, the Department of Health and Human Services shall have licensing authority for residential child care facilities. This authority shall not relieve any agency of responsibility for the proper and efficient management or evaluation of programs funded by that agency.

[1981, c. 260, §5 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

3. **Common licensing rules.** Common licensing rules developed under this section shall eliminate varying, duplicative and conflicting rules and procedures. Common licensing rules shall also assure, as far as practicable, that:

A. Licensing is accomplished expeditiously; [1981, c. 260, §5 (NEW).]

B. Applicants have to deal with as few agency representatives as possible; [1981, c. 260, §5 (NEW).]

C. Consideration is given to special circumstances made known by an applicant which make the timing of licensing investigation unreasonable; [1981, c. 260, §5 (NEW).]

D. Applicants are promptly informed of licensing decisions and of the cause for any delay or denial; [1981, c. 260, §5 (NEW).]

E. Applicants do not have to obtain information from another agency if the licensing agency can obtain the information more conveniently; and [1981, c. 260, §5 (NEW).]

F. Rules are applied uniformly. [1981, c. 260, §5 (NEW).]

[1981, c. 260, §5 (NEW) .]

4. **Authority to change daily rate for unlicensed foster care providers.** Notwithstanding any other provision of law, the department may change the daily rates for foster board and care paid to unlicensed homes and may provide the opportunity for those unlicensed homes, if they choose to apply, to pursue licensure that could result in a higher rate of payment.

[2005, c. 12, Pt. RR, §1 (NEW) .]

SECTION HISTORY
1981, c. 260, §5 (NEW). 1981, c. 493, §2 (AMD). 1989, c. 700, §A95 (AMD). 1991, c. 824, §A49 (AMD). RR 1995, c. 2, §46 (COR). 2001, c. 354, §3 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 12, §RR1 (AMD). 2005, c. 397, §A28 (AMD).

§8105. TRANSITIONAL PROVISION

1. **Rules.** Any rule in effect immediately prior to the effective date of this section shall remain in effect until it is amended.

[1981, c. 260, §5 (NEW) .]

2. **Licenses.** Any license in effect immediately prior to the effective date of this section shall remain in effect unless it is revoked, suspended or made conditional, or until it expires, or until a new license is issued.

[1981, c. 260, §5 (NEW) .]

SECTION HISTORY
1981, c. 260, §5 (NEW).

§8106. REPORT

(REPEALED)

SECTION HISTORY
1981, c. 260, §6 (NEW). 1993, c. 685, §B4 (RP).

§8107. EXCEPTIONS

The following exceptions to placement, as defined in section 8101, shall apply. [1983, c. 629, §2 (NEW).]

1. **Number; placement.** The limitations on the number of children in children's homes shall not prohibit the placement of more than the allowed number, if the purpose of the placement is to keep siblings together.

[1983, c. 629, §2 (NEW) .]

2. **Handicapped; placement.** The definitions used shall not preclude the department from placing a moderately to severely handicapped child in any appropriate child care facility at the department's discretion, subject to the limitations on the number of children specified in section 8101, subsections 1 and 3.

[1985, c. 706, §10 (AMD) .]

3. **Residents 18 years of age or older.** A resident in a children's home may remain in that home after attaining the age of 18 years without the home being required to be licensed as a boarding care facility under chapter 1663 if the department determines that it is in the best interest of the resident.

[1989, c. 355, §3 (NEW) .]

4. **Parents of children receiving services.** Adult parents may reside with their children in a children's residential care facility in order to facilitate the care of the child when the department has determined it to be in the best interest of the child.

[2013, c. 179, §9 (AMD) .]

The department may adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2007, c. 320, §2 (NEW).]

SECTION HISTORY

1983, c. 629, §2 (NEW). 1985, c. 706, §10 (AMD). 1989, c. 355, §3 (AMD). 2007, c. 320, §§1, 2 (AMD). 2013, c. 179, §9 (AMD).

§8108. SEARCH OF PROPERTY

An administrator or other staff designated by an administrator of a children's home or children's residential care facility may search a resident's backpack or travel bag upon the resident's return to the home or facility if there are reasonable grounds for suspecting that the backpack or travel bag contains misappropriated articles or items that would endanger the health or safety of the resident or other residents. A search of a resident's backpack or travel bag conducted under this section must be reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the resident and the nature of the suspected misappropriated or harmful items. Following a search of a resident's backpack or travel bag authorized under this section, the administrator or designated staff may confiscate any items found in the resident's possession that are misappropriated or that pose a health or safety risk to the resident or other residents. [2015, c. 240, §1 (NEW).]

§8108. Fees and terms for licenses

(As enacted by PL 2015, c. 267, Pt. RR, §3 is REALLOCATED TO TITLE 22, SECTION 8109)

SECTION HISTORY
RR 2015, c. 1, §23 (RAL). 2015, c. 240, §1 (NEW). 2015, c. 267, Pt. RR, §3 (NEW).

§8109. FEES AND TERMS FOR LICENSES

(REALLOCATED FROM TITLE 22, SECTION 8108)

License fees and terms for children's residential care facilities are governed by this section. [2015, c. 1, §23 (RAL).]

1. **Provisional license.** The application fee for a provisional license for a children's residential care facility may not be less than $100 nor more than $280. The term of a provisional license is for one year.

[2015, c. 1, §23 (RAL) .]

2. **Full license.** The application fee for a full license for a children's residential care facility may not be less than $100 nor more than $280. The term of a full license is for 2 years.

[2015, c. 1, §23 (RAL) .]

3. **Fee for biennial renewal of a full license.** The fee for the biennial renewal of a full license for a children's residential care facility may not be less than $70 nor more than $170.

[2015, c. 1, §23 (RAL) .]

4. **Fee to add a service site to a license.** The processing fee to add a service site to an issued license for a children's residential care facility may not be less than $35 nor more than $70.

[2015, c. 1, §23 (RAL) .]

5. **Fee to add a service to a license.** The processing fee to add a service to an issued license for a children's residential care facility may not be less than $70 nor more than $140.

[2015, c. 1, §23 (RAL) .]

6. **Fee to replace a license.** A licensee under this section shall maintain a valid license. An issued license is not valid when the information on the license is no longer accurate. A processing fee not to exceed $10 must be paid to the department to secure a reissued license with accurate information. The fee applies to each license replaced. The reissued license must have the same expiration date as the replaced license.

[2015, c. 1, §23 (RAL) .]

7. **Transaction fee for electronic renewal of license.** The transaction fee for the electronic renewal of a license for a children's residential care facility may not be less than $25 nor more than $50. The transaction fee may not exceed the cost of providing the electronic renewal service.

[2015, c. 1, §23 (RAL) .]

8. **Rules.** 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.

[2015, c. 1, §23 (RAL) .]

SECTION HISTORY
RR 2015, c. 1, §23 (RAL).

Chapter 1670: INTERDEPARTMENTAL COMMITTEE RELATING TO CHILDREN'S RESIDENTIAL TREATMENT CENTERS

§8151. INTERDEPARTMENTAL COMMITTEE CREATED

(REPEALED)

SECTION HISTORY
1985, c. 274, §2 (NEW). 1989, c. 700, §A96 (AMD). 1993, c. 738, §B9 (AFF). 1993, c. 738, §B4 (RP).

§8152. RESPONSIBILITIES

(REPEALED)

SECTION HISTORY
1985, c. 274, §2 (NEW). 1987, c. 432, §1 (RPR). 1987, c. 816, §GG1 (AMD). 1993, c. 269, §1 (AMD). 1993, c. 410, §CCC8 (AMD). 1993, c. 738, §B9 (AFF). 1993, c. 738, §B4 (RP).

§8153. CONTRACTS

(REPEALED)

SECTION HISTORY
1985, c. 274, §2 (NEW). 1987, c. 432, §2 (RP).

§8154. RESIDENTIAL TREATMENT CENTERS ADVISORY GROUP

(REPEALED)

SECTION HISTORY
1985, c. 274, §2 (NEW). 1987, c. 432, §3 (RPR). 1989, c. 503, §B97 (AMD). 1993, c. 738, §B9 (AFF). 1993, c. 738, §B4 (RP).

Chapter 1671: CHILD PLACING AGENCY

§8201. DEFINITION OF CHILD PLACING AGENCY

As used in this subtitle, the term "child placing agency" means a facility which advertises itself or holds itself out as finding homes for or otherwise placing children under the age of 18, in homes where care is provided on the basis of 24 hours a day. [1983, c. 625, (AMD).]

SECTION HISTORY
1975, c. 719, §6 (NEW). 1983, c. 625, (AMD).

§8202. RULES

1. **Rules promulgated.** The department shall promulgate rules for child placing agencies which shall include, but need not be limited to, rules pertaining to the appropriateness of placement, the continued welfare of the child placed and licensing procedures.

[1975, c. 719, §6 (NEW) .]

2.

[1977, c. 694, §380 (RP) .]

SECTION HISTORY
1975, c. 719, §6 (NEW). 1977, c. 694, §380 (AMD).

§8203. ADDITIONAL LICENSE PERMITTED

A licensed children's home may also be licensed as a child placing agency if the children's home complies with the law and rules applicable to child placing agencies. [1975, c. 719, §6 (NEW).]

SECTION HISTORY
1975, c. 719, §6 (NEW).

§8204. INDIVIDUALS PLACING CHILDREN FOR ADOPTION

1. **License required.** Any individual who operates a child placing agency shall be subject to the licensing requirements of the department, as specified under this chapter and under chapter 1663. Any individual who advertises himself or holds himself out as placing or finding homes for children for the purpose of adoption, shall be deemed to operate a child placing agency.

[1977, c. 515, §3 (NEW) .]

2. **License not required.** Any individual who does not advertise himself or hold himself out as placing or finding homes for children for the purpose of adoption, but who places or assists in placing a child for adoption, shall not be deemed to operate a child placing agency and shall not be subject to the licensing requirements of the department, as specified under this chapter and under chapter 1663.

[1977, c. 515, §3 (NEW) .]

3. **Fees; violation and penalty.** No individual who places or assists in placing a child for adoption shall charge a fee which represents more than the reasonable costs of the services provided.

Violation of this subsection shall be a Class D crime.

[1977, c. 515, §3 (NEW) .]

SECTION HISTORY
1977, c. 515, §3 (NEW).

§8205. COLLECTION AND DISCLOSURE OF INFORMATION ABOUT A CHILD'S BACKGROUND

This section governs the collection and disclosure of information about the child's background. [1995, c. 391, §3 (RPR).]

1. **Information to be collected.** The licensed child placing agency shall obtain medical and genetic information on the birth parents and the child. Specifically, the licensed child placing agency shall attempt to obtain:

A. A current medical, psychological and developmental history of the child, including an account of the child's prenatal care, medical condition at birth, results of newborn screening, any drug or medication taken by the child's birth mother during pregnancy, any subsequent medical, psychological or psychiatric examination and diagnosis, any physical, sexual or emotional abuse suffered by the child and a record of any immunizations and health care received since birth; and [1995, c. 391, §3 (NEW).]

B. Relevant information concerning the medical, psychological and social history of the birth parents, including any known disease or hereditary disposition to disease, the history of use of drugs and alcohol, the health of the birth mother during her pregnancy and the health of the birth parents at the time of the child's birth. [1995, c. 391, §3 (NEW).]

[1995, c. 391, §3 (NEW) .]

2. **Disclosure before placement.** Prior to the child being placed for the purpose of adoption, the licensed child placing agency shall provide the information described in subsection 1 to the prospective adoptive parents.

[1995, c. 391, §3 (NEW) .]

3. **Specific reasons for concern.** If the licensed child placing agency has specific, articulable reasons to question the truth or accuracy of any of the information obtained, those reasons must be disclosed in writing to the prospective adoptive parents.

[1995, c. 391, §3 (NEW) .]

4. **Notice that information unavailable.** The prospective adoptive parents must be informed in writing if any of the information described in subsection 2 can not be obtained, either because the records are unavailable or because the birth parents are unable or unwilling to consent to its disclosure or to be interviewed.

[1995, c. 391, §3 (NEW) .]

5. **Request for additional information.** If, after a child is placed for adoption and either before or after the adoption is final, the child suffers a serious medical or mental illness for which the specific medical, psychological or social history of the birth parents or the child may be useful in diagnosing or treating such illness, the prospective adoptive or adoptive parents may request the child placing agency to attempt to obtain additional information. The child placing agency shall attempt to obtain the information promptly and shall disclose any information collected to the prospective adoptive or adoptive parents as soon as reasonably possible. The licensed child placing agency may charge a fee to the prospective adoptive or adoptive parents

to cover the cost of obtaining and providing the additional information. Fees collected by the department must be dedicated to defray the costs of obtaining and providing the additional information. Fees may be reduced or waived for low-income prospective adoptive or adoptive parents.

[1995, c. 391, §3 (NEW) .]

6. **International adoptions.** If the child to be placed for adoption is from a foreign country that has jurisdiction over the child and the prospective adoptive parents are United States citizens, compliance with federal and international adoption laws is deemed to be compliance with this section.

[1995, c. 391, §3 (NEW) .]

SECTION HISTORY
1991, c. 630, §5 (NEW). 1995, c. 391, §3 (RPR).

§8206. PREADOPTIVE HOMES AS FOSTER HOMES

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

A. "Foster home" means a child's home that is a private dwelling where substitute parental care is provided within a family on a regular, 24-hour-a-day, residential basis. [1999, c. 265, §1 (NEW).]

B. "Preadoptive parent" means a person who has entered into an agreement with a licensed private child-placing agency that has certified the person as a potential adoptive parent who will accept a child into care with the intent to adopt that child. [1999, c. 265, §1 (NEW).]

[1999, c. 265, §1 (NEW) .]

2. **Home certification.** Pursuant to rules adopted by the department, a licensed private child-placing agency may certify a preadoptive parent's home as a foster home for a child placed in that home awaiting adoption by the preadoptive parent. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

[1999, c. 265, §1 (NEW) .]

SECTION HISTORY
1999, c. 265, §1 (NEW).

Chapter 1673: CHILD CARE FACILITIES

§8301. DEFINITION OF DAY CARE FACILITY

(REPEALED)

SECTION HISTORY
1975, c. 719, §6 (NEW). 1981, c. 309, §2 (AMD). 1989, c. 700, §A97 (AMD). 1997, c. 494, §15 (AFF). 1997, c. 494, §7 (RP).

§8301-A. LICENSURE OF CHILD CARE FACILITIES; CERTIFICATION OF FAMILY CHILD CARE PROVIDERS

1. **Definitions.**

[2001, c. 645, §6 (RP) .]

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

A. "Child care center" means:

(1) A house or other place in which a person maintains or otherwise carries out a regular program, for consideration, for any part of a day providing care and protection for 13 or more children under 13 years of age; or

(2) Any location or locations operated as a single child care program or by a person or persons when there are more than 12 children being cared for. [2001, c. 645, §6 (NEW).]

B. "Child care facility" means a child care center, small child care facility or nursery school. "Child care facility" does not include a facility operated by a family child care provider, a youth camp licensed under section 2495, programs offering instruction to children for the purpose of teaching a skill such as karate, dance or basketball, a formal public or private school in the nature of a kindergarten or elementary or secondary school approved by the Commissioner of Education in accordance with Title 20-A or a private school recognized by the Department of Education as a provider of equivalent instruction for the purpose of compulsory school attendance. Any program for children under 5 years of age that is located in a private school and programs that contract with one or more Child Development Services System sites are required to be licensed as a child care facility. [2009, c. 211, Pt. B, §20 (AMD).]

C. "Family child care provider" means a person who provides day care in that person's home on a regular basis, for consideration, for 3 to 12 children under 13 years of age who are not the children of the provider or who are not residing in the provider's home. If a provider is caring for children living in that provider's home and is caring for no more than 2 other children, the provider is not required to be certified as a family child care provider. [2005, c. 530, §7 (AMD).]

D. "Nursery school" means a house or other place in which a person or combination of persons maintains or otherwise carries out for consideration during the day a regular program that provides care for 3 or more children 33 months of age or older and under 8 years of age, provided that:

(1) No session conducted for the children is longer than 3 1/2 hours in length;

(2) No more than 2 sessions are conducted per day;

(3) Each child in attendance at the nursery school attends only one session per day; and

(4) No hot meal is served to the children.

"Nursery school" does not include any facility operated as a child care center or small child care facility licensed under subsection 2, a youth camp licensed under section 2495 or a public or private school in the nature of a kindergarten approved by the Commissioner of Education, in accordance with Title 20-A. [2009, c. 211, Pt. B, §21 (AMD).]

E. "Small child care facility" means a house or other place, not the residence of the operator, in which a person or combination of persons maintains or otherwise carries out a regular program, for consideration, for any part of a day providing care and protection for 3 to 12 children under 13 years of age. [2001, c. 645, §6 (NEW).]

[2009, c. 211, Pt. B, §§20, 21 (AMD) .]

2. **Child care facility licensure.** The owner or operator of a child care facility shall pay the licensing fee required under section 8303-A. A child care facility must be licensed under this chapter and must comply with the rules adopted by the commissioner under section 8302-A and the fire safety requirements of section 8304-A. The department shall make at least one unannounced inspection of a child care facility licensed under this chapter during the term of the license. The inspection must take place between 6 and 18 months after the issuance of the license. Except as otherwise provided, a nursery school must meet the requirements of this chapter and chapter 1675.

[2005, c. 640, §2 (AMD) .]

3. **Family child care provider certification.** A family child care provider shall pay the certification fee required under section 8303-A. A family child care provider must be certified under this chapter and shall comply with the rules adopted by the commissioner under section 8302-A and the fire safety requirements of section 8304-A. The department shall make at least one unannounced inspection of a family child care provider certified under this chapter during the term of the certificate. The inspection must take place between 6 and 18 months after the issuance of the certificate.

[2005, c. 640, §3 (AMD) .]

4. **Complaints.** Upon receipt of a complaint about a licensed child care facility or a certified family child care provider and if the department has reasonable cause to suspect that a violation of the licensure or certification requirements has occurred, the department may investigate the complaint and enter the premises at any reasonable time for the purposes of the investigation.

[2005, c. 530, §7 (AMD) .]

5. **Administrative suspension.** Whenever conditions exist that immediately jeopardize the health and safety of children, the commissioner may issue an order of closure, which suspends the certification of the family child care provider or the child care facility license for up to 10 days, pending further investigation or prior to obtaining an order of emergency suspension from the court. The department shall require that an order of closure be posted at the facility and made public as it determines to be most appropriate for parents and other potential customers.

[2005, c. 530, §7 (AMD) .]

6. **Temporary license.** Whenever a certified family child care provider or licensed child care facility moves to a new location the department may issue a temporary certificate or license, valid pending final action on the application for the new location by the department, when:

A. All applicable standards have been met except a requirement that is dependent on the action of an agency of State Government or a contractor of that agency; and [2001, c. 645, §6 (AMD).]

B. Through no action by the applicant that causes a significant delay, timely issuance of a provisional or full license has been delayed by the agency or contractor. [1999, c. 363, §5 (NEW).]

[2005, c. 530, §7 (AMD) .]

7. **Injunctive relief.** The department may seek an injunction to require compliance with the provisions of this section or rules adopted pursuant to this section.

[1999, c. 363, §5 (NEW) .]

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

[2005, c. 530, §7 (AMD) .]

9. **Exemption from certain requirements for accredited Montessori schools.** Notwithstanding any provision of this chapter or rules adopted pursuant to this chapter, a child care facility that is accredited as a Montessori school by a national or international accreditation organization may apply to the commissioner for an exemption from those requirements of this chapter or rules adopted pursuant to this chapter that conflict with the recognized tenets of the Montessori philosophy.

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

[2005, c. 224, §1 (NEW) .]

SECTION HISTORY
1997, c. 494, §8 (NEW). 1997, c. 494, §15 (AFF). 1999, c. 363, §§4,5 (AMD). 2001, c. 645, §6 (AMD). 2005, c. 224, §1 (AMD). 2005, c. 530, §7 (AMD). 2005, c. 640, §§2,3 (AMD). 2007, c. 324, §16 (AMD). 2009, c. 211, Pt. B, §§20, 21 (AMD).

§8302. RULES

(REPEALED)

SECTION HISTORY
1975, c. 719, §6 (NEW). 1977, c. 497, §7 (AMD). 1977, c. 694, §381 (AMD). 1989, c. 723, (AMD). 1991, c. 89, §§1,2 (AMD). 1995, c. 74, §1 (AMD). 1997, c. 494, §15 (AFF). 1997, c. 494, §9 (RP).

§8302-A. RULES FOR CHILD CARE FACILITIES AND FAMILY CHILD CARE PROVIDERS

The commissioner shall adopt rules for child care facilities and family child care providers according to this section. Nursery schools are subject to the requirements of chapter 1675 and this section, except that subsection 1, paragraph F does not apply to nursery schools. [2005, c. 530, §8 (AMD).]

1. **Rules for child care facilities.** Rules for child care facilities must include, but are not limited to, rules pertaining to the following:

A. Child to staff ratios; [1997, c. 494, §10 (NEW); 1997, c. 494, §15 (AFF).]

B. The health and safety of the children and staff, including training on communicable diseases; [1997, c. 494, §10 (NEW); 1997, c. 494, §15 (AFF).]

C. Water for drinking and cooking; [1997, c. 494, §10 (NEW); 1997, c. 494, §15 (AFF).]

D. Wastewater; [1997, c. 494, §10 (NEW); 1997, c. 494, §15 (AFF).]

E. Rabies vaccinations for pets; [1997, c. 494, §10 (NEW); 1997, c. 494, §15 (AFF).]

F. The quality of the program provided; [1997, c. 494, §10 (NEW); 1997, c. 494, §15 (AFF).]

G. The age, criminal record and personal history of the provider of care for children and staff members; [2001, c. 645, §7 (AMD).]

H. The administration of medication; [2015, c. 497, §2 (AMD).]

I. Licensing procedures; and [2015, c. 497, §2 (AMD).]

J. Requiring a criminal background check for:

(1) Each child care staff member whose activities involve the care or supervision of children; and

(2) Each adult who has unsupervised access to children who are cared for or supervised by a child care facility.

The criminal background check must meet the requirements of 42 United States Code, Section 9858f(b). [2015, c. 497, §2 (NEW).]

Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A, except that rules adopted pursuant to paragraph J to comply with 42 United States Code, Section 9858f(b) are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

[2015, c. 497, §2 (AMD) .]

2. **Rules for family child care providers.** Rules for family child care providers must include, and are limited to, rules pertaining to the following:

A. Cardiopulmonary resuscitation; [1997, c. 494, §10 (NEW); 1997, c. 494, §15 (AFF).]

B. Water for drinking and cooking; [1997, c. 494, §10 (NEW); 1997, c. 494, §15 (AFF).]

C. Wastewater; [1997, c. 494, §10 (NEW); 1997, c. 494, §15 (AFF).]

D. Rabies vaccinations for pets; [1997, c. 494, §10 (NEW); 1997, c. 494, §15 (AFF).]

E. Recording the times, reasons and numbers of children involved when more than 12 children are cared for; [1997, c. 494, §10 (NEW); 1997, c. 494, §15 (AFF).]

F. Ongoing training for providers on health and safety issues, including training on communicable diseases. This training must be offered at times that are convenient to the providers; [1997, c. 494, §10 (NEW); 1997, c. 494, §15 (AFF).]

G. Child to staff ratios; [1997, c. 494, §10 (NEW); 1997, c. 494, §15 (AFF).]

H. Health and safety of the children and staff; [1997, c. 494, §10 (NEW); 1997, c. 494, §15 (AFF).]

I. Procedures for waivers of rules and for suspension and revocation of certification; [2015, c. 497, §3 (AMD).]

J. The age, criminal record and personal history of the family child care provider, staff and members of the household; and [2015, c. 497, §3 (AMD).]

K. Requiring a criminal background check for:

(1) The family child care provider;

(2) Each child care staff member whose activities involve the care or supervision of children; and

(3) Each adult who has unsupervised access to children who are cared for or supervised by the family child care provider.

The criminal background check must meet the requirements of 42 United States Code, Section 9858f(b). [2015, c. 497, §3 (NEW).]

Rules adopted pursuant to paragraphs A to F are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A and rules adopted pursuant to paragraphs G to K are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

[2015, c. 497, §3 (AMD) .]

SECTION HISTORY

RR 1997, c. 1, §21 (COR). 1997, c. 494, §10 (NEW). 1997, c. 494, §15 (AFF). 2001, c. 645, §7 (AMD). 2005, c. 530, §8 (AMD). 2015, c. 497, §§2, 3 (AMD).

§8302-B. PROVIDERS SUBJECT TO STANDARDS

A person who provides day care in that person's home for one or 2 children whose care is paid for by state or federal funds is not required to be certified as a family child care provider pursuant to section 8301-A but is subject to the provisions of this section. [2005, c. 530, §9 (AMD).]

1. **Investigation.** The provider must pass a background investigation check by the State Bureau of Investigation, a check for involvement with child protective services and a motor vehicle record check.

[1997, c. 494, §11 (NEW); 1997, c. 494, §15 (AFF) .]

2. **Information provided by department.** The department shall supply providers with information on the following topics:

A. Health and safety, including the control of communicable disease, and immunization requirements; [1997, c. 494, §11 (NEW); 1997, c. 494, §15 (AFF).]

B. Physical premises safety; and [1997, c. 494, §11 (NEW); 1997, c. 494, §15 (AFF).]

C. Training opportunities in health and safety, first aid and cardiopulmonary resuscitation and early care and education. [1997, c. 494, §11 (NEW); 1997, c. 494, §15 (AFF).]

[1997, c. 494, §11 (NEW); 1997, c. 494, §15 (AFF) .]

3. **Authority to inspect.** The department has the authority to inspect the premises of the person providing the care.

[1997, c. 494, §11 (NEW); 1997, c. 494, §15 (AFF) .]

SECTION HISTORY
1997, c. 494, §11 (NEW). 1997, c. 494, §15 (AFF). 2005, c. 530, §9 (AMD).

§8303. FEE FOR LICENSES

(REPEALED)

SECTION HISTORY
1975, c. 719, §6 (NEW). 1993, c. 353, §7 (AFF). 1993, c. 353, §1 (RP).

§8303-A. FEE FOR LICENSES

1. **Child care facilities and certified family child care providers.** The department shall adopt rules to establish reasonable fees for both initial licensure or certification and license or certification renewals for child care facilities and certified family child care providers. Rules adopted pursuant to this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

[2009, c. 590, §6 (NEW) .]

2. **Nursery schools.** The department shall adopt rules to establish reasonable initial and renewal licensing fees for nursery schools that may not exceed $40 for an initial or renewal license. The department may adopt rules 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.

[2009, c. 590, §6 (NEW) .]

SECTION HISTORY
1993, c. 353, §2 (NEW). 1997, c. 494, §12 (AMD). 1997, c. 494, §15 (AFF). 2005, c. 530, §10 (AMD). 2005, c. 640, §4 (AMD). 2009, c. 590, §6 (RPR).

§8304. FIRE SAFETY

(REPEALED)

SECTION HISTORY
1975, c. 719, §6 (NEW). 1989, c. 502, §A86 (AMD). 1993, c. 158, §4 (RP).

§8304-A. FIRE SAFETY

1. **Inspection required.** As an ongoing condition of licensure or certification, the Commissioner of Public Safety must provide at least biennially to the department a written statement that the child care facility or certified family child care provider complies with applicable fire safety rules adopted pursuant to Title 25, section 2452. The Commissioner of Public Safety shall adopt rules in accordance with the Maine Administrative Procedure Act to implement this subsection. The rules must provide for at least the following.

A. The Commissioner of Public Safety shall issue a fire safety technician certificate to any person who successfully completes a training course established by the Department of Public Safety. A person who receives a fire safety technician certificate pursuant to this paragraph may perform fire safety inspections under this section. [1997, c. 728, §13 (AMD).]

B. In addition to ongoing license or certification requirements, inspection and certification are required under this section whenever a child care facility or certified family child care provider changes or augments a heating system or makes major structural alterations to the facility or home. [2005, c. 530, §11 (AMD).]

[2005, c. 530, §11 (AMD) .]

2. **Fees.** The department shall establish and pay reasonable fees to the Department of Public Safety for services rendered under this section. Fees collected by the Department of Public Safety under this section must be deposited into a special revenue account to carry out the purposes of this section. A balance remaining in the account at the end of the fiscal year may not lapse but must be carried forward into subsequent fiscal years.

[1997, c. 728, §13 (AMD) .]

3. **Inspectors.** The Commissioner of Public Safety may appoint subject to the Civil Service Law employees needed to carry out the purposes of this section. A person appointed pursuant to this subsection is under the administrative and supervisory direction of the Commissioner of Public Safety.

[1997, c. 728, §13 (AMD) .]

SECTION HISTORY

1993, c. 158, §5 (NEW). 1997, c. 494, §13 (AMD). 1997, c. 494, §15 (AFF). 1997, c. 728, §13 (AMD). 2001, c. 645, §8 (AMD). 2005, c. 530, §11 (AMD).

§8305. HOME BABY-SITTING SERVICE

(REPEALED)

SECTION HISTORY
1981, c. 309, §3 (NEW). 1981, c. 470, §B9 (AMD). 1985, c. 358, §1 (RPR). 1993, c. 158, §§6,7 (AMD). 1993, c. 353, §§3-5 (AMD). 1997, c. 393, §A23 (AMD). 1997, c. 494, §15 (AFF). 1997, c. 494, §14 (RP).

§8306. INFORMATION BROCHURE

(REPEALED)

SECTION HISTORY
1985, c. 358, §2 (NEW). 2005, c. 530, §12 (RP).

§8307. STATE EMPLOYEE CHILD CARE PROGRAMS

The Office of Child Care Coordination annually shall evaluate the status of state financed or operated child care facilities and programs which are operated primarily as a service for children of state employees, and shall set forth plans for the development of additional facilities. For the purpose of this section, "state employee" includes employees subject to the civil service law, employees defined in Title 5, chapter 71, and legislative employees. [1987, c. 741, §4 (NEW).]

1. **Evaluation and report.** The Office of Child Care Coordination shall report its findings and recommendations annually to the joint standing committee of the Legislature having jurisdiction over human resources no later than the 3rd Wednesday in January of each first regular session of the Legislature. This report, at a minimum, shall include the following:

A. The number and location of child care sites operated or planned for operation primarily for children of state employees; [1987, c. 741, §4 (NEW).]

B. The number and ages of children at each site; [1987, c. 741, §4 (NEW).]

C. The number and ages of children of state employees on waiting lists for admittance to the programs; [1987, c. 741, §4 (NEW).]

D. The types of activities and programs provided to the children; [1987, c. 741, §4 (NEW).]

E. The budget for each site, including expenditures and income. Income shall be further described to include fees charged and income from other sources. Any deficits shall also be described; [1987, c. 741, §4 (NEW).]

F. Assistance provided for children of low-income state employee households, including sliding scale fees and any other assistance. The number of children for whom this assistance is being provided shall also be included; [1987, c. 741, §4 (NEW).]

G. Any problems encountered in the operation of the child care facilities and programs and the reasons for these problems; [1987, c. 741, §4 (NEW).]

H. The successes that have been realized as a result of this service to state employees, including state employee successes relating directly to the program; [1987, c. 741, §4 (NEW).]

I. The hours of operation of each facility; and [1987, c. 741, §4 (NEW).]

J. Any other information deemed relevant and useful by the Office of Child Care Coordination. [1987, c. 741, §4 (NEW).]

[1987, c. 741, §4 (NEW) .]

2. **Feasibility study of other child care facilities and programs.** Prior to the creation of new or additional state financed or operated child care facilities provided primarily for the benefit of state employees, except the initial facility to be located in the Augusta area, the Office of Child Care Coordination, in cooperation with the Bureau of General Services, shall conduct a feasibility study of the proposed child care facility, which must be located in a state-owned facility or in a facility located conveniently near the workplaces of state employees. This feasibility study, at a minimum, must include:

A. The location of the site and the reasons justifying the location, including reasons justifying or not justifying using state-owned facilities; [1987, c. 741, §4 (NEW).]

B. An analysis of the benefits and liabilities of contracting with the private sector to provide child care programs under this section; [1987, c. 741, §4 (NEW).]

C. An analysis of the benefits and liabilities of State Government operation of child care programs and facilities for children of state employees; [1987, c. 741, §4 (NEW).]

D. The number and ages of children proposed for the site; [1987, c. 741, §4 (NEW).]

E. The type of assistance to be made available to children of state employees classified as low-income households; [1987, c. 741, §4 (NEW).]

F. The types of activities and programs to be provided, including preschool and after-school programs; [2011, c. 691, Pt. B, §24 (AMD).]

G. A time schedule for the commencement of programs at each facility; [1987, c. 741, §4 (NEW).]

H. Sources of income, including fees, if any, for funding each facility; and [1987, c. 741, §4 (NEW).]

I. Any other information determined important by the Office of Child Care Coordination and the Bureau of General Services. [2011, c. 691, Pt. B, §24 (AMD).]

The report required by this subsection must be provided to the joint standing committee of the Legislature having jurisdiction over human resources matters in a timely manner preceding the selection of the site.

[2011, c. 691, Pt. B, §24 (AMD) .]

3. **Priorities; rulemaking.** Any child care facility and programs operated primarily as a service to state employees shall give priority to children of low-income state employee households. Any facilities and programs offered under this section shall also be conveniently located for the use of state employees. The Office of Child Care Coordination shall adopt rules in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, with respect to:

A. Priorities of eligibility for the program; [1987, c. 741, §4 (NEW).]

B. The number of children that each state employee may enroll; [1987, c. 741, §4 (NEW).]

C. A sliding scale of fees for state employee households of different incomes; and [1987, c. 741, §4 (NEW).]

D. A definition of low income. [1987, c. 741, §4 (NEW).]

[1987, c. 741, §4 (NEW) .]

4. **Collective bargaining.** It is not the intent of the Legislature in this section to limit or restrict the rights of state employees to bargain collectively as provided in Title 26. Nothing in this section may invalidate or supersede the provisions of a collective bargaining agreement between an employee organization and the State.

[1987, c. 741, §4 (NEW) .]

SECTION HISTORY
1987, c. 741, §4 (NEW). RR 2009, c. 2, §62 (COR). 2011, c. 691, Pt. B, §24 (AMD).

§8308. FAMILY CHILD CARE PROVIDER REPRESENTATION

(REPEALED)

SECTION HISTORY
2007, c. 672, §1 (NEW). 2011, c. 641, §1 (RP).

Chapter 1674: INVESTIGATION OF OUT-OF-HOME CHILD ABUSE AND NEGLECT

§8351. SHORT TITLE

This chapter may be known and cited as "the Investigation of Out-of-home Child Abuse and Neglect Act." [2015, c. 283, §3 (NEW).]

SECTION HISTORY
2015, c. 283, §3 (NEW).

§8352. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2015, c. 283, §3 (NEW).]

1. **Abuse or neglect.** "Abuse or neglect" means a threat to a child's health or welfare by physical, mental or emotional injury or impairment, sexual abuse or exploitation, deprivation of essential needs or lack of protection from these, failure to ensure compliance with school attendance requirements under Title 20-A, section 3272, subsection 2, paragraph B or Title 20-A, section 5051-A, subsection 1, paragraph C by a person responsible for the child.

[2015, c. 283, §3 (NEW) .]

2. **Child.** "Child" means any person who is less than 18 years of age.

[2015, c. 283, §3 (NEW) .]

3. **Custodian.** "Custodian" means the person who has legal custody and power over the person of a child.

[2015, c. 283, §3 (NEW) .]

4. **Division.** "Division" means the division of licensing and regulatory services within the department.

[2015, c. 283, §3 (NEW) .]

5. **Family foster home.** "Family foster home" has the same meaning as set out in section 8101, subsection 3.

[2015, c. 283, §3 (NEW) .]

6. **Jeopardy.** "Jeopardy" means serious abuse or neglect, as evidenced by:

A. Serious harm or threat of serious harm; [2015, c. 283, §3 (NEW).]

B. Deprivation of adequate food, clothing, shelter, supervision or care or education when the child is at least 7 years of age and has not completed grade 6; [2015, c. 283, §3 (NEW).]

C. Deprivation of necessary health care when the deprivation places the child in danger of serious harm; [2015, c. 283, §3 (NEW).]

D. Abandonment of the child or absence of any person responsible for the child, which creates a threat of serious harm; or [2015, c. 283, §3 (NEW).]

E. Other situations of serious abuse or neglect. [2015, c. 283, §3 (NEW).]

[2015, c. 283, §3 (NEW) .]

7. **Licensed.** "Licensed" means holding the whole or any part of any permit, certificate, approval, registration, charter or similar form of permission required by law that represents an exercise of the State's regulatory or police powers.

[2015, c. 283, §3 (NEW) .]

8. **Office.** "Office" means the Office of Child and Family Services in the department.

[2015, c. 283, §3 (NEW) .]

9. **Out-of-home child abuse or neglect investigation team; investigation team.** "Out-of-home child abuse or neglect investigation team" or "investigation team" means individuals employed by the division to investigate allegations of out-of-home child abuse or neglect.

[2015, c. 283, §3 (NEW) .]

10. **Out-of-home child abuse or neglect.** "Out-of-home child abuse or neglect" means child abuse or neglect that occurs in a facility or by a person subject to licensure or inspection by the department, the Department of Education or the Department of Corrections or in a facility operated by any of these departments.

[2015, c. 283, §3 (NEW) .]

11. **Person.** "Person" means an individual, corporation, facility, institution, public or private agency or similar entity.

[2015, c. 283, §3 (NEW) .]

12. **Person responsible for the child.** "Person responsible for the child" means a person with responsibility for a child's health or welfare including a licensed facility that as part of its function provides for the care of the child.

[2015, c. 283, §3 (NEW) .]

13. **Resource family.** "Resource family" has the same meaning as in section 4002, subsection 9-D.

[2015, c. 283, §3 (NEW) .]

14. **Runaway.** "Runaway" has the same meaning as in section 4099-D, subsection 3.

[2015, c. 283, §3 (NEW) .]

15. **Serious harm.** "Serious harm" means:

A. Serious injury; [2015, c. 283, §3 (NEW).]

B. Serious mental or emotional injury or impairment that now or in the future is likely to be evidenced by serious mental, behavioral or personality disorder, including severe anxiety, depression or withdrawal, untoward aggressive behavior, seriously delayed development or similar serious dysfunctional behavior; or [2015, c. 283, §3 (NEW).]

C. Sexual abuse or exploitation. [2015, c. 283, §3 (NEW).]

[2015, c. 283, §3 (NEW) .]

16. **Serious injury.** "Serious injury" means serious physical injury or impairment.

[2015, c. 283, §3 (NEW) .]

17. **Suspicious child death.** "Suspicious child death" means the death of a child under circumstances in which there is reasonable cause to suspect that abuse or neglect was a cause of or factor contributing to the child's death.

[2015, c. 283, §3 (NEW) .]

SECTION HISTORY
2015, c. 283, §3 (NEW).

§8353. INVESTIGATION TEAM

1. **Investigation team established.** The investigation team is established within the division to investigate reports of suspected abuse or neglect of children by persons or in facilities subject to department licensure in accordance with this chapter.

[2015, c. 283, §3 (NEW) .]

2. **Participation with other departments.** The investigation team, on its own or upon request, may assist and participate with another department or agency charged with the responsibility to investigate child abuse or neglect, including the Department of Education or the Department of Corrections.

[2015, c. 283, §3 (NEW) .]

3. **Addition of relevant professionals.** The investigation team shall include, as appropriate, relevant professionals to participate as members of the investigation team for investigations of residential treatment centers, group homes, certified family child care providers or child care facilities.

[2015, c. 283, §3 (NEW) .]

4. **Assistance by licensing staff.** Upon the request of the division, department staff that performs general licensing functions may assist the investigation team in conducting out-of-home child abuse or neglect investigations.

[2015, c. 283, §3 (NEW) .]

5. **Consultation with law enforcement and others.** The investigation team may consult with law enforcement personnel, advocates and others in the investigation of out-of-home child abuse or neglect.

[2015, c. 283, §3 (NEW) .]

6. **Results.** The investigation team shall provide the results of its investigation to the applicable department for appropriate action.

[2015, c. 283, §3 (NEW) .]

7. **Investigation team training.** The investigation team shall receive training in the following:

A. Child development; [2015, c. 283, §3 (NEW).]

B. Identification of abuse and neglect; [2015, c. 283, §3 (NEW).]

C. Interview techniques, including but not limited to techniques for interviewing children who are nonverbal or have limited verbal ability; [2015, c. 283, §3 (NEW).]

D. Licensing laws and rules applicable to facilities or persons subject to this chapter; and [2015, c. 283, §3 (NEW).]

E. Remedies available to prevent, correct or eliminate abuse and neglect in out-of-home settings. [2015, c. 283, §3 (NEW).]

[2015, c. 283, §3 (NEW) .]

SECTION HISTORY
2015, c. 283, §3 (NEW).

§8354. DUTIES OF THE INVESTIGATION TEAM

The duties of the investigation team include but are not limited to the following. [2015, c. 283, §3 (NEW).]

1. **Receive reports of alleged abuse or neglect.** The investigation team shall receive reports of alleged out-of-home abuse, neglect or suspicious child death under circumstances set out in this chapter.

A. When the investigation team receives a report that alleges abuse or neglect in facilities or by persons not subject to licensure by the department, the investigation team shall immediately refer the report to the agency or department charged with the responsibility to investigate such a report. [2015, c. 283, §3 (NEW).]

B. When the investigation team receives a report that alleges out-of-home abuse or neglect in a residential care facility, the team shall use the facility's name as the identifier. [2015, c. 283, §3 (NEW).]

C. Information that identifies, directly or indirectly, a reference, complainant or reporter of suspected abuse or neglect is confidential. [2015, c. 283, §3 (NEW).]

[2015, c. 283, §3 (NEW) .]

2. **Investigate.** The investigation team shall investigate reported out-of-home abuse or neglect or suspicious child death.

A. The investigation team shall complete an investigation within 90 days from the date that the investigation was initiated, except in circumstances when the information necessary to complete the investigation is unavailable to the investigation team. [2015, c. 283, §3 (NEW).]

B. The investigation team's investigation of a report that alleges jeopardy to a child in a residential care facility must be initiated within 3 business days of the date of receipt of the report. If the investigation team cannot initiate its investigation within 3 business days, the investigation team shall request a safety plan from the facility. [2015, c. 283, §3 (NEW).]

C. To minimize redundant department investigations in response to the same or related allegations of out-of-home abuse or neglect, the investigation team shall conduct a single investigation sufficient to determine whether abuse or neglect occurred and whether a licensing violation has occurred. The investigation team shall coordinate and consult with the department entity that performs general licensing functions. [2015, c. 283, §3 (NEW).]

D. The investigation team shall refer allegations of criminal activity to the office of the district attorney or the Office of the Attorney General when appropriate and shall coordinate its investigation with the office to which allegations are referred to minimize trauma to the child or children involved. [2015, c. 283, §3 (NEW).]

E. The investigation team's investigation of a suspicious child death is subject to and may not interfere with the authority and responsibility of the Office of the Attorney General to investigate and prosecute homicides pursuant to Title 5, section 200-A. [2015, c. 283, §3 (NEW).]

F. The investigation team shall conduct interviews as needed to investigate allegations and determine if abuse or neglect has occurred.

(1) The investigation team shall conduct interviews of a child involved in the alleged abuse or neglect in a manner that is in the best interest of the child.

(2) The investigation team shall notify the parent, guardian or legal custodian of a child prior to initiating an interview of the child except under circumstances in which prior notification is not in the child's best interest.

(3) The investigation team shall conduct an interview of a child without prior notification in accordance with section 4021, subsection 3 and rules adopted pursuant to this chapter. [2015, c. 283, §3 (NEW).]

G. The investigation team, to the extent possible, shall record interviews using audio or video in accordance with applicable rules adopted by the department and pursuant to section 4021.

(1) Information collected in an interview that was not recorded may not be excluded from use in court proceedings solely because the interview was not recorded.

(2) A person being questioned or interviewed under this chapter may not be prohibited from recording the questioning or interview. [2015, c. 283, §3 (NEW).]

H. Notwithstanding Title 20-A, section 6101, subsection 2, when the investigation team is conducting an investigation of a person at the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf who is subject to licensure by the Department of Education, the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf and the Department of Education shall disclose the following information to the investigation team:

(1) Background checks related to the person;

(2) The person's credentials;

(3) Any conduct on the part of the person related to the allegation; and

(4) Any action taken by the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf or the Department of Education in response to conduct of any person at the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf that is similar to the allegation. [2015, c. 283, §3 (NEW).]

[2015, c. 283, §3 (NEW) .]

3. **Investigative powers of commissioner.** The following are investigative powers of the commissioner.

A. The commissioner may issue a subpoena requiring a person to disclose or provide to the department information or records in that person's possession that are necessary and relevant to an investigation of a report of suspected out-of-home child abuse or neglect or suspicious child death.

(1) The department may apply to the District Court to enforce a subpoena.

(2) A person who complies with a subpoena is immune from civil or criminal liability that might otherwise result from the act of turning over or providing information or records to the department.

(3) Information or records obtained by subpoena must be treated in accordance with section 7703. [2015, c. 283, §3 (NEW).]

B. The commissioner may obtain confidential criminal history record information and other criminal history record information under Title 16, chapter 7 that the commissioner considers relevant to an investigation of out-of-home child abuse or neglect or a suspicious child death. [2015, c. 283, §3 (NEW).]

[2015, c. 283, §3 (NEW) .]

4. **Determination of harm.** The investigation team shall determine whether or not a child has been harmed, in which case the investigation team shall determine the degree of harm or threatened harm by a person responsible for the care of that child.

A. In the case of a suspicious child death, the investigation team shall determine:

(1) Whether abuse or neglect was a cause or factor contributing to the child's death; and

(2) The degree of threatened harm to any other child for whom the person or persons responsible for the deceased child may be responsible now or in the future. [2015, c. 283, §3 (NEW).]

[2015, c. 283, §3 (NEW) .]

5. **Issue a decision.** The investigation team shall issue a written decision that an allegation of abuse or neglect is unsubstantiated, indicated or substantiated. Each allegation of abuse or neglect must be considered separately. The written decision must include at least the following:

A. The factors supporting an indicated or substantiated decision; [2015, c. 283, §3 (NEW).]

B. The identity of the person or persons responsible in the case of an indicated or substantiated decision; and [2015, c. 283, §3 (NEW).]

C. The person’s right to appeal the department’s indicated or substantiated decision pursuant to paragraph B. [2015, c. 283, §3 (NEW).]

[2015, c. 283, §3 (NEW) .]

SECTION HISTORY
2015, c. 283, §3 (NEW).

§8355. RIGHT TO HEARING; APPEAL

A person who is the subject of the decision in section 8354, subsection 4 has the right to a hearing to appeal an indicated or substantiated finding of out-of-home child abuse or neglect in accordance with the provisions of the Maine Administrative Procedure Act. [2015, c. 283, §3 (NEW).]

SECTION HISTORY
2015, c. 283, §3 (NEW).

§8356. ENTITIES SUBJECT TO INVESTIGATION

Reported child abuse or neglect that occurs in the following out-of- home entities is subject to investigation by the investigation team. [2015, c. 283, §3 (NEW).]

1. **Facility or person licensed by department; facility operated or funded by department.** Abuse or neglect that occurs in a facility or by a person licensed by the department or in a facility operated or funded by the department is subject to investigation by the investigation team, including, but not limited to, abuse or neglect that occurs in the following:

A. A child care facility licensed pursuant to section 8301-A, subsection 2; [2015, c. 283, §3 (NEW).]

B. A family child care provider certified pursuant to section 8301-A, subsection 3; [2015, c. 283, §3 (NEW).]

C. A nursery school licensed pursuant to section 8402; [2015, c. 283, §3 (NEW).]

D. A children's residential care facility licensed pursuant to chapter 1669; [2015, c. 283, §3 (NEW).]

E. An emergency children's shelter licensed pursuant to chapter 1669; [2015, c. 283, §3 (NEW).]

F. A shelter for homeless children licensed pursuant to chapter 1669; [2015, c. 283, §3 (NEW).]

G. A licensed family foster home as defined in section 8101, subsection 3, including, but not limited to, the home of a resource family that provides foster care, kinship care or adoption or permanency guardianship services; [2015, c. 283, §3 (NEW).]

H. An unlicensed relative’s home approved by the department as meeting licensing standards; and [2015, c. 283, §3 (NEW).]

I. An unlicensed provider for children with cognitive impairments and functional limitations that is funded by the department pursuant to rules adopted by the department. [2015, c. 283, §3 (NEW).]

[2015, c. 283, §3 (NEW) .]

2. **Unlicensed person or facilities.** The investigation team may investigate a person or facility described in subsection 1 if the person or facility is not licensed or certified.

[2015, c. 283, §3 (NEW) .]

SECTION HISTORY
2015, c. 283, §3 (NEW).

§8357. RECORDS; CONFIDENTIALITY; DISCLOSURE

Except as otherwise provided by law and the provisions of this chapter, records that are made, acquired or retained by the department in connection with its responsibilities under this chapter are subject to the provisions set out in section 7703. [2015, c. 283, §3 (NEW).]

1. **Disclosure; report of abuse or neglect.** Notwithstanding section 7703, subsection 2, paragraph B, the department may disclose a statement indicating whether or not a report of out-of-home child abuse or neglect has been received, the nature of the alleged abuse or neglect and the conclusion reached by the investigation team, upon the conclusion of the investigation.

[2015, c. 283, §3 (NEW) .]

2. **Notification of parent, guardian or custodian of child reported to be abused.** When a report is received of child abuse or neglect in a facility or program described in section 8356, the investigation team may notify the child's parent, guardian or custodian that it has been reported that the child has been allegedly abused or neglected, whether an investigation is being conducted and, upon conclusion of the investigation, whether the investigation team determined that the allegations are supported or not supported.

[2015, c. 283, §3 (NEW) .]

3. **Notification of parents, guardians or custodians of children in facility.** When a report is received of child abuse or neglect in a facility or program described in section 8356, the investigation team, upon conclusion of the investigation, may notify a parent, guardian or custodian who has a child in the program or facility for whom there is no report of abuse or neglect whether the investigation team determined that a violation of law or rules adopted by the department has occurred.

[2015, c. 283, §3 (NEW) .]

4. **Disclosure to facility or program.** The investigation team shall notify a facility or program described in section 8356 when there is an indicated or substantiated finding of abuse or neglect against an employee of the facility or program.

[2015, c. 283, §3 (NEW) .]

5. **Disclosure of investigation.** The department may publish information regarding an investigation conducted pursuant to this chapter on the department's publicly accessible website upon the conclusion of an investigation in accordance with rules adopted by the department.

[2015, c. 283, §3 (NEW) .]

SECTION HISTORY
2015, c. 283, §3 (NEW).

§8358. RULES

The department may adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A. Rules may include but are not limited to establishing the factors that support unsubstantiated, indicated and substantiated findings. [2015, c. 283, §3 (NEW).]

SECTION HISTORY
2015, c. 283, §3 (NEW).

Chapter 1675: NURSERY SCHOOLS

§8401. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1989, c. 700, Pt. A, §98 (NEW).]

1. **Children.**

[2001, c. 645, §9 (RP) .]

2. **Nursery school.** "Nursery school" has the same meaning as in section 8301-A, subsection 1-A, paragraph D.

A. [2001, c. 645, §9 (RP).]

B. [2001, c. 645, §9 (RP).]

C. [2001, c. 645, §9 (RP).]

D. [2001, c. 645, §9 (RP).]

[2001, c. 645, §9 (AMD) .]

SECTION HISTORY
1975, c. 709, §2 (NEW). 1989, c. 700, §A98 (AMD). 2001, c. 645, §9 (AMD).

§8402. LICENSURE

1. **License required.**

[1983, c. 386, §4 (RP) .]

2. **Term of license.**

[1983, c. 386, §4 (RP) .]

3. **Requirements.** In order to receive a license from the department, a nursery school must meet the requirements of chapter 1673 applicable to nursery schools and the following requirements.

A. The department shall adopt rules regarding the health of staff as required to protect the health and safety of the children. The rules must include a requirement that every 2 years each licensee, administrator or other staff member of the nursery school who provides care for children be declared free from communicable disease by a licensed physician, except that this requirement may be waived for a person who objects on the grounds of sincerely held religious or philosophical belief. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [2001, c. 645, §10 (AMD).]

B. Drinking water that is taken from sources other than a public water system must pass a test for bacteria, nitrates and nitrites every year and must pass a partial chemical test every 4 years. [2001, c. 645, §10 (AMD).]

C. The nursery school carries minimum liability insurance of $100,000 per person and $300,000 per occurrence. [2001, c. 645, §10 (AMD).]

D. [2001, c. 645, §10 (RP).]

E. The nursery school meets, biennially, the fire safety requirements specified in section 8403, subsection 2. [2005, c. 640, §5 (AMD).]

F. [2001, c. 645, §10 (RP).]

[2005, c. 640, §5 (AMD) .]

3-A. **Rules.** The department shall establish routine technical rules pursuant to Title 5, chapter 375, subchapter II-A for the safe operation of nursery schools. These rules must be reasonably related to the health and safety of children cared for in nursery schools.

[2001, c. 266, §1 (NEW) .]

4. **License issued promptly.** The department shall issue with reasonable promptness a license to each nursery school from which the department has received and verified documentation indicating that the nursery school has met the requirements included in subsection 3.

[1975, c. 709, §2 (NEW) .]

5. **Fee.**

[1993, c. 353, §7 (AFF); 1993, c. 353, §6 (RP) .]

6. **Relationship to licensing of child care facilities.** A nursery school must be licensed as a child care facility under chapter 1673.

[2001, c. 645, §11 (AMD) .]

SECTION HISTORY
1975, c. 709, §2 (NEW). 1977, c. 497, §8 (AMD). 1983, c. 386, §4 (AMD). 1993, c. 353, §6 (AMD). 1993, c. 353, §7 (AFF). 2001, c. 266, §1 (AMD). 2001, c. 645, §§10,11 (AMD). 2005, c. 640, §5 (AMD).

§8402-A. RULES AND REGULATIONS

The department shall establish rules and regulations for the administration of medication in nursery schools. [1977, c. 497, §9 (NEW).]

SECTION HISTORY
1977, c. 497, §9 (NEW).

§8403. FIRE SAFETY

1. **Inspection required.** A license may not be issued by the department for a nursery school until the department has received from the Commissioner of Public Safety a written statement signed by one of the officials designated in Title 25, section 2360, 2391 or 2392 to make fire safety inspections.

[1997, c. 728, §14 (AMD) .]

2. **Requirements.** This written statement must be furnished biennially to the department and must indicate that the nursery school has complied with at least the requirements of the Life Safety Code of the National Fire Protection Association that are specified in:

A. The family day care homes section, if the nursery school has at least 3 but no more than 6 children per session; [1997, c. 728, §14 (AMD).]

B. The group day care homes section, if the nursery school has at least 7 but no more than 20 children per session; or [1975, c. 709, §2 (NEW).]

C. The child day care centers section, if the nursery school has more than 20 children per session. [1975, c. 709, §2 (NEW).]

[2005, c. 640, §6 (AMD) .]

3. **Fees.** The department shall establish and pay reasonable fees to the Department of Public Safety or municipal officials for each such inspection. Fees collected by the Department of Public Safety must be deposited into a special revenue account to defray expenses in carrying out this section. Any balance of fees may not lapse but must be carried forward as a continuing account to be expended for the same purposes in the following fiscal years.

[1997, c. 728, §14 (AMD) .]

SECTION HISTORY
1975, c. 709, §2 (NEW). 1997, c. 728, §14 (AMD). 2005, c. 640, §6 (AMD).

§8404. EXISTING NURSERY SCHOOLS

(REPEALED)

SECTION HISTORY
1975, c. 709, §2 (NEW). 1981, c. 470, §A119 (RP).

§8405. EXEMPTION FROM CERTAIN REQUIREMENTS FOR ACCREDITED MONTESSORI SCHOOLS

Notwithstanding any provision of this chapter or chapter 1673 or rules adopted pursuant to this chapter or chapter 1673, a nursery school that is accredited as a Montessori school by a national or international accreditation organization may apply to the commissioner for an exemption from those requirements of this chapter or chapter 1673 or rules adopted pursuant to this chapter or chapter 1673 that conflict with the recognized tenets of the Montessori philosophy. [2005, c. 224, §2 (NEW).]

The commissioner shall adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2005, c. 224, §2 (NEW).]

SECTION HISTORY
2005, c. 224, §2 (NEW).

Chapter 1677: EMERGENCY SERVICES FOR VICTIMS OF FAMILY VIOLENCE

§8501. PROVISION OF SERVICES

The Department of Health and Human Services shall provide, through social service contracts, emergency services for family members who cannot safely remain in their own homes because of violence, serious threat of violence or other serious family crisis. The emergency services shall include such services as shelter care, counseling and coordinating other necessary services. [1979, c. 565, §1 (NEW); 2003, c. 689, Pt. B, §6 (REV).]

The department shall make these services available to all areas of the State insofar as practicable. [1979, c. 565, §1 (NEW).]

SECTION HISTORY
1979, c. 565, §1 (NEW). 2003, c. 689, §B6 (REV).

Chapter 1678: ALZHEIMER SPECIAL CARE PROGRAMS

§8551. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 205, §1 (NEW).]

1. **Alzheimer special care program.** "Alzheimer special care program" means a special program or secure, locked or segregated unit within one of the following entities for individuals with a diagnosis of probable Alzheimer's disease or a related disorder to prevent or limit access by an individual to areas outside the designated or separated program or area and that advertises, markets or otherwise promotes that entity as providing specialized Alzheimer or dementia care services:

A. A residential care facility subject to licensure pursuant to chapter 1663 or 1664; [2001, c. 596, Pt. B, §20 (AMD); 2001, c. 596, Pt. B, §25 (AFF).]

B. A skilled nursing or intermediate care facility or unit subject to licensure pursuant to chapter 405; [1995, c. 205, §1 (NEW).]

C. A hospice program subject to licensure pursuant to chapter 1681; or [1995, c. 205, §1 (NEW).]

D. Other facility, including, but not limited to, assisted living, adult daycare, congregate housing and eating and lodging facilities. [1995, c. 205, §1 (NEW).]

[2001, c. 596, Pt. B, §20 (AMD); 2001, c. 596, Pt. B, §25 (AFF) .]

SECTION HISTORY
1995, c. 205, §1 (NEW). 2001, c. 596, §B20 (AMD). 2001, c. 596, §B25 (AFF).

§8552. ALZHEIMER SPECIAL CARE PROGRAM DISCLOSURE

1. **Disclosure required.** An entity that offers to provide or provides care for individuals with Alzheimer's disease or a related disorder through an Alzheimer special care program shall disclose the form of care or treatment it provides that distinguishes it as being especially applicable to or suitable for those individuals. The disclosure must be made to the department and to any individual seeking placement within an Alzheimer special care program or the individual's guardian or other responsible party. The department shall examine and verify the accuracy of all disclosures as part of an entity's license renewal procedure.

[1995, c. 205, §1 (NEW) .]

2. **Disclosure content.** The disclosure required under subsection 1 must explain the additional care provided in the Alzheimer special care program and include at a minimum:

A. The program's written statement of its philosophy and mission that reflect the needs of individuals with dementia; [2009, c. 299, Pt. A, §5 (AMD).]

B. The process and criteria for placement in, or transfer or discharge from the program; [1995, c. 205, §1 (NEW).]

C. The process used for the assessment and establishment of a plan of care and its implementation, including the methods by which the plan of care evolves and remains responsive to changes in an individual's condition; [1995, c. 205, §1 (NEW).]

D. The program's staff training and continuing education practices; [1995, c. 205, §1 (NEW).]

E. Documentation of the program's physical environment and design features appropriate to support the functioning of cognitively impaired adult individuals; [1995, c. 205, §1 (NEW).]

F. The frequency and types of individuals' activities provided by the program; [1995, c. 205, §1 (NEW).]

G. A description of family involvement and the availability of family support programs; [1995, c. 205, §1 (NEW).]

H. An itemization of the costs of care and any additional fees; and [1995, c. 205, §1 (NEW).]

I. A description of security measures provided by the facility. [1995, c. 205, §1 (NEW).]

[2009, c. 299, Pt. A, §5 (AMD) .]

SECTION HISTORY
1995, c. 205, §1 (NEW). 2009, c. 299, Pt. A, §5 (AMD).

Chapter 1679: ADULT DAY CARE PROGRAM

§8601. DEFINITION

As used in this subtitle, the term "adult day care program" means a program of care, activities and protection maintained or carried out on a regular basis by a person or combination of persons in a private dwelling or other facility, for consideration, for any part of a day for 3 or more adults, 19 years of age or older, who are not blood relatives and are coming to the facility for the express purpose of participating in this program. [1987, c. 389, §5 (NEW).]

The term does not include: [1987, c. 389, §5 (NEW).]

1. **Adult program.** Any program for adults provided by a licensed residential facility; or

[1987, c. 389, §5 (NEW) .]

2. **Any day activity program.** Any day activity program licensed by the department.

[1989, c. 502, Pt. A, §87 (AMD); 1995, c. 560, Pt. K, §82 (AMD); 1995, c. 560, Pt. K, §83 (AFF); 2001, c. 354, §3 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

SECTION HISTORY
1987, c. 389, §5 (NEW). 1989, c. 502, §A87 (AMD). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). 2003, c. 689, §B6 (REV).

§8602. RULES

The Department of Health and Human Services, in consultation with adult day care providers and the Maine Committee on Aging, shall promulgate rules for adult day care programs which shall include, but not be limited to, rules pertaining to the health and safety of the adult clients and staff, the quality of the program provided, the administration of medication and licensing procedures. [1987, c. 389, §5 (NEW); 2003, c. 689, Pt. B, §6 (REV).]

Different standards may be developed for different types of adult day care programs with differences based on number of participants or other factors affecting programming. [1987, c. 389, §5 (NEW).]

SECTION HISTORY
1987, c. 389, §5 (NEW). 2003, c. 689, §B6 (REV).

§8603. LICENSE

Beginning on July 1, 1988, no person or combination of persons may operate an adult day care program in this State without having obtained a license to operate an adult day care program from the Department of Health and Human Services. [1987, c. 389, §5 (NEW); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY
1987, c. 389, §5 (NEW). 2003, c. 689, §B6 (REV).

§8604. FEE FOR LICENSE

The department shall charge a reasonable fee for a license. There may be differential fees charged to programs based on numbers of participants, type of license or other considerations. [1987, c. 389, §5 (NEW).]

SECTION HISTORY
1987, c. 389, §5 (NEW).

§8605. FIRE SAFETY

1. **Inspection required.** A license may not be issued by the department for an adult day care program until the department has received from the Commissioner of Public Safety a written statement signed by one of the officials designated under Title 25, section 2360, 2391 or 2392 to make fire safety inspections. This statement must indicate that a facility has complied with the applicable fire safety provisions referred to in subsection 2 and Title 25, section 2452 and must be furnished annually to the department.

[1997, c. 728, §15 (AMD) .]

2. **Life Safety Code.** The written statement must be furnished annually to the department and must indicate that the adult day care program has complied with at least the requirements of the Life Safety Code of the National Fire Protection Association that are specified in:

A. The family day care homes section, if the adult day care program has no more than 6 adults per session; [1987, c. 389, §5 (NEW).]

B. The group day care homes section, if the adult day care program has at least 7 but no more than 12 adults per session; or [1987, c. 389, §5 (NEW).]

C. The child day care section, if the adult day care program has more than 13 adults per session. [1987, c. 389, §5 (NEW).]

[1997, c. 728, §15 (AMD) .]

3. **Fees.** The department shall establish and pay reasonable fees to the Department of Public Safety or municipal official for each such inspection. Fees collected by the Department of Public Safety must be deposited into a special revenue account to defray expenses in carrying out this section. Any balance of fees may not lapse but must be carried forward as a continuing account to be expended for the same purposes in the following fiscal years.

[1997, c. 728, §15 (AMD) .]

SECTION HISTORY
1987, c. 389, §5 (NEW). 1997, c. 728, §15 (AMD).

§8606. PROHIBITED EMPLOYMENT BASED ON DISQUALIFYING OFFENSES

1. **Prohibited employment based on disqualifying offenses.** An adult day care program shall conduct a comprehensive background check for direct access personnel, as defined in section 1717, subsection 1, paragraph A-2, in accordance with state law and rules adopted by the department and is subject to the employment restrictions set out in section 1812-G and other applicable federal and state laws when hiring, employing or placing direct access personnel, including, but not limited to, a certified nursing assistant or a direct care worker.

A. [2015, c. 196, §15 (RP); 2015, c. 299, §23 (RP).]

B. [2015, c. 196, §15 (RP); 2015, c. 299, §23 (RP).]

C. [2015, c. 196, §15 (RP); 2015, c. 299, §23 (RP).]

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

[2015, c. 196, §15 (AMD); 2015, c. 299, §23 (RPR) .]

SECTION HISTORY
2003, c. 634, §10 (NEW). 2011, c. 257, §18 (AMD). 2015, c. 196, §15 (AMD). 2015, c. 299, §23 (RPR).

Chapter 1680: MAINE HOSPICE COUNCIL

§8611. MAINE HOSPICE COUNCIL ESTABLISHED

The Maine Hospice Council is established to coordinate a statewide hospice program of training, education and advocacy as a body politic and a public instrumentality of the State. For the purposes of this chapter, "council" means the Maine Hospice Council. [1989, c. 596, Pt. F, §2 (NEW).]

SECTION HISTORY
1989, c. 596, §F2 (NEW).

§8612. RULE-MAKING AUTHORITY

The council has the authority to adopt rules as necessary in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, to carry out its responsibilities. [1989, c. 596, Pt. F, §2 (NEW).]

SECTION HISTORY
1989, c. 596, §F2 (NEW).

§8613. MEETINGS

The council shall meet at least once a year. Special meetings shall be held as deemed necessary by the council. The minutes of all proceedings of the council shall be a public record available and on file in the office of the council. Members of the council shall be compensated according to the provisions of Title 5, chapter 379. [1989, c. 596, Pt. F, §2 (NEW).]

SECTION HISTORY
1989, c. 596, §F2 (NEW).

§8614. COUNCIL BUDGET; FINANCING; EXECUTIVE DIRECTOR

The council shall prepare and adopt a biennial budget for presentation to the Governor and the Legislature as a request for appropriations sufficient to carry out its statutory responsibilities. The council may accept contributions of any type from any source to assist it in carrying out its responsibilities and to make arrangements regarding the administration of these funds as may be required as a condition precedent to the receipt of these funds by the Federal Government or any other source. [1991, c. 145, (AMD).]

The council may employ an executive director who shall be the principal administrative and executive employee of the council. The executive director may hire staff as necessary to carry out the responsibilities for the coordination of all affairs of the council including, but not limited to, the training and education of volunteers, health care professionals and the general public. The executive director is also responsible for advocacy on behalf of community hospices throughout the State. The executive director may obtain office space, goods and services as required to carry out these responsibilities. [1989, c. 596, Pt. F, §2 (NEW).]

SECTION HISTORY
1989, c. 596, §F2 (NEW). 1991, c. 145, (AMD).

§8615. PALLIATIVE CARE INITIATIVES

To the extent allowed by available resources, the council shall establish a palliative care consumer and professional information and education program to maximize the effectiveness of palliative care initiatives by ensuring that comprehensive and accurate information and education are available to the public, health care providers and health care facilities. The council shall publish and maintain on a publicly accessible website information and resources related to palliative care, including, but not limited to, links to external resources, continuing professional education opportunities, delivery of palliative care in the home and in primary, secondary and tertiary care environments, best practices for palliative care delivery and consumer educational materials and referral information for palliative care, including hospice care. The council may develop and implement other initiatives regarding palliative care services and education as it determines to be appropriate. The council may seek and accept funding to cover the costs of the Palliative Care and Quality of Life Interdisciplinary Advisory Council under section 1726. In performing its work under this section, the council shall consult with the Palliative Care and Quality of Life Interdisciplinary Advisory Council. [2015, c. 203, §3 (NEW).]

SECTION HISTORY
2015, c. 203, §3 (NEW).

Chapter 1681: LICENSING OF HOSPICE PROGRAMS

Subchapter 1: LICENSING OF REIMBURSED HOSPICE PROGRAMS

§8621. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1993, c. 692, §1 (NEW).]

1. **Bereavement services.** "Bereavement services" means emotional support services related to the death of a family member, including, but not limited to, counseling, provision of written material, social reorientation and group support for up to one year following the death of the client who was terminally ill. Bereavement services must be consistent with the bereavement care plan.

[1993, c. 692, §1 (NEW) .]

2. **Care plan.** "Care plan" means a written service delivery plan that the interdisciplinary team, in conjunction with the client, shall develop to reflect the changing care needs of the client. A care plan must specify what hospice services are needed and how they will be delivered.

[1993, c. 692, §1 (NEW) .]

3. **Client.** "Client" means the person who is receiving the hospice services.

[1993, c. 692, §1 (NEW) .]

4. **Council.** "Council" means the Maine Hospice Council established by section 8611.

[1993, c. 692, §1 (NEW) .]

5. **Direct service provider.** "Direct service provider" means employees or volunteers who provide hospice services directly to a client.

[1993, c. 692, §1 (NEW) .]

6. **Durable health care power of attorney.** "Durable health care power of attorney" has the same meaning as "power of attorney for health care" contained in Title 18-A, section 5-801.

[2009, c. 292, §4 (AMD); 2009, c. 292, §6 (AFF) .]

7. **Family.** "Family" means a spouse, primary caregiver, biological relatives and individuals with close personal ties to the client.

[1993, c. 692, §1 (NEW) .]

8. **Governing body.** "Governing body" means the entity that establishes policy and is legally responsible for the overall operation of a hospice program.

[1993, c. 692, §1 (NEW) .]

9. **Hospice philosophy.** "Hospice philosophy" means a philosophy of palliative care for individuals and families during the process of dying and bereavement. "Hospice philosophy" is life affirming and strengthens the client's role in making informed decisions about care. "Hospice philosophy" stresses the delivery of services in the least restrictive setting possible and with the least amount of technology necessary by volunteers and professionals who are trained to help clients with the physical, social, psychological, spiritual and emotional needs related to terminal illness.

[1993, c. 692, §1 (NEW) .]

10. **Hospice program or hospice provider.** "Hospice program" or "hospice provider" means a distinct, clearly recognizable entity that exists to provide hospice services.

[1993, c. 692, §1 (NEW) .]

11. **Hospice services.** "Hospice services" means a range of interdisciplinary services provided on a 24-hours-a-day, 7-days-a-week basis to a person who is terminally ill and that person's family. Hospice services must be delivered in accordance with hospice philosophy.

[1993, c. 692, §1 (NEW) .]

12. **Interdisciplinary team.** For a hospice providing comprehensive services, "interdisciplinary team" means a group comprised of at least a medical director, a licensed nurse, a licensed social worker, a pastoral or other counselor and a volunteer coordinator or representative. For a volunteer hospice program, "interdisciplinary team" means a regularly scheduled case conference as defined by program policy. The client, and the client's family if the client desires, must be given the opportunity and encouraged to attend interdisciplinary team meetings.

[1993, c. 692, §1 (NEW) .]

13. **Medical director.** "Medical director" means a licensed physician who oversees the medical components of hospice services and serves on the interdisciplinary team.

[1993, c. 692, §1 (NEW) .]

14. **Nurse supervisor.** "Nurse supervisor" means a licensed registered nurse with education, experience and training in hospice nursing care who is designated by the program director to oversee nursing services for the hospice program.

[1993, c. 692, §1 (NEW) .]

15. **Primary physician.** "Primary physician" means the physician identified by the client or by the person authorized to make decisions for the client pursuant to a durable health care power of attorney.

[1993, c. 692, §1 (NEW) .]

16. **Program director.** "Program director" means the person designated by the governing body of a hospice program as responsible for the day-to-day operations of the program.

[1993, c. 692, §1 (NEW) .]

17. **Terminally ill.** "Terminally ill" means that a person has a limited life expectancy in the opinion of the person's primary physician or the medical director.

[1993, c. 692, §1 (NEW) .]

18. **Volunteer.** "Volunteer" means a trained individual who works for a hospice program without compensation.

[1993, c. 692, §1 (NEW) .]

19. **Volunteer hospice program.** "Volunteer hospice program" means a hospice program that provides all direct patient care at no charge.

[1993, c. 692, §1 (NEW) .]

SECTION HISTORY
1993, c. 692, §1 (NEW). 2009, c. 292, §4 (AMD). 2009, c. 292, §6 (AFF).

§8622. LICENSING OF HOSPICE PROGRAMS

1. **License required.** Beginning January 1, 1995, a person, partnership, association or corporation may not represent itself as a hospice program, operate a hospice program or otherwise provide hospice services unless the person, partnership, association or corporation has obtained a license by the department.

[1993, c. 692, §1 (NEW) .]

2. **Licenses.** If, after receiving an application for a license, the department finds that all the conditions of licensure are met, it shall issue a license to the applicant for a period of 2 years. If the department finds less than full compliance with the conditions of licensure, it may issue a conditional license.

The department may issue a conditional license if the applicant fails to comply with applicable laws and rules but the best interest of the public would be served by issuing a conditional license. The conditional license must specify when and what corrections must be made during the term of the conditional license.

When an applicant fails to comply with applicable laws and rules, the department may refuse to issue or renew the license.

[1993, c. 692, §1 (NEW) .]

3. **Appeals.** An applicant who is denied a license, or whose application is not acted upon with reasonable promptness, has the right of appeal to the commissioner. The commissioner shall provide the appellant with reasonable notice and opportunity for a fair hearing. The commissioner or a member of the department designated and authorized by the commissioner shall hear all evidence pertinent to the matter at issue and render a decision within a reasonable period after the date of the hearing. The hearing must conform to the procedures detailed in this subsection. Review of any action or failure to act under this chapter must be pursuant to Title 5, chapter 375, subchapter VII. An action relative to the denial of a license provided under this chapter must be communicated to the applicant in writing and must include the specific reason or reasons for that action and must state that the person affected has a right to a hearing.

[1993, c. 692, §1 (NEW) .]

4. **Deemed status.** A Medicare-certified hospice is deemed to meet the licensure requirements for a hospice program if it attests in writing that it meets all state licensure requirements.

[1993, c. 692, §1 (NEW) .]

5. **Medicare certification and requirements.** Beginning July 1, 1996 any hospice program except a volunteer hospice program must be Medicare-certified and meet Medicare requirements to be eligible for licensure as a hospice program.

[1995, c. 486, §1 (AMD) .]

6. **Right of entry and inspection.** A duly designated employee of the department may enter the premises of any hospice provider who has applied for a license or who is licensed pursuant to this chapter or rules adopted pursuant to this chapter. These employees may inspect relevant documents of the hospice provider to determine whether the provider is in compliance with this chapter and rules adopted pursuant to

this chapter. The right of entry and inspection extends to any premises and documents of providers whom the department has reason to believe are providing hospice services without a license. These entries or inspections must be made with the permission of the owner or person in charge unless a warrant is first obtained from the District Court authorizing that entry or inspection under section 2148.

[1993, c. 692, §1 (NEW) .]

7. **Application fee.** Each application for a license under this chapter must be accompanied by a fee established by the department, based on the cost of survey and enforcement. All fees collected under this subsection must be deposited into the General Fund.

[1993, c. 692, §1 (NEW) .]

8. **Sanctions.** A person who violates this chapter commits a civil violation for which a forfeiture not to exceed $100 per day of violation may be adjudged.

[1993, c. 692, §1 (NEW) .]

9. **Compliance.** A hospice program must meet all appropriate state rules and federal regulations.

[1993, c. 692, §1 (NEW) .]

10. **Minimum survey requirement.** Notwithstanding subsection 4, a hospice program is not eligible for licensure or renewal of licensure unless the hospice program has had a Medicare survey or a state licensure survey within the previous 3 years.

[1993, c. 692, §1 (NEW) .]

SECTION HISTORY
1993, c. 692, §1 (NEW). 1995, c. 486, §1 (AMD).

§8623. RULES

The department shall adopt rules in accordance with Title 5, chapter 375 that specify the requirements for licensure under this chapter. The rules must require, but are not limited to, the following provisions. [1993, c. 692, §1 (NEW).]

1. **Mission statement.** A hospice program must have a clear mission statement that is consistent with hospice philosophy adopted by the council.

[1993, c. 692, §1 (NEW) .]

2. **Discreet entity.** A hospice program must be a discreet entity with at least the following features:

A. A governing body; [1993, c. 692, §1 (NEW).]

B. A program director; [1993, c. 692, §1 (NEW).]

C. An interdisciplinary team; [1993, c. 692, §1 (NEW).]

D. Volunteers; and [1993, c. 692, §1 (NEW).]

E. A medical director. [1993, c. 692, §1 (NEW).]

[1993, c. 692, §1 (NEW) .]

3. **Clients.** A hospice program may provide services to any person who consents to receive those services.

[1993, c. 692, §1 (NEW) .]

4. **Services.** Hospice services must be delivered in accordance with a care plan approved by the interdisciplinary team, regardless of whether the hospice services are provided by hospice program staff or by contractors. The care plan must provide for 24-hours-a-day, 7-days-a-week services. The care plan must be reviewed periodically by the interdisciplinary team and revised as needed. The interdisciplinary team must consider the need for at least the following services when developing the care plan:

A. Social services; [1993, c. 692, §1 (NEW).]

B. Nursing care; [1993, c. 692, §1 (NEW).]

C. Counseling; [1993, c. 692, §1 (NEW).]

D. Pastoral care; [1993, c. 692, §1 (NEW).]

E. Volunteer visits to provide comfort, companionship and respite; [1993, c. 692, §1 (NEW).]

F. Bereavement services for at least one year after the death of the person who is terminally ill; and [1993, c. 692, §1 (NEW).]

G. Medical services. [1993, c. 692, §1 (NEW).]

[1993, c. 692, §1 (NEW) .]

5. **Nursing.** Nursing services provided by a hospice program must be provided in accordance with a care plan and must be under the direction and supervision of a nurse supervisor. The nurse supervisor shall:

A. Develop nursing objectives, policies and procedures consistent with hospice philosophy; [1993, c. 692, §1 (NEW).]

B. Develop job descriptions for nursing personnel consistent with hospice philosophy; [1993, c. 692, §1 (NEW).]

C. Establish staffing and on-call schedules for nursing staff; and [1993, c. 692, §1 (NEW).]

D. Develop and implement orientation and training programs for nursing staff. [1993, c. 692, §1 (NEW).]

[1993, c. 692, §1 (NEW) .]

6. **Orientation.** Before providing any hospice service, a direct service provider must receive an orientation of at least 4 hours specific to hospice service. The policy and procedures of the provider define the agenda of the hospice orientation program. The provider shall document in personnel files that staff members have completed the 4-hour orientation. Indirect service volunteers must be oriented according to provider policies.

The hospice orientation program must include, but is not limited to, the following subjects:

A. Hospice philosophy; [1993, c. 692, §1 (NEW).]

B. Personal death awareness; [1993, c. 692, §1 (NEW).]

C. Communication skills; [1993, c. 692, §1 (NEW).]

D. Personnel issues; [1993, c. 692, §1 (NEW).]

E. Identification of hospice resource people; [1993, c. 692, §1 (NEW).]

F. Stress management; [1993, c. 692, §1 (NEW).]

G. Ethics; [1993, c. 692, §1 (NEW).]

H. Stages of dying; and [1993, c. 692, §1 (NEW).]

I. Funeral arrangements. [1993, c. 692, §1 (NEW).]

[1993, c. 692, §1 (NEW) .]

7. **Training.** A hospice program shall provide an educational program that offers a comprehensive overview of hospice philosophy and hospice care. A minimum of 18 hours of education, including 4 hours of orientation, is required for all direct service providers delivering hospice care. The educational program must include, but is not limited to, the following subjects:

A. Hospice philosophy; [1993, c. 692, §1 (NEW).]

B. Family dynamics; [1993, c. 692, §1 (NEW).]

C. Pain and symptom management; [1993, c. 692, §1 (NEW).]

D. Grief, loss and transition; [1993, c. 692, §1 (NEW).]

E. Psychological perspectives on death and dying; [1993, c. 692, §1 (NEW).]

F. Spirituality; [1993, c. 692, §1 (NEW).]

G. Communication skills; [1993, c. 692, §1 (NEW).]

H. Volunteer roles; and [1993, c. 692, §1 (NEW).]

I. Multidisciplinary management. [1993, c. 692, §1 (NEW).]

Hospice personnel who choose to provide direct service to patients are required to meet the minimum training requirement of 18 hours within one year. Documentation of completion of training is transferable from one hospice program to another.

[1993, c. 692, §1 (NEW) .]

8. **Continuing education and in-service training.** Hospice direct service providers are required to complete a minimum of 8 hours of continuing education or in-service training each year after the first year, based on date of hire.

[1993, c. 692, §1 (NEW) .]

9. **Records.** A hospice program shall maintain, at a minimum, the following records:

A. Minutes of governing body meetings; [1993, c. 692, §1 (NEW).]

B. Care plans of interdisciplinary teams; [1993, c. 692, §1 (NEW).]

C. Progress notes regarding the families receiving services; [1993, c. 692, §1 (NEW).]

D. All receipts and expenditures; [1993, c. 692, §1 (NEW).]

E. Training provided to paid staff and volunteers; and [1993, c. 692, §1 (NEW).]

F. A discharge summary for each client, a copy of which must be provided to the primary physician. [1993, c. 692, §1 (NEW).]

[1993, c. 692, §1 (NEW) .]

10. **Policies.** A hospice program shall have and follow written policies and procedures governing its operation, including, but not limited to, a policy regarding confidentiality and a policy regarding training.

[1993, c. 692, §1 (NEW) .]

11. **Required information.** A person who enters a hospice program must be given information regarding durable health care power of attorney.

[1993, c. 692, §1 (NEW) .]

12. **Quality assurance.** The hospice provider shall have a functional quality assurance or improvement plan in place that:

A. Continually monitors and evaluates the care provided; [1993, c. 692, §1 (NEW).]

B. Identifies issues and potential issues; [1993, c. 692, §1 (NEW).]

C. Proposes and implements improvements; and [1993, c. 692, §1 (NEW).]

D. Reevaluates the care provided to determine if further improvement is possible or needed. [1993, c. 692, §1 (NEW).]

[1993, c. 692, §1 (NEW) .]

SECTION HISTORY
1993, c. 692, §1 (NEW).

Subchapter 2: LICENSING OF VOLUNTEER HOSPICE PROGRAMS

§8631. VOLUNTEER HOSPICE PROGRAMS

A volunteer hospice program must comply with this section and with all provisions of subchapter I that are relevant to a volunteer hospice program. [1993, c. 692, §1 (NEW).]

1. **Direct services.** At a minimum, a direct service volunteer must:

A. Submit a written application; [1993, c. 692, §1 (NEW).]

B. Undergo a screening interview and a posttraining interview; [1993, c. 692, §1 (NEW).]

C. Attend a 20-hour standard training program; [1993, c. 692, §1 (NEW).]

D. Submit a confidentiality statement; and [1993, c. 692, §1 (NEW).]

E. If the volunteer will transport individuals, have proof of auto insurance and a valid driver's license. [1993, c. 692, §1 (NEW).]

[1993, c. 692, §1 (NEW) .]

2. **Policies and procedures.** Hospice programs shall develop and maintain policies and procedures that address the following:

A. Recruitment, retention and dismissal; [1993, c. 692, §1 (NEW).]

B. Screening; [1993, c. 692, §1 (NEW).]

C. Orientation; [1993, c. 692, §1 (NEW).]

D. Scope of function; [1993, c. 692, §1 (NEW).]

E. Supervision; [1993, c. 692, §1 (NEW).]

F. Ongoing training and support; [1993, c. 692, §1 (NEW).]

G. Interdisciplinary team conferencing; [1993, c. 692, §1 (NEW).]

H. Records of volunteer activities; and [1993, c. 692, §1 (NEW).]

I. Bereavement services. [1993, c. 692, §1 (NEW).]

[1993, c. 692, §1 (NEW) .]

3. **Duties of coordinator.** Volunteer services must be directed by a coordinator of volunteer services who shall:

A. Implement a direct service volunteer program; [1993, c. 692, §1 (NEW).]

B. Coordinate the orientation, education, support and supervision of direct service volunteers; and [1993, c. 692, §1 (NEW).]

C. Coordinate the use of direct service volunteers with other hospice staff. [1993, c. 692, §1 (NEW).]

[1993, c. 692, §1 (NEW) .]

4. **Demonstrated knowledge.** Volunteers must demonstrate knowledge of and ability to access community resources that reflect the full scope of hospice care.

[1993, c. 692, §1 (NEW) .]

SECTION HISTORY
1993, c. 692, §1 (NEW).

Chapter 1683: MAINE HEALTH DATA ORGANIZATION

§8701. DECLARATION OF PURPOSE

It is the intent of the Legislature that uniform systems of reporting health care information be established; that all providers and payors who are required to file reports do so in a manner consistent with these systems; and that, using the least restrictive means practicable for the protection of privileged health care information, public access to those reports be ensured. [1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF).]

SECTION HISTORY
1995, c. 653, §A2 (NEW). 1995, c. 653, §A7 (AFF).

§8702. DEFINITIONS

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF).]

1. **Board.** "Board" means the Board of Directors of the Maine Health Data Organization established pursuant to section 8703.

[1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF) .]

1-A. **Carrier.** "Carrier" means an insurance company licensed in accordance with Title 24-A, including a health maintenance organization, a multiple employer welfare arrangement licensed pursuant to Title 24-A, chapter 81, a preferred provider organization, a fraternal benefit society or a nonprofit hospital or medical service organization or health plan licensed pursuant to Title 24. An employer exempted from the applicability of Title 24-A, chapter 56-A under the federal Employee Retirement Income Security Act of 1974, 29 United States Code, Sections 1001 to 1461 (1988) is not considered a carrier.

[2001, c. 457, §1 (NEW) .]

1-B. (TEXT EFFECTIVE ON CONTINGENCY: See PL 2013, c. 528, §12) **Business associate.** "Business associate" has the same meaning as under 45 Code of Federal Regulations, Section 160.103 (2013).

[2013, c. 528, §2 (NEW); 2013, c. 528, §12 (AFF) .]

2. **Clinical data.** "Clinical data" includes but is not limited to the data required to be submitted by providers and payors pursuant to sections 8708 and 8711.

[2007, c. 136, §1 (AMD) .]

2-A. (TEXT EFFECTIVE ON CONTINGENCY; See PL 2013, c. 528, §12) **Covered entity.** "Covered entity" has the same meaning as under 45 Code of Federal Regulations, Section 160.103 (2013).

[2013, c. 528, §3 (NEW); 2013, c. 528, §12 (AFF) .]

3. **Financial data.** "Financial data" includes but is not limited to financial information required to be submitted pursuant to section 8709.

[1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF) .]

4. **Health care facility.** "Health care facility" means a public or private, proprietary or not-for-profit entity or institution providing health services, including, but not limited to, a radiological facility licensed under chapter 160, a health care facility licensed under chapter 405, an independent radiological service center, a federally qualified health center certified by the United States Department of Health and Human Services, Health Resources and Services Administration, a rural health clinic or rehabilitation agency certified or otherwise approved by the Division of Licensing and Regulatory Services within the Department of Health and Human Services, a home health care provider licensed under chapter 419, an assisted living program or a residential care facility licensed under chapter 1663, a hospice provider licensed under chapter 1681, a state institution as defined under Title 34-B, chapter 1 and a mental health facility licensed under Title 34-B, chapter 1. For the purposes of this chapter, "health care facility" does not include retail pharmacies.

[2011, c. 233, §1 (AMD) .]

4-A. **Health care practitioner.** "Health care practitioner" has the meaning provided in Title 24, section 2502, subsection 1-A.

[2003, c. 469, Pt. C, §18 (NEW) .]

4-B. (TEXT EFFECTIVE ON CONTINGENCY: See PL 2013, c. 528, §12) **HIPAA.** "HIPAA" means the federal Health Insurance Portability and Accountability Act of 1996.

[2013, c. 528, §4 (NEW); 2013, c. 528, §12 (AFF) .]

5. **Managed care organization.** "Managed care organization" means an organization that manages and controls medical services, including but not limited to a health maintenance organization, a preferred provider organization, a competitive medical plan, a managed indemnity insurance program and a nonprofit hospital and medical service organization, licensed in the State.

[1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF) .]

5-A. **Medicare health plan sponsor.** "Medicare health plan sponsor" means a health insurance carrier or other private company authorized by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services to administer Medicare Part C and Part D benefits under a health plan or prescription drug plan.

[2009, c. 71, §4 (AMD) .]

5-B. **Nonlicensed carrier.** "Nonlicensed carrier" means a health insurance carrier that is not required to obtain a license in accordance with Title 24-A and pays health care claims on behalf of residents of this State.

[2007, c. 136, §1 (NEW) .]

6. **Organization.** "Organization" means the Maine Health Data Organization established under this chapter.

[1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF) .]

7. **Outpatient services.** "Outpatient services" means all therapeutic or diagnostic health care services rendered to a person who has not been admitted to a hospital as an inpatient.

[1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF) .]

8. **Payor.** "Payor" means a 3rd-party payor, 3rd-party administrator, Medicare health plan sponsor, pharmacy benefits manager or nonlicensed carrier.

[2009, c. 71, §5 (AMD) .]

8-A. **Plan sponsor.** "Plan sponsor" means any person, other than an insurer, who establishes or maintains a plan covering residents of this State, including, but not limited to, plans established or maintained by 2 or more employers or jointly by one or more employers and one or more employee organizations or the association, committee, joint board of trustees or other similar group of representatives of the parties that establish or maintain the plan.

[2001, c. 457, §3 (NEW) .]

8-B. **Pharmacy benefits manager.** "Pharmacy benefits manager" has the same meaning as in Title 24-A, section 1913, subsection 1, paragraph A.

[2011, c. 443, §3 (AMD) .]

8-C. (TEXT EFFECTIVE ON CONTINGENCY: See PL 2013, c. 528, §12) **Protected health information.** "Protected health information" includes:

A. "Protected health information" as defined in 45 Code of Federal Regulations, Section 160.103 (2013); [2013, c. 528, §5 (NEW); 2013, c. 528, §12 (AFF).]

B. Individually identifiable health information:

(1) That is demographic information about an individual reported to the organization that relates to the past, present or future physical or mental health or condition of the individual;

(2) That pertains to the provision of health care to an individual; or

(3) That relates to the past, present or future payment for the provision of health care to an individual and that identifies, or with respect to which there is a reasonable basis to believe the information could be used to identify, the individual; and [2013, c. 528, §5 (NEW); 2013, c. 528, §12 (AFF).]

C. "Health care information" as defined in section 1711-C, subsection 1, paragraph E. [2013, c. 528, §5 (NEW); 2013, c. 528, §12 (AFF).]

[2013, c. 528, §5 (NEW); 2013, c. 528, §12 (AFF) .]

9. **Provider.** "Provider" means a health care facility, health care practitioner, health product manufacturer or health product vendor but does not include a retail pharmacy.

[2011, c. 233, §2 (AMD) .]

9-A. **Quality data.** "Quality data" means information on health care quality required to be submitted pursuant to section 8708-A.

[2003, c. 469, Pt. C, §20 (NEW) .]

10. **Restructuring data.** "Restructuring data" means reports, charts and information required to be submitted pursuant to section 8710.

[1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF) .]

10-A. **Third-party administrator.** "Third-party administrator" means any person who, on behalf of a plan sponsor, health care service plan, nonprofit hospital or medical service organization, health maintenance organization or insurer, receives or collects charges, contributions or premiums for, or adjusts or settles claims on, residents of this State.

[2001, c. 457, §3 (NEW) .]

11. **Third-party payor.** "Third-party payor" means a health insurer, carrier, including a carrier that provides only administrative services for plan sponsors, nonprofit hospital, medical services organization or managed care organization licensed in the State. "Third-party payor" does not include carriers licensed to issue limited benefit health policies or accident, specified disease, vision, disability, long-term care or nursing home care policies.

[2007, c. 695, Pt. A, §27 (RPR) .]

SECTION HISTORY
1995, c. 653, §A2 (NEW). 1995, c. 653, §A7 (AFF). 1997, c. 525, §1 (AMD). 1999, c. 353, §1 (AMD). 2001, c. 457, §§1-3 (AMD). 2001, c. 596, §B21 (AMD). 2001, c. 596, §B25 (AFF). 2001, c. 677, §2 (AMD). 2003, c. 469, §§C17-21 (AMD). 2003, c. 689, §B6 (REV). RR 2005, c. 2, §18 (COR). 2005, c. 253, §2 (AMD). 2007, c. 136, §1 (AMD). 2007, c. 240, Pt. VV, §2 (AMD). 2007, c. 466, Pt. B, §18 (AMD). 2007, c. 695, Pt. A, §§26, 27 (AMD). 2009, c. 71, §§4, 5 (AMD). 2011, c. 233, §§1, 2 (AMD). 2011, c. 443, §3 (AMD). 2013, c. 528, §§2-5 (AMD). 2013, c. 528, §12 (AFF).

§8703. MAINE HEALTH DATA ORGANIZATION ESTABLISHED

The Maine Health Data Organization is established as an independent executive agency. [1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF).]

1. **Objective.** The purposes of the organization are to create and maintain a useful, objective, reliable and comprehensive health information database that is used to improve the health of Maine citizens and to issue reports, as provided in section 8712. This database must be publicly accessible while protecting patient confidentiality and respecting providers of care. The organization shall collect, process, analyze and report clinical, financial, quality and restructuring data as defined in this chapter.

[2003, c. 469, Pt. C, §22 (AMD) .]

2. **Board of directors.** The organization operates under the supervision of a board of directors, which consists of 20 voting members and one nonvoting member.

A. The Governor shall appoint 18 board members in accordance with the following requirements. Appointments by the Governor are not subject to review or confirmation.

(1) Four members must represent consumers. For the purposes of this section, "consumer" means a person who is not affiliated with or employed by a 3rd-party payor, a provider or an association representing those providers or those 3rd-party payors.

(2) Three members must represent employers. One member must be chosen from a list provided by a health management coalition in this State. One member must be chosen from a list provided by a statewide chamber of commerce.

(3) Two members must represent 3rd-party payors chosen from a list provided by a statewide organization representing 3rd-party payors.

(4) Nine members must represent providers. Two provider members must represent hospitals chosen from a list provided by the Maine Hospital Association. Two provider members must be physicians or representatives of physicians, one chosen from a list provided by the Maine Medical Association and one chosen from a list provided by the Maine Osteopathic Association. One provider member must be a doctor of chiropractic chosen from a list provided by a statewide chiropractic association. One provider member must be a representative, chosen from a list provided by the Maine Primary Care Association, of a federally qualified health center. One provider member must be a pharmacist chosen from a list provided by the Maine Pharmacy Association. One provider member must be a mental health provider chosen from a list provided by the Maine Association of Mental Health Services. One provider member must represent a home health care company. [2007, c. 136, §2 (AMD).]

B. The commissioner shall appoint one member who is an employee of the department to represent the State's interest in maintaining health data and to ensure that information collected is available for determining public health policy. [2009, c. 71, §6 (AMD).]

C. [1999, c. 353, §4 (RP).]

D. The Executive Director of Dirigo Health, or a designee of the executive director who is an employee of Dirigo Health, shall serve as a voting member. [2009, c. 71, §6 (NEW).]

E. The Commissioner of Professional and Financial Regulation, or the commissioner's designee who is an employee of the Department of Professional and Financial Regulation, shall serve in a nonvoting, consultative capacity. [2009, c. 71, §6 (NEW).]

[2009, c. 71, §6 (AMD) .]

3. **Terms of office.** The terms of office of board members are determined under this subsection.

A. The terms of board members appointed by the Governor are determined as follows.

(1) Initial terms are staggered. One consumer, one employer, one 3rd-party payor and 3 providers shall serve one-year terms. Two consumers, one employer, one 3rd-party payor and 3 providers shall serve 2-year terms.

(2) After the initial terms, members appointed by the Governor shall serve full 3-year terms and shall continue to serve until their successors have been appointed.

(3) Board members may serve 3 full terms consecutively. [2005, c. 253, §4 (AMD).]

B. State agency board members may serve an unlimited number of terms. [2009, c. 71, §7 (AMD).]

[2009, c. 71, §7 (AMD) .]

4. **Meetings; officers.** Board members shall elect a chair and a vice-chair from among the membership to serve 2-year terms. All meetings of the board are public proceedings within the meaning of the Freedom of Access Law, Title 1, chapter 13, subchapter I.

[1999, c. 353, §5 (AMD) .]

5. **Legal counsel.** The Attorney General, when requested, shall furnish any legal assistance, counsel or advice the organization requires in the discharge of its duties.

[1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF) .]

6. **Compensation.** Board members are entitled to reimbursement for necessary expenses according to the provisions of Title 5, chapter 379.

[1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF) .]

SECTION HISTORY
1995, c. 653, §A2 (NEW). 1995, c. 653, §A7 (AFF). 1997, c. 53, §1 (AMD). 1997, c. 568, §1 (AMD). 1999, c. 353, §§2-5 (AMD). 2001, c. 457, §§4-6 (AMD). 2003, c. 264, §1 (AMD). 2003, c. 469, §C22 (AMD). 2005, c. 253, §§3,4 (AMD). 2007, c. 136, §2 (AMD). 2009, c. 71, §§6, 7 (AMD).

§8704. POWERS AND DUTIES OF THE BOARD

The board has the following powers and duties. [1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF).]

1. **Uniform reporting systems.** The board shall establish uniform reporting systems.

A. The board shall develop and implement policies and procedures for the collection, processing, storage and analysis of clinical, financial, quality and restructuring data in accordance with this subsection for the following purposes:

(1) To use, build and improve upon and coordinate existing data sources and measurement efforts through the integration of data systems and standardization of concepts;

(2) To coordinate the development of a linked public and private sector information system;

(3) To emphasize data that is useful, relevant and not duplicative of existing data;

(4) To minimize the burden on those providing data; and

(5) To preserve the reliability, accuracy and integrity of collected data while ensuring that the data is available in the public domain. [2003, c. 469, Pt. C, §23 (AMD).]

B. Information and data required to be filed pursuant to this chapter must be filed annually or more frequently as specified by the organization. The organization shall establish a schedule for compliance with the required uniform reporting systems. [1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF).]

C. The organization may modify the uniform reporting systems for clinical, financial, quality and restructuring data to allow for differences in the scope or type of services and in financial structure among health care facilities, providers or payors subject to this chapter. [2003, c. 469, Pt. C, §24 (AMD).]

D. The board may provide analysis of data upon request. [1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF).]

E. The board shall exempt from reporting by a provider data regarding a person who informs the provider of the person's objection, or the objection of a parent of a minor, to inclusion in data collection based on a sincerely held religious belief. [1999, c. 353, §7 (NEW).]

[2003, c. 469, Pt. C, §§23, 24 (AMD) .]

2. **Contracts for data collection; processing.** The board may contract with one or more qualified, nongovernmental, independent 3rd parties for services necessary to carry out the data collection, processing and storage activities required under this chapter. For purposes of this subsection, a group or organization affiliated with the University of Maine System is not considered a governmental entity. Unless permission is specifically granted by the board, a 3rd party hired by the organization may not release, publish or otherwise use any information to which the 3rd party has access under its contract and shall otherwise comply with the requirements of this chapter.

[2001, c. 457, §8 (AMD) .]

3. **Contracts generally.** The board may enter into all other contracts necessary or proper to carry out the powers and duties of this chapter, including contracts allowing organization staff to provide technical assistance to other public or private entities, with the proceeds used to offset the operational costs of the organization.

[2007, c. 136, §3 (AMD) .]

4. **Rulemaking.** The board shall adopt rules necessary for the proper administration and enforcement of the requirements of this chapter. All rules must be adopted in accordance with Title 5, chapter 375 and unless otherwise provided are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2011, c. 494, §7 (AMD) .]

5. **Public hearings.** The board may conduct any public hearings determined necessary to carry out its responsibilities.

[1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF) .]

6. **Staff.** The board shall appoint staff as needed to carry out the duties and responsibilities of the board under this chapter. The appointment and compensation of the staff are subject to Civil Service Law.

[1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF) .]

7. **Annual report.** The board shall prepare and submit an annual report on the operation of the organization, including any activity contracted for by the organization, with resulting net earnings, as well as on collaborative activities with other health data collection and management organizations and stakeholder groups on their efforts to improve consumer access to health care quality and price information and price transparency initiatives, to the Governor and 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 insurance and financial services matters no later than February 1st of each year. The report must include an annual accounting of all revenue received and expenditures incurred in the previous

year and all revenue and expenditures planned for the next year. The report must include a list of persons or entities that requested data from the organization in the preceding year with a brief summary of the stated purpose of the request.

[2015, c. 494, Pt. A, §26 (AMD) .]

8. **Grants.** The board may solicit, receive and accept grants, funds or anything of value from any public or private organization and receive and accept contributions of money, property, labor or any other thing of value from any legitimate source, except that the board may not accept grants from any entity that might have a vested interest in the decisions of the board.

[1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF) .]

9. **Cooperation; advice.** The board may cooperate with and advise the department and any other person or entity on behavioral risk factor surveys, work site health and safety, and health work force research.

[1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF) .]

10. **Quality improvement foundations.**

[2003, c. 469, Pt. C, §26 (RP) .]

11. **Other powers.** The board may exercise all powers reasonably necessary to carry out the powers expressly granted and responsibilities expressly imposed by this chapter.

[1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF) .]

SECTION HISTORY
1995, c. 653, §A2 (NEW). 1995, c. 653, §A7 (AFF). 1997, c. 525, §2 (AMD). 1999, c. 127, §B8 (AMD). 1999, c. 353, §§6-8 (AMD). 2001, c. 457, §§7-10 (AMD). 2003, c. 469, §§C23-26 (AMD). 2005, c. 253, §5 (AMD). 2005, c. 565, §5 (AMD). 2007, c. 136, §3 (AMD). 2007, c. 460, §§2, 3 (AMD). 2011, c. 494, §§7, 8 (AMD). 2013, c. 560, §3 (AMD). 2015, c. 494, Pt. A, §26 (AMD).

§8705. ENFORCEMENT

(REPEALED)

SECTION HISTORY
1995, c. 653, §A2 (NEW). 1995, c. 653, §A7 (AFF). 1999, c. 353, §9 (AMD). 2001, c. 457, §§11,12 (AMD). 2003, c. 452, §§K28,29 (AMD). 2003, c. 452, §X2 (AFF). 2003, c. 659, §1 (RP).

§8705-A. ENFORCEMENT

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

The board shall adopt rules to ensure that payors and providers file data as required by section 8704, subsection 1; that users that obtain health data and information from the organization safeguard the identification of patients and health care practitioners as required by section 8707, subsections 1 and 3; and that payors and providers pay all assessments as required by section 8706, subsection 2. [2003, c. 659, §2 (NEW).]

The board shall adopt rules to ensure that payors and providers file data as required by section 8704, subsection 1; that users that obtain health data and information from the organization safeguard the identification of patients and health care practitioners as required by section 8714, subsections 2, 3 and 4; and that payors and providers pay all assessments as required by section 8706, subsection 2. [2013, c. 528, §6 (AMD); 2013, c. 528, §12 (AFF).]

1. **Definitions.** As used in this section, unless the context otherwise indicates, the following definitions of "intentionally" and "knowingly" apply to this section.

A. A person acts intentionally with respect to a result of that person's conduct when it is that person's conscious object to produce such a result. [2003, c. 659, §2 (NEW).]

B. A person acts knowingly with respect to a result of that person's conduct when the person is aware that it is practically certain that that person's conduct will cause such a result. [2003, c. 659, §2 (NEW).]

[2003, c. 659, §2 (NEW) .]

2. **Rulemaking.** The board shall adopt rules to implement this section. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. The rules may contain procedures for monitoring compliance with this chapter. Rules adopted pursuant to this subsection must include a schedule of fines for:

A. Failure to file data; [2003, c. 659, §2 (NEW).]

B. Failure to pay assessments; and [2003, c. 659, §2 (NEW).]

C. Intentionally or knowingly and without authorization using or disseminating health care information that directly or indirectly identifies patients or health care practitioners performing abortions as defined in section 1596. [2003, c. 659, §2 (NEW).]

[2003, c. 659, §2 (NEW) .]

3. (TEXT EFFECTIVE UNTIL CONTINGENCY: See PL 2013, c. 528, §12) **Fines.** The following provisions apply to enforcement actions under this section except for circumstances beyond a person's or entity's control.

A. When a person or entity that is a health care facility or payor violates the requirements of this chapter, except for section 8707, that person or entity commits a civil violation for which a fine of not more than $1,000 per day may be adjudged. A fine imposed under this paragraph may not exceed $25,000 for any one occurrence. [2007, c. 136, §4 (AMD).]

B. A person or entity that receives data or information under the terms and conditions of section 8707 and intentionally or knowingly uses, sells or transfers the data in violation of the board's rules for commercial advantage, pecuniary gain, personal gain or malicious harm commits a civil violation for which a fine not to exceed $500,000 may be adjudged. [2005, c. 565, §6 (AMD).]

C. A person or entity not covered by paragraph A or B that violates the requirements of this chapter, except for section 8707, commits a civil violation for which a fine of not more than $100 per day may be adjudged. A fine imposed under this paragraph may not exceed $2,500 for any one occurrence. [2003, c. 659, §2 (NEW).]

[2007, c. 136, §4 (AMD) .]

3. (TEXT EFFECTIVE ON CONTINGENCY: See PL 2013, c. 528, §12) **Fines.** The following provisions apply to enforcement actions under this section except for circumstances beyond a person's or entity's control.

A. When a person or entity that is a health care facility or payor violates the requirements of this chapter, except for section 8707, that person or entity commits a civil violation for which a fine of not more than $1,000 per day may be adjudged. A fine imposed under this paragraph may not exceed $25,000 for any one occurrence. [2007, c. 136, §4 (AMD).]

A. When a person or entity that is a health care facility or payor violates the requirements of this chapter, except for section 8714, that person or entity commits a civil violation for which a fine of not more than $1,000 per day may be adjudged. A fine imposed under this paragraph may not exceed $25,000 for any one occurrence. [2013, c. 528, §7 (AMD); 2013, c. 528, §12 (AFF).]

B. A person or entity that receives data or information under the terms and conditions of section 8714 and intentionally or knowingly uses, sells or transfers the data in violation of the board's rules for commercial advantage, pecuniary gain, personal gain or malicious harm commits a civil violation for which a fine not to exceed $500,000 may be adjudged. [2013, c. 528, §7 (AMD); 2013, c. 528, §12 (AFF).]

C. A person or entity not covered by paragraph A or B that violates the requirements of this chapter, except for section 8714, commits a civil violation for which a fine of not more than $100 per day may be adjudged. A fine imposed under this paragraph may not exceed $2,500 for any one occurrence. [2013, c. 528, §7 (AMD); 2013, c. 528, §12 (AFF).]

[2013, c. 528, §7 (AMD); 2013, c. 528, §12 (AFF) .]

4. **Enforcement action.** Upon a finding that a person or entity has failed to comply with the requirements of this chapter, including the payment of a fine determined under this section, the board may undertake any or all of the following.

A. The board may refer the matter to the department or board that issued a license to the provider for such action as the department or board considers appropriate. [2003, c. 659, §2 (NEW).]

B. The board may refer the matter to the Department of Professional and Financial Regulation, Bureau of Insurance for such action against the payor as the bureau considers appropriate. [2003, c. 659, §2 (NEW).]

C. The board may file a complaint with the Superior Court in the county in which the person resides or the entity is located or in Kennebec County seeking an order to require that person or entity to comply with the requirements of this chapter, seeking enforcement of a fine determined under this section or seeking other relief from the court. [2003, c. 659, §2 (NEW).]

[2003, c. 659, §2 (NEW) .]

5. **Injunctive relief.** In the event of any violation of this chapter or any rule adopted pursuant to this chapter, the Attorney General may seek to enjoin a further violation and seek any other appropriate remedy provided by this chapter.

[2003, c. 659, §2 (NEW) .]

6. **Exception.**

[2009, c. 613, §7 (NEW); T. 22, §8705-A, sub-§6 (RP) .]

SECTION HISTORY
2003, c. 659, §2 (NEW). 2005, c. 565, §6 (AMD). 2007, c. 136, §4 (AMD). 2009, c. 613, §7 (AMD). 2013, c. 528, §§6, 7 (AMD). 2013, c. 528, §12 (AFF).

§8706. REVENUES AND EXPENDITURES

1. **Transition funding.**

[1999, c. 353, §10 (RP) .]

2. **Permanent funding.** Permanent funding for the organization is provided from reasonable costs, user fees and assessments according to this subsection and as provided by rules adopted by the board.

A. Fees may be charged for the reasonable costs of duplicating, mailing, publishing and supplies. [1997, c. 525, §3 (RPR).]

B. Reasonable user fees must be charged on a sliding scale for the right to access and use the health data and information available from the organization. Fees may be charged for services provided to the department on a contractual basis. Fees may be reduced or waived for users that demonstrate a plan to use the data or information in research of general value to the public health or inability to pay the scheduled fees, as provided by rules adopted by the board. [2005, c. 253, §6 (AMD).]

C. The operations of the organization must be supported from 3 sources as provided in this paragraph:

(1) Fees collected pursuant to paragraphs A and B;

(2) Annual assessments of not less than $100 assessed against the following entities licensed under Titles 24 and 24-A: nonprofit hospital and medical service organizations, health insurance carriers and health maintenance organizations on the basis of the total annual health care premium; and 3rd-party administrators, carriers that provide only administrative services for a plan sponsor and pharmacy benefits managers that process and pay claims on the basis of claims processed or paid for each plan sponsor. The assessments are to be determined on an annual basis by the board. Health care policies issued for specified disease, accident, injury, hospital indemnity, disability, long-term care or other limited benefit health insurance policies are not subject to assessment under this subparagraph. For purposes of this subparagraph, policies issued for dental services are not considered to be limited benefit health insurance policies. The total dollar amount of assessments under this subparagraph must equal the assessments under subparagraph (3); and

(3) Annual assessments of not less than $100 assessed by the organization against providers. The assessments are to be determined on an annual basis by the board. The total dollar amount of assessments under this subparagraph must equal the assessments under subparagraph (2).

The aggregate level of annual assessments under subparagraphs (2) and (3) must be an amount sufficient to meet the organization's expenditures authorized in the state budget established under Title 5, chapter 149. The annual assessment may not exceed $1,346,904 in fiscal year 2002-03. In subsequent fiscal years, the annual assessment may increase above $1,346,904 by an amount not to exceed 5% per fiscal year. The board may waive assessments otherwise due under subparagraphs (2) and (3) when a waiver is determined to be in the interests of the organization and the parties to be assessed. [2007, c. 136, §5 (AMD).]

[2007, c. 136, §5 (AMD) .]

3. **Use of funds.** The organization shall use the revenues from fees, assessments and user fees to defray the costs incurred by the board pursuant to this chapter, including staff salaries, administrative expenses, data system expenses, consulting fees and any other reasonable costs incurred to administer this chapter.

[1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF) .]

4. **Budget.** The expenditures of the organization are subject to legislative approval in the biennial budget process.

[1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF) .]

5. **Unexpended funds.** Any funds not expended at the end of a fiscal year may not lapse but must be carried forward to the succeeding fiscal year.

[1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF) .]

6. **Deposit with Treasurer of State.** The organization shall deposit all payments made pursuant to this section with the Treasurer of State into a dedicated account. The deposits must be used for the sole purpose of paying the expenses of the organization.

[1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF) .]

SECTION HISTORY
1995, c. 653, §A2 (NEW). 1995, c. 653, §A7 (AFF). 1997, c. 525, §3 (AMD). 1999, c. 353, §§10,11 (AMD). 2001, c. 457, §13 (AMD). 2005, c. 253, §6 (AMD). 2005, c. 565, §7 (AMD). 2007, c. 136, §5 (AMD).

§8707. PUBLIC ACCESS TO DATA

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL CONTINGENCY: See PL 2013, c. 528, §12)

The board shall adopt rules to provide for public access to data and to implement the requirements of this section. [1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF).]

1. **Public access; confidentiality.** The board shall adopt rules making available to any person, upon request, information, except privileged medical information and confidential information, provided to the organization under this chapter as long as individual patients are not directly or indirectly identified through a reidentification process. The board shall adopt rules to protect the identity of certain health care practitioners, as it determines appropriate, except that the identity of practitioners performing abortions as defined in section 1596 must be designated as confidential and must be protected. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

[2001, c. 457, §14 (AMD) .]

2. **Notice and comment period.** The rules must establish criteria for determining whether information is confidential clinical data, confidential financial data or privileged medical information and adopt procedures to give affected health care providers and payors notice and opportunity to comment in response to requests for information that may be considered confidential or privileged.

[2003, c. 469, Pt. C, §27 (AMD) .]

3. **Public health studies.** The rules may allow exceptions to the confidentiality requirements only to the extent authorized in this subsection.

A. The board may approve access to identifying information for patients to the department and other researchers with established protocols that have been approved by the board for safeguarding confidential or privileged information. [2001, c. 457, §15 (AMD).]

B. The rules must ensure that:

(1) Identifying information is used only to gain access to medical records and other medical information pertaining to public health;

(2) Medical information about any patient identified by name is not obtained without the consent of that patient except when the information sought pertains only to verification or comparison of health data and the board finds that confidentiality can be adequately protected without patient consent;

(3) Those persons conducting the research or investigation do not disclose medical information about any patient identified by name to any other person without that patient's consent;

(4) Those persons gaining access to medical information about an identified patient use that information to the minimum extent necessary to accomplish the purposes of the research for which approval was granted; and

(5) The protocol for any research is designed to preserve the confidentiality of all health care information that can be associated with identified patients, to specify the manner in which contact is made with patients and to maintain public confidence in the protection of confidential information. [2001, c. 457, §15 (AMD).]

C. The board may not grant approval under this subsection if the board finds that the proposed identification of or contact with patients would violate any state or federal law or diminish the confidentiality of health care information or the public's confidence in the protection of that information in a manner that outweighs the expected benefit to the public of the proposed investigation. [2001, c. 457, §15 (AMD).]

[2001, c. 457, §15 (AMD) .]

4. **Certain confidential information.** The board may determine financial data submitted to the organization under section 8709 to be confidential information if the public disclosure of the data will directly result in the provider of the data being placed in a competitive economic disadvantage. This section may not be construed to relieve the provider of the data of the requirement to disclose such information to the organization in accordance with this chapter and rules adopted by the board.

[2011, c. 524, §4 (AMD) .]

5. **Rules for release, publication and use of data.** The rules must govern the release, publication and use of analyses, reports or compilations derived from the health data made available by the organization.

[1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF) .]

SECTION HISTORY
1995, c. 653, §A2 (NEW). 1995, c. 653, §A7 (AFF). 1999, c. 353, §§12,13 (AMD). 2001, c. 457, §§14,15 (AMD). 2003, c. 469, §C27 (AMD). 2007, c. 466, Pt. A, §44 (AMD). 2011, c. 524, §4 (AMD). 2013, c. 528, §12 (AFF). 2013, c. 528, §8 (RP).

§8707. PUBLIC ACCESS TO DATA

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT REPEALED ON CONTINGENCY: See PL 2013, c. 528, §12)

SECTION HISTORY
1995, c. 653, §A2 (NEW). 1995, c. 653, §A7 (AFF). 1999, c. 353, §§12,13 (AMD). 2001, c. 457, §§14,15 (AMD). 2003, c. 469, §C27 (AMD). 2007, c. 466, Pt. A, §44 (AMD). 2011, c. 524, §4 (AMD). 2013, c. 528, §12 (AFF). 2013, c. 528, §8 (RP).

§8708. CLINICAL DATA

Clinical data must be filed, stored and managed as follows. [1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF).]

1. **Information required.** Pursuant to rules adopted by the board for form, medium, content and time for filing, each health care facility shall file with the organization the following information:

A. [1999, c. 353, §14 (RP).]

B. A completed uniform hospital discharge data set, or comparable information, for each patient discharged from the facility after June 30, 1983 and for each hospital outpatient service occurring after June 30, 1996; and [1999, c. 353, §14 (AMD).]

C. In addition to any other requirements applicable to specific categories of health care facilities, the organization may require the filing of data as set forth in this chapter or in rules adopted pursuant to this chapter. [1999, c. 353, §14 (AMD).]

[1999, c. 353, §14 (AMD) .]

2. **Additional information on ambulatory services and surgery.** Pursuant to rules adopted by the board for form, medium, content and time for filing, each provider shall file with the organization a completed data set, comparable to data filed by health care facilities under subsection 1, paragraph B. This subsection may not be construed to require duplication of information required to be filed under subsection 1.

[2001, c. 457, §16 (AMD) .]

3. **More than one licensed health care facility or location.** When more than one licensed health care facility is operated by the reporting organization, the information required by this chapter must be reported for each health care facility separately. When a provider of health care operates in more than one location, the organization may require that information be reported separately for each location.

[1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF) .]

4. **Data lists.**

[2001, c. 457, §17 (RP) .]

5. **Medical record abstract data.** In addition to the information required to be filed under subsections 1 and 2 and pursuant to rules adopted by the organization for form, medium, content and time of filing, each health care facility shall file with the organization such medical record abstract data as the organization may require.

[1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF) .]

6. **Merged data.** The board may require the discharge data submitted pursuant to subsection 1 and any medical record abstract data required pursuant to subsection 5 to be merged with associated billing data.

[1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF) .]

6-A. **Additional data.** Subject to the limitations of section 8704, subsection 1, the board may adopt rules requiring the filing of additional clinical data from other providers and payors as long as the submission of data to the organization is consistent with federal law. Data filed by payors must be provided in a format that does not directly identify the patient.

[2007, c. 136, §6 (AMD) .]

7. **Authority to obtain information.** Nothing in this section may be construed to limit the board's authority to obtain information that it considers necessary to carry out its duties. The board shall adopt rules regarding the definition, collection, use and release of clinical data before collecting any type of clinical data that it did not collect as of March 1, 2014. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[2013, c. 528, §9 (AMD) .]

SECTION HISTORY
1995, c. 653, §A2 (NEW). 1995, c. 653, §A7 (AFF). 1997, c. 525, §4 (AMD). 1999, c. 353, §14 (AMD). 2001, c. 457, §§16-18 (AMD). 2007, c. 136, §6 (AMD). 2013, c. 528, §9 (AMD).

§8708-A. QUALITY DATA

The board shall adopt rules regarding the collection of quality data. The board shall work with the Maine Quality Forum and the Maine Quality Forum Advisory Council established in Title 24-A, chapter 87, subchapter 2 to develop the rules. The rules must be based on the quality measures adopted by the Maine Quality Forum pursuant to Title 24-A, section 6951, subsection 2. The rules must specify the content, form, medium and frequency of quality data to be submitted to the organization. In the collection of quality data, the organization must minimize duplication of effort, minimize the burden on those required to provide data and focus on data that may be retrieved in electronic format from within a health care practitioner's office or health care facility. As specified by the rules, health care practitioners and health care facilities shall submit quality data to the organization. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [2003, c. 469, Pt. C, §28 (NEW).]

SECTION HISTORY
2003, c. 469, §C28 (NEW).

§8709. FINANCIAL DATA; SCOPE OF SERVICE DATA

Financial data and scope of service data must be filed, stored and managed as follows. [1999, c. 353, §15 (AMD).]

1. **Financial data.** Each health care facility shall file with the organization, in a form specified by rule pursuant to section 8704, financial information including costs of operation, revenues, assets, liabilities, fund balances, other income, rates, charges and units of services, except to the extent that the board specifies by rule that portions of this information are unnecessary.

[1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF) .]

1-A. **Hospitals; standardized accounting template.** When filing the financial information required under subsection 1, a hospital also shall file information using the standardized accounting template published in the report of the Commission to Study Maine's Community Hospitals in February 2005. The hospital shall file this information using an electronic version of the template provided to the hospital by the organization. If in succeeding years the template needs to be modified, the board shall adopt rules specifying the filing requirements. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 394, §2 (NEW) .]

2. **Certification required.** The board may require certification of such financial reports and attestation from responsible officials of the health care facility that such reports have to the best of their knowledge and belief been prepared in accordance with the requirements of the board.

[1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF) .]

3. **Scope of service data.** Each health care facility shall file with the organization scope of service information, including bed capacity by service provided, special services, ancillary services, physician profiles in the aggregate by clinical specialties, nursing services and such other scope of service information as the organization determines necessary for the performance of its duties.

[1999, c. 353, §15 (NEW) .]

SECTION HISTORY
1995, c. 653, §A2 (NEW). 1995, c. 653, §A7 (AFF). 1999, c. 353, §15 (AMD). 2005, c. 394, §2 (AMD).

§8710. RESTRUCTURING DATA

Restructuring data must be filed, stored and managed as follows. [1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF).]

1. **Major structural changes.** The board may require providers and payors to report the occurrence of major structural changes relevant to the restructuring of the delivery and financing of health care in the State and to the potential effects of that restructuring upon consumers.

[1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF) .]

2. **Rulemaking.** The board shall adopt rules to define the specific structural changes to be reported, consistent with subsection 1. The required report must be limited to the filing of a concise narrative description of those occurrences that are clearly defined by the rule as requiring a report, accompanied by a chart depicting the relationship among organizations affected by the structural change. The rule must allow a single report to be filed by all providers and payors participating in or affected by a structural change for which a report is required.

[1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF) .]

3. **Additional information.** In addition to the reports required under subsections 1 and 2, the organization may collect, store and analyze additional information from published sources and information that a provider or payor has prepared voluntarily for nonconfidential distribution to persons other than employees, officers and the governing body of the provider or payor.

[1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF) .]

4. **Construction.** Nothing in this section may be construed to require providers or payors to notify the organization prior to taking action to evaluate restructuring or to require providers or payors to generate, compile, analyze or submit information in addition to the concise narrative descriptions and chart required in subsection 2.

[1995, c. 653, Pt. A, §2 (NEW); 1995, c. 653, Pt. A, §7 (AFF) .]

SECTION HISTORY
1995, c. 653, §A2 (NEW). 1995, c. 653, §A7 (AFF).

§8711. OTHER HEALTH CARE INFORMATION

1. **Development of health care information systems.** In addition to its authority to obtain information to carry out the specific provisions of this chapter, the organization may require providers and payors to furnish information with respect to the nature and quantity of services or coverage provided to the extent necessary to develop proposals for the modification, refinement or expansion of the systems of information disclosure established under this chapter. The organization's authority under this subsection includes the design and implementation of pilot information reporting systems affecting selected categories or representative samples of providers and payors.

[2007, c. 136, §7 (AMD) .]

2. **Information on mandated services.**

[2005, c. 253, §7 (RP) .]

SECTION HISTORY
1995, c. 653, §A2 (NEW). 1995, c. 653, §A7 (AFF). 1999, c. 353, §16 (AMD). 2001, c. 457, §19 (AMD). 2005, c. 253, §7 (AMD). 2007, c. 136, §7 (AMD).

§8712. REPORTS

The organization shall produce clearly labeled and easy-to-understand reports as follows. Unless otherwise specified, the organization shall distribute the reports on a publicly accessible site on the Internet or via mail or e-mail, through the creation of a list of interested parties. The organization shall make reports available to members of the public upon request. [2009, c. 613, §8 (AMD).]

1. **Quality.** The organization shall promote public transparency of the quality and cost of health care in the State in conjunction with the Maine Quality Forum established in Title 24-A, section 6951 and shall collect, synthesize and publish information and reports on an annual basis that are easily understandable by the average consumer and in a format that allows the user to compare the information listed in this section to the extent practicable. The organization's publicly accessible websites and reports must, to the extent practicable, coordinate, link and compare information regarding health care services, their outcomes, the effectiveness of those services, the quality of those services by health care facility and by individual practitioner and the location of those services. The organization's health care costs website must provide a link in a publicly accessible format to provider-specific information regarding quality of services required to be reported to the Maine Quality Forum.

[2009, c. 2, §63 (COR) .]

2. **Payments.** The organization shall create a publicly accessible interactive website that presents reports related to payments for services rendered by health care facilities and practitioners to residents of the State. The services presented must include, but not be limited to, imaging, preventative health, radiology and surgical services and other services that are predominantly elective and may be provided to a large number of patients who do not have health insurance or are underinsured. The website must also be constructed to display prices paid by individual commercial health insurance companies, 3rd-party administrators and, unless prohibited by federal law, governmental payors. Beginning October 1, 2012, price information posted on the website must be posted semiannually, must display the date of posting and, when posted, must be current to within 12 months of the date of submission of the information.

A. [2009, c. 613, §8 (RP).]

[2011, c. 525, §1 (AMD) .]

3. **Comparison report.** At a minimum, the organization shall develop and produce an annual report that compares the 15 most common diagnosis-related groups and the 15 most common outpatient procedures for all hospitals in the State and the 15 most common procedures for nonhospital health care facilities in the State to similar data for medical care rendered in other states, when such data are available.

[2003, c. 469, Pt. C, §29 (NEW) .]

4. **Physician services.** The organization shall provide an annual report of the 10 services and procedures most often provided by osteopathic and allopathic physicians in the private office setting in this State. The organization shall distribute this report to all physician practices in the State. The first report must be produced by July 1, 2004.

[2003, c. 469, Pt. C, §29 (NEW) .]

SECTION HISTORY
2003, c. 469, §C29 (NEW). 2005, c. 391, §2 (AMD). RR 2009, c. 2, §63 (COR). 2009, c. 71, §8 (AMD). 2009, c. 350, Pt. A, §1 (AMD). 2009, c. 613, §8 (AMD). 2011, c. 525, §1 (AMD).

§8713. CONFIDENTIALITY PROTECTION FOR CERTAIN HEALTH CARE PRACTITIONERS

(REPEALED)

SECTION HISTORY
2007, c. 460, §4 (NEW). 2011, c. 494, §9 (RP).

§8714. GENERAL PUBLIC ACCESS TO DATA; RULES

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE ON CONTINGENCY: See PL 2013, c. 528, §12)

The board shall adopt rules to provide for public access to data allowed under this chapter and to implement the requirements of this section. [2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF).]

1. **Confidentiality.** All data collected by the organization that contain protected health information are confidential. Data of the organization may be collected, stored and released only in accordance with this chapter and rules adopted pursuant to this chapter. Data of the organization containing protected health information may not be open to public inspection, are not public records for purposes of any state or federal freedom of access laws and may not be examined in any judicial, executive, legislative, administrative or other proceeding as to the existence or content of any individual's identifying health information except that an individual's identifying health information may be used to the extent necessary to prosecute civil or criminal violations regarding information in the organization database. Decisions of the organization or employees and subcommittees of the organization on data release are not reviewable.

[2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF) .]

2. **General public access; confidentiality.** The board shall adopt rules making information provided to the organization under this chapter, except protected health information and other confidential information, available to any person upon request.

[2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF) .]

3. **Release of data.** The board shall adopt rules for the release of data governing all levels of information in the form of de-identified data, limited data sets and protected health information. All uses of released data are governed by the following principles of release:

A. Release of protected health information must be limited to only information that is necessary for the stated purpose of the release; [2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF).]

B. Data releases must be governed by data use agreements that provide adequate privacy and security measures that include appropriate accountability and notification requirements as required of business associate agreements under HIPAA; [2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF).]

C. Follow-up must be provided to ensure data are used as specified and that no protected health information is publicly revealed. The board shall adopt rules providing for any necessary data suppression; and [2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF).]

D. Release of more protected health information than a limited data set as described in 45 Code of Federal Regulations, Section 164.514(e) must be approved by the board consistent with state and federal laws. [2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF).]

[2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF) .]

4. **Certain practitioners.** The board shall adopt rules to protect the identity of certain health care practitioners, as it determines appropriate, except that the identity of practitioners performing abortions as defined in section 1596 must be designated as confidential and may not be disclosed.

[2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF) .]

5. **Notice and comment period.** The board shall adopt rules to establish criteria for determining whether information is confidential clinical data, confidential financial data or other protected health information and specify procedures to give affected health care practitioners and payors notice and opportunity to comment in response to requests for information that may be considered confidential.

[2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF) .]

6. **Identifying information.** The board shall adopt rules to provide that individuals may be directly or indirectly identified, including through a linking or reidentification process, only as provided in this chapter and the rules of the board. Any protected health information may be used only for the purposes for which the organization releases it.

[2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF) .]

7. **Minimum use.** The board shall adopt rules to provide that persons gaining access to protected health information may use that information to the minimum extent necessary to accomplish the purposes for which approval was granted and for no other purpose.

[2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF) .]

8. **Limitation on release.** The board may not grant approval for release of data if the board finds that the proposed identification of or contact with individuals would violate any state or federal law or diminish the confidentiality of health care information or the public's confidence in the protection of that information in a manner that outweighs the expected benefit to the public of the proposed investigation.

[2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF) .]

9. **Release; publication and use of data.** The board shall adopt rules to govern the release, publication and use of analyses, reports and compilations derived from the health data made available by the organization. The rules must apply to all data collected, stored and released by the organization, including reports under section 8712.

[2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF) .]

10. **Other privacy protections.** Individually identifiable data submitted to the organization that would be protected by Title 5, sections 19203 and 19203-D, Title 34-B, section 1207 or 42 United States Code, Section 290dd-2 may not be linked or reidentified in any way that identifies an individual or in any way for which there is a reasonable basis to believe the information could be used to identify an individual. The board shall adopt rules to ensure privacy and security protections of the data that are at least equivalent to the privacy and security requirements of HIPAA.

[2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF) .]

11. **Choice regarding disclosure of information.** The board shall adopt rules to address the provisions for requirements regarding the disclosure of information in section 8717, subsection 3.

[2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF) .]

12. **Oversight and notification to individuals.** Rules developed pursuant to this section must include a definition of "breach" and a procedure for notification to affected individuals that is equivalent to those of HIPAA. If a breach requiring notification to affected individuals has occurred, the board shall notify the joint standing committee of the Legislature having jurisdiction over health and human services matters within 30 days of the breach. Information provided pursuant to this subsection must maintain the confidentiality of all individuals affected by the breach.

[2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF) .]

13. **Individual complaints.** The board shall adopt rules to establish a process for an individual to file a complaint if the individual believes that the individual's protected health information has been released by the organization, the board or an employee of the organization, in violation of the board's rules.

[2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF) .]

14. **Rulemaking.** The board shall adopt rules as necessary to implement this section. Rules adopted pursuant to this section are major substantive rules as described in Title 5, chapter 375, subchapter 2-A.

[2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF) .]

SECTION HISTORY
2013, c. 528, §10 (NEW). 2013, c. 528, §12 (AFF).

§8715. PUBLIC HEALTH

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE ON CONTINGENCY: See PL 2013, c. 528, §12)

1. **Permitted use and disclosure to public health authorities.** The organization may disclose protected health information, without an individual's authorization, to a public health authority for public health purposes mandated by state or federal law.

[2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF) .]

2. **Use by public health authority.** A state or federal public health authority to which protected health information has been disclosed under subsection 1 may use that information for public health activities and may disclose that information for public health activities as allowed by state or federal law and in accordance with board rules on data release adopted pursuant to section 8714.

[2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF) .]

3. **Data use agreement.** Prior to disclosing any data under subsection 1, the organization shall enter into a data use agreement with a public health authority. The agreement must include protocols that have been approved by the board for safeguarding confidential information and for ensuring there will be no disclosures of protected health information. The protocols must include appropriate accountability and notification requirements as in the business associate agreements under HIPAA.

[2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF) .]

SECTION HISTORY
2013, c. 528, §10 (NEW). 2013, c. 528, §12 (AFF).

§8716. HEALTH CARE IMPROVEMENT STUDIES

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE ON CONTINGENCY: See PL 2013, c. 528, §12)

The board may approve the disclosure of protected health information to persons conducting health care improvement studies, subject to the following conditions. [2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF).]

1. **Disclosure to study entities.** For health care improvement studies, regarding health care utilization, improvement, cost or quality and involving patients with whom the study entity has a treatment or payor relationship, whether the study is funded by the Federal Government or the State Government or private persons, the organization may disclose protected health information to a study entity who is a covered entity or to the covered entity's business associates if those persons conducting the study do not disclose protected health information to any person not directly involved in the study without consent from the subject of the protected health information.

[2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF) .]

2. **Recipients of information.** A person receiving protected health information under subsection 1 may use that information only to the minimum extent necessary to accomplish the purposes of the study for which approval was granted and for no other purpose.

[2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF) .]

3. **Confidentiality; protocol.** The protocol for any study entity receiving protected health information under subsection 1 must be designed to preserve the confidentiality of all health care information that can be associated with identified patients, to specify the manner in which contact is made with patients and to maintain public confidence in the protection of confidential information.

[2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF) .]

4. **Additional protection.** The board may not grant approval to a study entity under this section for the disclosure of protected health information if the board finds that the proposed identification of or contact with patients would violate any state or federal law or diminish the confidentiality of health care information or the public's confidence in the protection of that information in a manner that outweighs the expected benefit to the public of the proposed investigation.

[2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF) .]

5. **Data use agreement.** Prior to disclosing any data pursuant to subsection 1, the organization shall enter into a data use agreement with a study entity. The agreement must include protocols that have been approved by the board for safeguarding confidential information and for ensuring there will be no disclosures of protected health information. The protocols must include appropriate accountability and notification requirements as in business associate agreements under HIPAA.

[2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF) .]

SECTION HISTORY
2013, c. 528, §10 (NEW). 2013, c. 528, §12 (AFF).

§8717. COVERED ENTITIES' ACCESS TO PROTECTED HEALTH INFORMATION

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE ON CONTINGENCY: See PL 2013, c. 528, §12)

1. **Permitted uses and disclosures; definitions.** The organization may disclose protected health information without authorization by the subject of the information for the treatment activities of any health care provider, the payment activities of a covered entity and of any health care provider or the health care operations of a covered entity or its business associates involving either quality or competency assurance activities or fraud and abuse detection and compliance activities, if the covered entity has a relationship with the subject of the information and the protected health information pertains to the relationship. For the purposes of this section:

A. "Health care operations" means any of the following activities of a covered entity:

(1) Quality assessment and improvement activities, including case management and care coordination;

(2) Competency assurance activities, including provider or health plan performance evaluation, credentialing and accreditation;

(3) Conducting or arranging for medical reviews, audits or legal services, including fraud and abuse detection and compliance programs;

(4) Specified insurance functions, such as underwriting, risk rating and reinsuring risks;

(5) Business planning, development, management and administration; and

(6) Business management and general administrative activities of the covered entity, including but not limited to de-identifying protected health information, creating a limited data set and permissible fund-raising for the benefit of the covered entity; [2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF).]

B. "Payment activities" means activities of a health plan to obtain premiums, determine or fulfill responsibilities for coverage and provision of benefits and furnish or obtain reimbursement for health care delivered to an individual and activities of a health care provider to obtain payment or be reimbursed for the provision of health care to an individual; and [2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF).]

C. "Treatment" means the provision, coordination or management of health care and related services for an individual by one or more health care providers, including consultation between providers regarding an individual and referral of an individual by one provider to another. [2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF).]

[2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF) .]

2. **Minimum necessary.** The board shall develop policies and procedures that reasonably limit disclosures of, and requests for, protected health information for payment activities and health care operations to the minimum extent necessary.

[2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF) .]

3. **Choice regarding disclosure of information.** Before approving the release of any protected health information under this chapter, the organization shall implement a mechanism that allows an individual to choose to not allow the organization to disclose and use the individual's health information under this chapter.

[2013, c. 528, §10 (NEW); 2013, c. 528, §12 (AFF) .]

SECTION HISTORY
2013, c. 528, §10 (NEW). 2013, c. 528, §12 (AFF).

Chapter 1684: SENTINEL EVENTS REPORTING

§8751. SENTINEL EVENT REPORTING

There is established under this chapter a system for reporting sentinel events for the purpose of improving the quality of health care and increasing patient safety. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

SECTION HISTORY
2001, c. 678, §1 (NEW). 2001, c. 678, §3 (AFF).

§8752. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

1. **Division.** "Division" means the Department of Health and Human Services, Division of Licensing and Regulatory Services.

[2009, c. 358, §1 (AMD) .]

2. **Health care facility.** "Health care facility" or "facility" means a state institution as defined under Title 34-B, chapter 1 or a health care facility licensed by the division, except that it does not include a facility licensed as a nursing facility or licensed under chapter 1664. "Health care facility" includes a general and specialty hospital, an ambulatory surgical facility, an end-stage renal disease facility and an intermediate care facility for persons with intellectual disabilities or other developmental disabilities.

[2011, c. 542, Pt. A, §48 (AMD) .]

2-A. **Immediate jeopardy.** "Immediate jeopardy" means a situation in which the provider's noncompliance with one or more conditions of participation in the federal Medicare program has caused, or is likely to cause, serious injury, harm or impairment to or death of a patient.

[2009, c. 358, §1 (NEW) .]

3. **Major permanent loss of function.** "Major permanent loss of function" means sensory, motor, physiological or intellectual impairment that was not present at the time of admission and requires continued treatment or imposes persistent major restrictions in activities of daily living.

[2009, c. 358, §1 (AMD) .]

3-A. **Near miss.** "Near miss" means an event or situation that did not produce patient injury, but only because of chance, which may include, but is not limited to, robustness of the patient or a fortuitous, timely intervention.

[2009, c. 358, §1 (NEW) .]

3-B. **Root cause analysis.** "Root cause analysis" means a structured process for identifying the causal or contributing factors underlying adverse events. The root cause analysis follows a predefined protocol for identifying these specific factors in causal categories.

[2009, c. 358, §1 (NEW) .]

4. **Sentinel event.**

[2009, c. 358, §1 (RP) .]

4-A. **Sentinel event.** "Sentinel event" means:

A. An unanticipated death, or patient transfer to another health care facility, unrelated to the natural course of the patient's illness or underlying condition or proper treatment of that illness or underlying condition in a health care facility; [2009, c. 358, §1 (NEW).]

B. A major permanent loss of function unrelated to the natural course of the patient's illness or underlying condition or proper treatment of that illness or underlying condition in a health care facility that is present at the time of the discharge of the patient. If within 2 weeks of discharge from the facility, evidence is discovered that the major loss of function was not permanent, the health care facility is not required to submit a report pursuant to section 8753, subsection 2; [2009, c. 358, §1 (NEW).]

C. An unanticipated perinatal death or major permanent loss of function in an infant with a birth weight over 2,500 grams that is unrelated to the natural course of the infant's or mother's illness or underlying condition or proper treatment of that illness or underlying condition in a health care facility; and [2009, c. 358, §1 (NEW).]

D. Other serious and preventable events as identified by a nationally recognized quality forum and determined in rules adopted by the department pursuant to section 8756. [2009, c. 358, §1 (NEW).]

[2009, c. 358, §1 (NEW) .]

SECTION HISTORY
RR 2001, c. 2, §A38 (AFF). RR 2001, c. 2, §A37 (COR). 2001, c. 678, §1 (NEW). 2001, c. 678, §3 (AFF). 2007, c. 324, §17 (REV). 2009, c. 358, §1 (AMD). 2011, c. 542, Pt. A, §48 (AMD).

§8753. MANDATORY REPORTING OF SENTINEL EVENTS

A health care facility shall notify the division whenever a sentinel event has occurred, as provided in this chapter. [2009, c. 358, §2 (AMD).]

1. **Notification.** A health care facility shall notify the division of a sentinel event by the next business day after the event occurred or the next business day after the facility discovers that the event occurred. The notification must include the date and time of notification, the name of the health care facility and the type of sentinel event pursuant to section 8752, subsection 4-A.

[2009, c. 358, §2 (AMD) .]

2. **Reporting.** The health care facility shall file a written report no later than 45 days following the notification of the occurrence of a sentinel event pursuant to subsection 1. The written report must be signed by the chief executive officer of the facility and must contain the following information:

A. Facility name and address; [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

B. Name, title and phone number of the contact person for the facility; [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

C. The date and time of the sentinel event; [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

D. The type of sentinel event and a brief description of the sentinel event; and [2009, c. 358, §2 (AMD).]

E. [2009, c. 358, §2 (RP).]

F. [2009, c. 358, §2 (RP).]

G. [2009, c. 358, §2 (RP).]

H. A thorough and credible root cause analysis. A root cause analysis is thorough and credible only in accordance with the following.

(1) A thorough root cause analysis must include: a determination of the human and other factors most directly associated with the sentinel event and the processes and systems related to its occurrence; an analysis of the underlying systems and processes to determine where redesign might reduce risk; an inquiry into all areas appropriate to the specific type of event; an identification of risk points and their potential contributions to the event; a determination of potential improvement in processes or systems that would tend to decrease the likelihood of such an event in the future or a determination, after analysis, that no such improvement opportunities exist; an action plan that identifies changes that can be implemented to reduce risks or formulates a rationale for not undertaking such changes; and, where improvement actions are planned, an identification of who is responsible for implementation, when the action will be implemented and how the effectiveness of the action will be evaluated.

(2) A credible root cause analysis must include participation by the leadership of the health care facility and by the individuals most closely involved in the processes and systems under review, is internally consistent without contradictions or unanswered questions, provides an explanation for all findings, including those identified as "not applicable" or "no problem," and includes the consideration of any relevant literature.

(3) The root cause analysis submitted to the division may exclude protected professional competence review information pursuant to the Maine Health Security Act. [2009, c. 358, §2 (NEW).]

[2009, c. 358, §2 (AMD) .]

3. **Cooperation.** A health care facility that has filed a notification or a report of the occurrence of a sentinel event under this section shall cooperate with the division as necessary for the division to fulfill its duties under section 8754.

[2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF) .]

4. **Immunity.** A person who in good faith reports a near miss, a suspected sentinel event or a sentinel event or provides a root cause analysis pursuant to this chapter is immune from any civil or criminal liability for the act of reporting or participating in the review by the division. "Good faith" does not include instances when a false report is made and the person reporting knows the report is false. This subsection may not be construed to bar civil or criminal action regarding perjury or regarding the sentinel event that led to the report.

[2009, c. 358, §2 (AMD) .]

5. **Near miss notification.** A health care facility may notify the division of the occurrence of a near miss. Should a facility report a near miss, the notification must include the date and time of notification, the name of the health care facility and the type of event or situation pursuant to section 8752, subsection 4-A that is related to the near miss.

[2009, c. 358, §2 (NEW) .]

SECTION HISTORY
2001, c. 678, §1 (NEW). 2001, c. 678, §3 (AFF). 2009, c. 358, §2 (AMD).

§8753-A. STANDARDIZED PROCEDURE

A health care facility shall have a written standardized procedure for the identification of sentinel events. The division shall develop the standardized reporting and notification procedures by adoption of routine technical rules under Title 5, chapter 375, subchapter 2-A. [2009, c. 358, §3 (NEW).]

SECTION HISTORY
2009, c. 358, §3 (NEW).

§8754. DIVISION DUTIES

The division has the following duties under this chapter. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

1. **Initial review; other action.** Upon receipt of a notification or report of a sentinel event, the division shall complete an initial review and may take such other action as the division determines to be appropriate under applicable rules and within the jurisdiction of the division. Upon receipt of a notification or report of a suspected sentinel event the division shall determine whether the event constitutes a sentinel event and complete an initial review and may take such other action as the division determines to be appropriate under applicable rules and within the jurisdiction of the division. The division may conduct on-site reviews of medical records and may retain the services of consultants when necessary to the division.

A. The division may conduct on-site visits to health care facilities to determine compliance with this chapter. [2009, c. 358, §4 (NEW).]

B. Division personnel responsible for sentinel event oversight shall report to the division's licensing section only incidences of immediate jeopardy and each condition of participation in the federal Medicare program related to the immediate jeopardy for which the provider is out of compliance. [2009, c. 358, §4 (NEW).]

[2009, c. 358, §4 (AMD) .]

2. **Procedures.** The division shall adopt procedures for the reporting, reviewing and handling of information regarding sentinel events. The procedures must provide for electronic submission of notifications and reports.

[2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF) .]

3. **Confidentiality.** Notifications and reports filed pursuant to this chapter and all information collected or developed as a result of the filing and proceedings pertaining to the filing, regardless of format, are confidential and privileged information.

A. Privileged and confidential information under this subsection is not:

(1) Subject to public access under Title 1, chapter 13, except for data developed from the reports that do not identify or permit identification of the health care facility;

(2) Subject to discovery, subpoena or other means of legal compulsion for its release to any person or entity; or

(3) Admissible as evidence in any civil, criminal, judicial or administrative proceeding. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

B. The transfer of any information to which this chapter applies by a health care facility to the division or to a national organization that accredits health care facilities may not be treated as a waiver of any privilege or protection established under this chapter or other laws of this State. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

C. The division shall take appropriate measures to protect the security of any information to which this chapter applies. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

D. This section may not be construed to limit other privileges that are available under federal law or other laws of this State that provide for greater peer review or confidentiality protections than the peer review and confidentiality protections provided for in this subsection. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

E. For the purposes of this subsection, "privileged and confidential information" does not include:

(1) Any final administrative action;

(2) Information independently received pursuant to a 3rd-party complaint investigation conducted pursuant to department rules; or

(3) Information designated as confidential under rules and laws of this State. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

This subsection does not affect the obligations of the department relating to federal law.

[2009, c. 358, §5 (AMD) .]

4. **Report.** The division shall submit an annual report by February 1st each year to the Legislature, health care facilities and the public that includes summary data of the number and types of sentinel events of the prior calendar year by type of health care facility, rates of change and other analyses and an outline of areas to be addressed for the upcoming year.

[2009, c. 358, §6 (AMD) .]

SECTION HISTORY
2001, c. 678, §1 (NEW). 2001, c. 678, §3 (AFF). 2009, c. 358, §§4-6 (AMD).

§8755. COMPLIANCE

1. **Oversight.** The division shall place primary emphasis on ensuring effective corrective action by the facility.

[2009, c. 358, §7 (NEW) .]

2. **Penalties.** When the division determines that a health care facility failed to report a sentinel event pursuant to this chapter, the health care facility is subject to a penalty imposed in conformance with Title 5, chapter 375, subchapter 4 and payable to the State of not more than $10,000 per violation. If the facility in good faith notified the division of a suspected sentinel event and the division later determines it is a sentinel event, the facility is not subject to a penalty for that event. Funds collected pursuant to this section must be deposited in a dedicated special revenue account to be used to support sentinel event reporting and education.

[2009, c. 358, §7 (NEW) .]

3. **Administrative hearing and appeal.** To contest the imposition of a penalty under this section, a health care facility must submit to the division a written request for an administrative hearing within 10 days of notice of imposition of a penalty pursuant to this section. Judicial appeal must be in accordance with Title 5, chapter 375, subchapter 7.

[2009, c. 358, §7 (NEW) .]

4. **Injunction.** Notwithstanding any other remedies provided by law, the Office of the Attorney General may seek an injunction to require compliance with the provisions of this chapter.

[2009, c. 358, §7 (NEW) .]

5. **Enforcement.** The Office of the Attorney General may file a complaint with the District Court seeking injunctive relief for violations of this chapter.

[2009, c. 358, §7 (NEW) .]

SECTION HISTORY
2001, c. 678, §1 (NEW). 2001, c. 678, §3 (AFF). 2009, c. 358, §7 (RPR).

§8756. RULEMAKING

The department shall adopt rules to implement this chapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

SECTION HISTORY
2001, c. 678, §1 (NEW). 2001, c. 678, §3 (AFF).

Chapter 1684-A: SCREENING FOR METHICILLIN-RESISTANT STAPHYLOCOCCUS AUREUS AND CLOSTRIDIUM DIFFICILE

§8761. METHICILLIN-RESISTANT STAPHYLOCOCCUS AUREUS AND CLOSTRIDIUM DIFFICILE

All hospitals licensed under chapter 405 shall: [2011, c. 316, §1 (RPR).]

1. **Enrollment.** No later than October 1, 2011, enroll and shall maintain enrollment after that date in the National Healthcare Safety Network within the United States Department of Health and Human Services, Centers for Disease Control and Prevention, Division of Healthcare Quality Promotion, referred to in this section as "the network";

[2011, c. 316, §1 (NEW) .]

2. **Submission of MRSA data.** No later than October 1, 2011, submit to the network infection data for nosocomial methicillin-resistant Staphylococcus aureus, referred to in this section as "MRSA," for all inpatients on a monthly basis in accordance with the protocols defined by the United States Department of Health and Human Services, Centers for Disease Control and Prevention;

[2011, c. 316, §1 (NEW) .]

3. **Access to MRSA data.** No later than November 1, 2011, authorize, for public health surveillance purposes only, the Maine Center for Disease Control and Prevention's access to the facility-specific infection rates for nosocomial MRSA contained in the network database;

[2011, c. 316, §1 (NEW) .]

4. **Authorization to Maine Health Data Organization regarding MRSA data.** Upon completion of data validation by the Maine Center for Disease Control and Prevention in partnership with a statewide collaborative for infection prevention, authorize, for public reporting purposes only, the Maine Health Data Organization's access to the facility-specific infection rates for nosocomial MRSA contained in the network database;

[2011, c. 316, §1 (NEW) .]

5. **Submission of C. diff data.** Beginning January 1, 2012, submit to the network infection data for nosocomial Clostridium difficile, referred to in this section as "C. diff," for all inpatients on a monthly basis in accordance with the protocols defined by the United States Department of Health and Human Services, Centers for Disease Control and Prevention;

[2011, c. 316, §1 (NEW) .]

6. **Access to C. diff data.** No later than July 1, 2012, authorize, for public health surveillance purposes only, the Maine Center for Disease Control and Prevention's access to the facility-specific infection rates for nosocomial C. diff contained in the network database; and

[2011, c. 316, §1 (NEW) .]

7. **Authorization to Maine Health Data Organization regarding C. diff data.** Upon completion of data validation by the Maine Center for Disease Control and Prevention in partnership with a statewide collaborative for infection prevention, authorize, for public reporting purposes only, the Maine Health Data Organization's access to the facility-specific infection rates for nosocomial C. diff contained in the network database.

[2011, c. 316, §1 (NEW) .]

The Maine Health Data Organization shall adopt rules regarding public reporting of data reported to the United States Department of Health and Human Services, Centers for Disease Control and Prevention regarding MRSA and C. diff in accordance with this section. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [2011, c. 316, §1 (NEW).]

SECTION HISTORY

2009, c. 346, §1 (NEW). 2011, c. 316, §1 (RPR).

Chapter 1685: QUALITY EMPLOYMENT AND BUSINESS OWNERSHIP OPPORTUNITIES PROGRAM

§8801. DEFINITIONS

(REPEALED)

SECTION HISTORY
1997, c. 484, §1 (NEW). MRSA T. 22, §8811 (RP).

§8802. QUALITY EMPLOYMENT AND BUSINESS OWNERSHIP OPPORTUNITIES PROGRAM

(REPEALED)

SECTION HISTORY
1997, c. 484, §1 (NEW). MRSA T. 22, §8811 (RP).

§8803. ELIGIBILITY FOR GRANTS

(REPEALED)

SECTION HISTORY
1997, c. 484, §1 (NEW). MRSA T. 22, §8811 (RP).

§8804. APPLICATION PROCEDURE

(REPEALED)

SECTION HISTORY
1997, c. 484, §1 (NEW). MRSA T. 22, §8811 (RP).

§8805. PROGRAM REQUIREMENTS

(REPEALED)

SECTION HISTORY
1997, c. 484, §1 (NEW). MRSA T. 22, §8811 (RP).

§8806. AVAILABILITY OF FUNDS

(REPEALED)

SECTION HISTORY
1997, c. 484, §1 (NEW). MRSA T. 22, §8811 (RP).

§8807. MONITORING OF GRANTEES

(REPEALED)

SECTION HISTORY
1997, c. 484, §1 (NEW). MRSA T. 22, §8811 (RP).

§8808. JOB BANK

(REPEALED)

SECTION HISTORY
1997, c. 484, §1 (NEW). MRSA T. 22, §8811 (RP).

§8809. RULES

(REPEALED)

SECTION HISTORY
1997, c. 484, §1 (NEW). MRSA T. 22, §8811 (RP).

§8810. REPORT TO LEGISLATURE

(REPEALED)

SECTION HISTORY
1997, c. 484, §1 (NEW). MRSA T. 22, §8811 (RP).

§8811. EFFECTIVE DATE

(REPEALED)

SECTION HISTORY
1997, c. 484, §1 (NEW). MRSA T. 22, §8811 (RP).

Chapter 1686: NEWBORN HEARING PROGRAM

§8821. NEWBORN HEARING PROGRAM ESTABLISHED

There is established within the department the Newborn Hearing Program, referred to in this chapter as the "program," to enable children and their families and caregivers to obtain information regarding hearing screening and evaluation and to learn about treatment and intervention services at the earliest opportunity in order to prevent or mitigate developmental delays and academic failures associated with undetected hearing loss. The obligations of the department regarding this program begin when funding is available to the department to implement the program. [1999, c. 647, §2 (NEW).]

SECTION HISTORY
1999, c. 647, §2 (NEW).

§8822. PROGRAM REQUIREMENTS

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

A. "Birth admission" means the time after birth that the newborn remains in the hospital nursery prior to discharge. [1999, c. 647, §2 (NEW).]

B. "Board" means the Newborn Hearing Screening Advisory Board. [1999, c. 647, §2 (NEW).]

C. "Hearing loss" means a hearing loss of 30 decibels or more in the frequency region important for speech recognition and comprehension in one or both ears. The department may adopt rules to decrease the amount of decibels of hearing loss as technology allows for detection of hearing loss of 15 to 25 decibels in one or both ears. [1999, c. 647, §2 (NEW).]

D. "Intervention" or "treatment" means the early intervention services described in the federal Individuals with Disabilities Education Act, 20 United States Code, Chapter 33, Subchapter III, Sections 1431 to 1445, as amended. "Intervention" or "treatment" includes, but is not limited to, audiological, medical or early educational services that provide a choice of methods of communication in a variety of sensory modalities. [1999, c. 647, §2 (NEW).]

E. "Parent" means a natural parent, stepparent, adoptive parent, legal guardian or other legal custodian of a child. [1999, c. 647, §2 (NEW).]

F. "Person who is culturally deaf" means a person with permanent hearing loss who identifies as a member of the deaf community and who utilizes American Sign Language as the primary mode of communication. [1999, c. 647, §2 (NEW).]

G. "Person who is hard-of-hearing" or "person who is deaf" means a person with permanent hearing loss who communicates using aural or oral skills for accessing spoken language. [1999, c. 647, §2 (NEW).]

[1999, c. 647, §2 (NEW) .]

2. **Information to parents of children born in hospitals.** Beginning November 1, 2000, a hospital shall provide information to the parents of children born in the hospital regarding the importance of screening the hearing of newborns and of receiving follow-up care. The information must explain the process of hearing screening, the likelihood of a child having a hearing loss, follow-up procedures and community resources and must include a description of the normal auditory, speech and language development process in children. The hospital must provide information about hearing screening that may be provided at the hospital or coordinated, scheduled or arranged for by the hospital. The program must provide this information prior to discharge from the birth admission to the hospital or within 3 months of discharge.

[1999, c. 647, §2 (NEW) .]

3. **Information to parents of children born outside of hospitals.** By November 1, 2002, when a newborn is delivered in a facility other than a hospital, the department shall provide information to the parents on the merits of having the hearing screening performed and on the availability of the hearing screening within 3 months of the date of birth.

[1999, c. 647, §2 (NEW) .]

4. **Guidelines for services for children with hearing loss and at-risk children.** The department, after consultation with the board, shall establish guidelines for the provision of follow-up services for newborn children in the State who are identified as having or being at risk of developing hearing loss. These services must include, but are not limited to, diagnostic audiologic assessment, counseling and educational services for the parents and an explanation of the potential effects of the identified hearing loss on the development of the newborn's speech, language and cognitive skills as well as the potential benefits of early identification and use of spoken or sign language.

[1999, c. 647, §2 (NEW) .]

4-A. **Follow-up appointment with an audiologist.** Upon the approval of a parent or legal guardian of a newborn who is screened and receives a screening result of "refer," the birthing hospital, birthing center, hospital or other medical facility in which the child was screened must schedule the newborn for a follow-up appointment with an audiologist. That follow-up appointment must be scheduled prior to discharge, when possible. The hospital, center or facility must notify the newborn's primary care provider in writing of the screening result and audiologist appointment. This notice must be prepared prior to discharge, when possible.

[2007, c. 646, §1 (NEW) .]

5. **Reporting.** Beginning January 1, 2003, every hospital and other location providing birthing services shall report annually to the department concerning the following:

A. The number of newborns born in the hospital or location, the number screened at birth admission and the number of newborns who passed and did not pass the screening; [1999, c. 647, §2 (NEW).]

B. The number of newborns and infants who participated in follow-up rescreening at that hospital or location and the number who passed the rescreening; [1999, c. 647, §2 (NEW).]

C. The number of newborns recommended for monitoring, intervention and follow-up care; [1999, c. 647, §2 (NEW).]

D. The number of newborns and infants recommended for diagnostic audiologic evaluation; and [1999, c. 647, §2 (NEW).]

E. The number of newborns whose parents declined screening. [1999, c. 647, §2 (NEW).]

[1999, c. 647, §2 (NEW) .]

6. **Application.** The requirements of this section apply to all hospitals licensed under this Title and to other locations providing birthing services.

[1999, c. 647, §2 (NEW) .]

SECTION HISTORY
1999, c. 647, §2 (NEW). 2007, c. 646, §1 (AMD).

§8823. NEWBORN HEARING SCREENING ADVISORY BOARD

The Newborn Hearing Screening Advisory Board, as established in Title 5, section 12004-G, subsection 14-C, is created to provide oversight and advice on the program. The department shall provide administrative support services required by the board. [1999, c. 647, §2 (NEW).]

1. **Duties.** The board shall perform the following duties.

A. The board shall oversee the program and advise the commissioner on issues relating to the program and shall recommend procedures for hearing screening, evaluation, treatment and intervention services. [1999, c. 647, §2 (NEW).]

B. Beginning January 1, 2001, the board shall report each year to the joint standing committees of the Legislature having jurisdiction over health and human services matters and education matters on the program, the percentages of children being screened and evaluated and those children being offered and receiving intervention and treatment services. The report must be made available to the public. [1999, c. 647, §2 (NEW).]

[1999, c. 647, §2 (NEW) .]

2. **Composition of board.** The board consists of an odd number of members, numbering at least 15, appointed by the Governor, including but not limited to:

A. An audiologist, a physician, a speech-language pathologist, a nurse, a certified teacher of the deaf and a person who provides early intervention services to children who are deaf or hard-of-hearing through the Govenor Baxter School for the Deaf; [1999, c. 647, §2 (NEW).]

B. A person who is culturally deaf, a person who is hard-of-hearing or deaf, a parent of a child who is culturally deaf, a parent of a child who is hard-of-hearing or deaf and a parent of a hearing child; and [1999, c. 647, §2 (NEW).]

C. A representative of hospitals, a representative of health carriers, a representative of the early childhood special education program under Title 20-A, chapter 303 and a representative of the department. [2005, c. 662, Pt. A, §42 (AMD).]

[2005, c. 662, Pt. A, §42 (AMD) .]

3. **Reimbursement for expenses.** Board members may be reimbursed for reasonable and necessary expenses incurred to attend board meetings but are not entitled to per diem payments.

[1999, c. 647, §2 (NEW) .]

4. **Funding.** The department shall provide financial and staff support for the board. The department shall submit grant proposals for funding the program to the Federal Government under the federal Newborn and Infant Hearing Screening and Intervention Act of 1999 and under 42 United States Code, Chapter 7, Subchapter V.

[1999, c. 647, §2 (NEW) .]

SECTION HISTORY
1999, c. 647, §2 (NEW). 2005, c. 662, §A42 (AMD).

§8824. TRACKING SYSTEM

The department is authorized to implement a tracking system that provides the information necessary to effectively plan, establish and evaluate a comprehensive system of developmentally appropriate services for newborn infants and children up to 3 years of age who are deaf or hard-of-hearing and to ensure that all families are given information regarding the availability of hearing screening for their infants. The services must be designed to reduce the likelihood of associated disabling conditions for these children. The tracking system may be integrated with any national database or similar system developed by the Federal Government or with any regional database or with both. [2007, c. 508, §2 (AMD).]

1. **Mandatory reporting.** Once the tracking system is operating, all hospitals licensed in the State and other providers of services that have established hearing screening or diagnostic procedures for newborn infants and children up to 3 years of age shall report to the department all data on hearing screening, evaluation and diagnoses of newborn infants and children up to 3 years of age. Reports that are required under this subsection must be submitted at least monthly.

[2007, c. 236, §2 (AMD) .]

1-A. **Referral to Child Development Services System.** The department shall adopt rules according to which it shall in a timely fashion refer children identified in subsection 1 as having a high likelihood of having a hearing impairment to the Child Development Services System. The rules must also describe the timetables under which the department shall refer to the Child Development Services System children identified by the department in accordance with subsection 1 as having possible hearing impairment but for whom hearing impairment has been neither confirmed nor disconfirmed by 6 months of age. The Department of Education and the Department of Health and Human Services shall execute an interagency agreement to facilitate the referrals in this subsection. In accordance with the interagency agreement, the Department of Education shall offer a single point of contact for the Department of Health and Human Services to use in making referrals. Also in accordance with the interagency agreement, the Child Development Services System may make direct contact with the families who are referred. The referrals may take place electronically. For purposes of quality assurance and improvement, the Child Development Services System

shall supply to the Department of Health and Human Services aggregate data at least annually on the number of children referred under this subsection who are found eligible for early intervention services and on the number of children found not eligible for early intervention services.

[2007, c. 695, Pt. A, §28 (AMD) .]

2. **Use of information.** Information collected in the tracking system is confidential health care information subject to section 1711-C. Parents must be provided information on the availability of resources and services for children with hearing loss, including those provided in accordance with the federal Individuals with Disabilities Education Act and departmental policy.

[1999, c. 647, §2 (NEW) .]

3. **Immunity.** Persons reporting information in good faith in compliance with this chapter are immune from civil liability.

[1999, c. 647, §2 (NEW) .]

SECTION HISTORY
1999, c. 647, §2 (NEW). 2007, c. 236, §§1, 2 (AMD). 2007, c. 450, Pt. A, §8 (AMD). 2007, c. 508, §2 (AMD). 2007, c. 695, Pt. A, §28 (AMD).

§8825. RULEMAKING

The department shall adopt rules as required to implement this chapter. Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter II-A. [1999, c. 647, §2 (NEW).]

SECTION HISTORY
1999, c. 647, §2 (NEW).

Chapter 1687: BIRTH DEFECTS PROGRAM

§8941. BIRTH DEFECTS PROGRAM

There is established, within the Bureau of Health, the Birth Defects Program, referred to in this chapter as the "program," to identify and investigate birth defects in children. The program shall identify and research birth defects in children and maintain a central registry of cases of birth defects. [1999, c. 344, §1 (NEW).]

1. **Duties.** The program shall collect, analyze and distribute information and undertake necessary research to identify the following with regard to birth defects: causes, risk factors and strategies for prevention and the provision of services.

[1999, c. 344, §1 (NEW) .]

2. **Data collection.** The program shall establish systems for data collection that are medically recognized and scientific, that identify prevalence and incidence rates by region and population group and that identify the morbidity and mortality rates resulting from birth defects.

[1999, c. 344, §1 (NEW) .]

3. **Submission of information.** Providers of health care licensed under this Title and Title 32 must make available to the program health care records and information relating to the occurrence of birth defects in the form and manner provided by the department.

[1999, c. 344, §1 (NEW) .]

4. **Contact with families.** The department may contact families to provide information about available services.

[1999, c. 344, §1 (NEW) .]

5. **Contracts.** The department may enter into contracts with nonprofit institutions and entities to perform its functions under this chapter.

[1999, c. 344, §1 (NEW) .]

SECTION HISTORY
1999, c. 344, §1 (NEW).

§8942. INVESTIGATIONS AND INSPECTIONS

The department may conduct investigations and inspections, including medical, demographic, environmental, epidemiological and toxicological investigations, of current or past cases of suspected birth defects in order to determine the nature and extent of disease or known or suspected causes of the birth defects, to improve access to services and to formulate and evaluate control measures to protect the public health. Persons requested to provide information and access to health care and other records for the purposes of an investigation or inspection under this section shall provide information and access. [1999, c. 344, §1 (NEW).]

SECTION HISTORY
1999, c. 344, §1 (NEW).

§8943. CENTRAL REGISTRY

The department shall establish and maintain a central registry for cases of birth defects to accomplish the purposes of this chapter and facilitate research on birth defects. The submission of information to and distribution of information from the central registry are subject to the requirements of this chapter and other provisions of law. Information that directly or indirectly identifies individual persons contained within the registry is confidential and must be distributed from the registry in accordance with rules adopted by the department. The department shall adopt rules according to which it will in a timely fashion refer to the Child Development Services System children with confirmed birth defects who may be eligible for early intervention. The department and the Department of Education shall execute an interagency agreement to facilitate the referrals under this section. In accordance with the interagency agreement, the Department of Education shall offer a single point of contact for the Department of Health and Human Services to use in making referrals. Also in accordance with the interagency agreement, the Child Development Services System may make direct contact with the families who are referred. The referrals may take place electronically. For purposes of quality assurance and improvement, the Child Development Services System shall supply to the department aggregate data at least annually on the number of children referred under this section who were found eligible for early intervention services and on the number of children found not eligible for early intervention services. In addition, the department shall supply data at least annually to the Child Development Services System on how many children had data entered into the registry. For a child

whose parent or legal guardian objects on the basis of sincerely held religious belief, the department may not require the reporting of information about that child to the central registry or enter into the central registry information regarding birth defects of that child. [2007, c. 450, Pt. A, §9 (AMD).]

SECTION HISTORY
1999, c. 344, §1 (NEW). 2007, c. 450, Pt. A, §9 (AMD).

§8944. RULES

The department shall adopt rules to implement this chapter. Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter II-A. [1999, c. 344, §1 (NEW).]

SECTION HISTORY
1999, c. 344, §1 (NEW).

§8945. REPORT

By the last business day of each year the department shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters regarding the operation of the program and the central registry. The report must include information on any findings and activities of the department with regard to birth defects and a summary of statistical information from the program and the central registry. The report may include recommendations from the department to improve the operation of the program and the central registry. [1999, c. 344, §1 (NEW).]

SECTION HISTORY
1999, c. 344, §1 (NEW).

Chapter 1689: VETERANS' ADULT DAY HEALTH CARE PROGRAMS

§9001. DEFINITION

For purposes of this chapter, "veterans' adult day health care program" or "program" means a therapeutically oriented outpatient day program that provides health maintenance and rehabilitative services to participants eligible for services under Title 37-B, chapter 11; that provides individualized care delivered by an interdisciplinary health care team and support staff, with an emphasis on helping participants and their caregivers to develop the knowledge and skills necessary to manage care requirements in the program; and that is principally targeted for complex medical or functional needs of veterans and other eligible participants. "Veterans' adult day health care program" does not include a program for adults provided by a licensed residential facility, a day activity program licensed by the department or an adult day care program as defined in section 8601. [2011, c. 444, §1 (NEW).]

SECTION HISTORY
2011, c. 444, §1 (NEW).

§9002. RULES

The department shall adopt rules for veterans' adult day health care programs, which must include, but may not be limited to, rules pertaining to the health and safety of the eligible participants and staff, the quality of the program provided, the administration of medication and licensing procedures. Reimbursement to the provider of veterans' adult day health care must be at the rate of 65% of the MaineCare reimbursement

for nursing facility care. The department shall use as guidance for the rules those established by the United States Department of Veterans Affairs, 38 Code of Federal Regulations, Part 52. [2011, c. 444, §1 (NEW).]

SECTION HISTORY
2011, c. 444, §1 (NEW).

§9003. LICENSE

1. **License required.** Beginning October 1, 2011, a person may not operate a veterans' adult day health care program in this State without having obtained a license from the department.

[2011, c. 444, §1 (NEW) .]

2. **Fee.** The department shall by rule establish a reasonable fee for a program license.

[2011, c. 444, §1 (NEW) .]

SECTION HISTORY
2011, c. 444, §1 (NEW).

§9004. FIRE SAFETY

1. **Inspection required.** A license may not be issued by the department for a veterans' adult day health care program until the department has received from the Commissioner of Public Safety a written statement signed by one of the officials designated under Title 25, section 2360, 2391 or 2392 to make fire safety inspections indicating that the program's facility is in compliance with the applicable fire safety provisions in subsection 2 and Title 25, section 2452.

[2011, c. 444, §1 (NEW) .]

2. **Life Safety Code.** The written statement under subsection 1 must be furnished annually to the department and must indicate that the veterans' adult day health care program's facility is in compliance with the requirements of the National Fire Protection Association Life Safety Code that are specified in:

A. The provisions relating to family day care homes, if the veterans' adult day health care program has no more than 6 adults per session; [2011, c. 444, §1 (NEW).]

B. The provisions relating to group day care homes, if the veterans' adult day health care program has at least 7 but no more than 12 adults per session; or [2011, c. 444, §1 (NEW).]

C. The provisions relating to child day care, if the veterans' adult day health care program has 13 or more adults per session. [2011, c. 444, §1 (NEW).]

[2011, c. 444, §1 (NEW) .]

3. **Fees.** The department shall establish and pay reasonable fees to the Department of Public Safety or a municipal official for each inspection under this section. Fees collected by the Department of Public Safety under this subsection must be deposited into a special revenue account to defray expenses in carrying out this section. Any balance of fees may not lapse but must be carried forward as a continuing account to be expended for the same purposes in the following fiscal years.

[2011, c. 444, §1 (NEW) .]

SECTION HISTORY
2011, c. 444, §1 (NEW).

§9005. PROHIBITED EMPLOYMENT BASED ON DISQUALIFYING OFFENSES

1. **Prohibited employment based on disqualifying offenses.** A veterans' adult day health care program shall conduct a comprehensive background check for direct access personnel, as defined in section 1717, subsection 1, paragraph A-2, in accordance with state law and rules adopted by the department and is subject to the employment restrictions set out in section 1812-G and other applicable federal and state laws when hiring, employing or placing direct access personnel, including, but not limited to, a certified nursing assistant or a direct care worker.

A. [2015, c. 196, §16 (RP); 2015, c. 299, §24 (RP).]

B. [2015, c. 196, §16 (RP); 2015, c. 299, §24 (RP).]

C. [2015, c. 196, §16 (RP); 2015, c. 299, §24 (RP).]

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

[2015, c. 196, §16 (AMD); 2015, c. 299, §24 (RPR) .]

SECTION HISTORY
2011, c. 444, §1 (NEW). 2015, c. 196, §16 (AMD). 2015, c. 299, §24 (RPR).

Chapter 1691: MAINE BACKGROUND CHECK CENTER ACT

§9051. SHORT TITLE

This chapter may be known and cited as "the Maine Background Check Center Act." [2015, c. 299, §25 (NEW).]

SECTION HISTORY
2015, c. 299, §25 (NEW).

§9052. BACKGROUND CHECK CENTER

In order to promote and protect the health and safety of children and adults in need of support and care, the Background Check Center is established within the department to operate an Internet-based system that employers use to access criminal records and other background information to determine the eligibility of individuals to work in direct access positions with vulnerable Maine citizens including children, elderly persons, dependent adults and persons with disabilities. The online system is maintained by the Background Check Center in coordination with the Department of Public Safety, State Bureau of Identification and with other state and federal agencies. [2015, c. 299, §25 (NEW).]

SECTION HISTORY
2015, c. 299, §25 (NEW).

§9053. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2015, c. 299, §25 (NEW).]

1. **Adult day care program.** "Adult day care program" means an adult day care program licensed pursuant to chapter 1663 or 1679.

[2015, c. 299, §25 (NEW) .]

2. **Assisted housing program** "Assisted housing program" means a program or facility licensed pursuant to chapter 1663.

[2015, c. 299, §25 (NEW) .]

3. **Background check.** "Background check" means the collection of personally identifiable information and data for comparison with criminal record repositories and registry databases that are relevant to an individual's identity and background, including monitoring for future offenses through a rap back monitoring program.

[2015, c. 299, §25 (NEW) .]

4. **Background Check Center.** "Background Check Center" means the entity established under section 9052 to operate the Internet-based system maintained by the department pursuant to section 9054 that is designed to integrate and analyze data streams from various sources and is used by providers when conducting background checks on potential or current direct access workers.

[2015, c. 299, §25 (NEW) .]

5. **Background check report.** "Background check report" means a comprehensive report generated by the Background Check Center based on a search and analysis of data stored in federal and state criminal record repositories, registry databases or agencies, including, but not limited to, the Federal Bureau of Investigation; the Department of Public Safety, State Bureau of Identification; abuse and neglect, sex offender and employment-related registries; professional licensing authorities; and Medicare and Medicaid exclusion databases. The background check report informs a provider when an offense appears in an individual's record that may disqualify the individual from employment as a direct access worker.

[2015, c. 299, §25 (NEW) .]

6. **Bureau.** "Bureau" means the Department of Public Safety, State Bureau of Identification.

[2015, c. 299, §25 (NEW) .]

7. **Child care facility.** "Child care facility" means a child care facility licensed pursuant to chapters 1661 and 1673.

[2015, c. 299, §25 (NEW) .]

8. **Child placing agency.** "Child placing agency" means a child placing agency licensed pursuant to chapter 1663.

[2015, c. 299, §25 (NEW) .]

9. **Children's residential care facility.** "Children's residential care facility" means a children's home licensed pursuant to chapter 1663.

[2015, c. 299, §25 (NEW) .]

10. **Contingent offer of employment.** "Contingent offer of employment" means an offer of employment as a direct access worker that is based upon receipt of a final nondisqualifying background check report and that may be withdrawn if a disqualifying final background check report is issued.

[2015, c. 299, §25 (NEW) .]

11. **Criminal charge without disposition.** "Criminal charge without disposition" means a charge that appears on an individual's criminal history record that has not been finally disposed at the time the criminal record is reviewed.

[2015, c. 299, §25 (NEW) .]

12. **Direct access.** "Direct access" means access to the property, personally identifiable information, financial information and resources of an individual or physical access to an individual who is a Medicare or Medicaid beneficiary or other protected individual served by a provider subject to this chapter.

[2015, c. 299, §25 (NEW) .]

13. **Direct access employment.** "Direct access employment" or "employment" means any activity involving direct access services including employment for wages, contracting for temporary staff or use of unsupervised volunteers or students who perform functions similar to those performed by direct access workers.

[2015, c. 299, §25 (NEW) .]

14. **Direct access worker.** "Direct access worker" means an individual who by virtue of employment has direct access to a Medicare or Medicaid beneficiary or other protected individual served by a provider subject to this chapter. "Direct access worker" does not include an individual performing repairs, deliveries, installations or similar services who does not have direct access without supervision. "Direct access worker" includes but is not limited to the following individuals:

A. An individual seeking employment as a direct access worker; [2015, c. 299, §25 (NEW).]

B. An employee who is employed upon the effective date of this chapter and who is required to have a background check in accordance with section 9058; [2015, c. 299, §25 (NEW).]

C. A former employee who consents, prior to leaving employment, to periodic review of that employee's criminal background for a fixed time; [2015, c. 299, §25 (NEW).]

D. An independent contractor pursuant to Title 26, section 1043, subsection 11, paragraph E or Title 39-A, section 102, subsection 13-A or a worker who is placed with a provider by a temporary nurse agency or a personal care agency or a placement agency registered pursuant to section 1717; and [2015, c. 299, §25 (NEW).]

E. A volunteer, student or other person with direct access who routinely performs unsupervised functions similar to those performed by a direct access worker for a provider. [2015, c. 299, §25 (NEW).]

[2015, c. 299, §25 (NEW) .]

15. **Disqualifying offense.** "Disqualifying offense" means an event in a person's background that has resulted in a database or registry notation or criminal record report that is relevant to the health and safety of protected individuals and that is included on the list of disqualifying offenses adopted in rules pursuant to this chapter that mandate a prohibition or exclusion from direct access employment.

[2015, c. 299, §25 (NEW) .]

16. **Drug treatment center.** "Drug treatment center" means a facility licensed pursuant to chapter 1663.

[2015, c. 299, §25 (NEW) .]

17. **Employer.** "Employer" means a person or other legal entity that employs or places a direct access worker or otherwise provides direct access services. "Employer" includes a provider, a temporary nurse agency, a personal care agency and a placement agency.

[2015, c. 299, §25 (NEW) .]

18. **Family child care provider.** "Family child care provider" means a child care provider certified pursuant to chapter 1673.

[2015, c. 299, §25 (NEW) .]

19. **Grandfathered employee.** "Grandfathered employee" means an individual subject to the requirements of this chapter who has been employed prior to the effective date of this chapter and is subject to section 9058.

[2015, c. 299, §25 (NEW) .]

20. **Home health care provider.** "Home health care provider" means an entity licensed pursuant to chapter 419.

[2015, c. 299, §25 (NEW) .]

21. **Hospice provider.** "Hospice provider" means an entity licensed pursuant to chapter 1681.

[2015, c. 299, §25 (NEW) .]

22. **Intermediate care facility for individuals with intellectual disabilities.** "Intermediate care facility for individuals with intellectual disabilities" means a facility licensed pursuant to chapter 405.

[2015, c. 299, §25 (NEW) .]

23. **Medicare or Medicaid beneficiary.** "Medicare or Medicaid beneficiary" means a person enrolled in the Medicare or Medicaid program.

[2015, c. 299, §25 (NEW) .]

24. **Mental health services facility or provider.** "Mental health services facility or provider" means a facility or agency licensed pursuant to Title 34-B, section 1203-A.

[2015, c. 299, §25 (NEW) .]

25. **Nursery school.** "Nursery school" means a nursery school licensed pursuant to chapter 1675.

[2015, c. 299, §25 (NEW) .]

26. **Nursing facility.** "Nursing facility" means a facility licensed pursuant to chapter 405.

[2015, c. 299, §25 (NEW) .]

27. **Personal care agency and placement agency.** "Personal care agency" and "placement agency" mean an entity registered pursuant to section 1717.

[2015, c. 299, §25 (NEW) .]

28. **Personally identifiable information.** "Personally identifiable information" means information that permits the identity of an individual to whom the information applies to be able to be reasonably inferred or known by either direct or indirect means.

[2015, c. 299, §25 (NEW) .]

29. **Provider.** "Provider" means a licensed, certified or registered entity that employs direct care workers to provide long-term care, child care and in-home and community-based services under this chapter.

[2015, c. 299, §25 (NEW) .]

30. **Protected individual.** "Protected individual" means a person who is in need of support, who is vulnerable to abuse, neglect and exploitation and who receives services offered by providers subject to this chapter. A protected individual requires special protective measures by criminal justice, social services and health care agencies; may be a patient, consumer, beneficiary or resident; and is typically elderly, a child or an individual with disabilities in need of assistance.

[2015, c. 299, §25 (NEW) .]

31. **Rap back monitoring program.** "Rap back monitoring program" means a coordinated system used by federal and state agencies to monitor and generate reports for new criminal record events appearing subsequent to an initial background check pursuant to section 9056.

[2015, c. 299, §25 (NEW) .]

32. **Residential care facility.** "Residential care facility" means a residential care facility licensed pursuant to chapter 1663.

[2015, c. 299, §25 (NEW) .]

33. **Supervision.** "Supervision" means a supervisor is physically present and immediately able to respond to the needs of protected individuals through an ongoing and verifiable process for the duration of conditional employment.

[2015, c. 299, §25 (NEW) .]

34. **Temporary nurse agency.** "Temporary nurse agency" means an agency registered pursuant to chapter 417 or an agency that places temporary health care professionals in direct access positions in the State that is not otherwise required to register in the State.

[2015, c. 299, §25 (NEW) .]

35. **Waiver.** "Waiver" means an exemption granted by the department to a specific individual who is banned from employment as a direct access worker for a disqualifying offense.

[2015, c. 299, §25 (NEW) .]

SECTION HISTORY
2015, c. 299, §25 (NEW).

§9054. BACKGROUND CHECK CENTER; PROCEDURES

1. **Bureau responsibilities.** The bureau is responsible for working with the Background Check Center and federal and state agencies to facilitate background checks.

[2015, c. 299, §25 (NEW) .]

2. **Employer obligations.** An employer subject to this chapter shall use the Background Check Center to conduct a comprehensive background check that includes a criminal history records check for all direct access workers. The employer shall comply with the requirements of this chapter when making employment-related decisions for direct access workers.

[2015, c. 299, §25 (NEW) .]

3. **Direct access worker information.** An employer seeking to hire, place or continue to employ an individual as a direct access worker shall:

A. Obtain personally identifiable information for the individual that is sufficient to secure the required components of the background check using the Background Check Center; [2015, c. 299, §25 (NEW).]

B. Obtain the individual's executed consent to release information to all entities as needed to conduct the background check investigation, analysis and monitoring process; [2015, c. 299, §25 (NEW).]

C. Secure a release executed by an individual seeking placement through a temporary nurse agency, personal care agency, placement agency or other agency to obtain the results of existing background checks conducted at the direction and expense of the temporary nurse agency, personal care agency, placement agency or other agency; and [2015, c. 299, §25 (NEW).]

D. Use and distribute department-approved forms as required for all pre-hire and post-employment background checks. [2015, c. 299, §25 (NEW).]

[2015, c. 299, §25 (NEW) .]

4. **Placed or temporary direct access workers.** A temporary nurse agency, personal care agency or placement agency engaged in the business of securing or attempting to secure direct access employment for individuals or of securing or attempting to secure a direct access worker for placement with another provider shall:

A. Conduct and pay for the background check process required by this chapter; [2015, c. 299, §25 (NEW).]

B. Upon request, provide the background check record to the provider seeking to fill a position where the direct access employment will take place; and [2015, c. 299, §25 (NEW).]

C. Repeat the background check process for placed direct access workers after placement as mandated by rules adopted pursuant to this chapter, until the employment status shifts away from the placing entity to another entity, in which case the other entity then acquires the burden of paying for and conducting periodic background checks for the direct access workers who remain employed. [2015, c. 299, §25 (NEW).]

[2015, c. 299, §25 (NEW) .]

5. **Subsequent background check; 5 years.** An employer shall conduct a periodic subsequent background check in accordance with rules adopted pursuant to this chapter. Criminal history record checks for all direct access workers must be completed every 5 years subsequent to the date of hire or the anniversary date of a previous background check completed through use of the Background Check Center.

[2015, c. 299, §25 (NEW) .]

6. **Notice.** An employer shall provide a department-approved notice to each individual who is required to participate in a background check.

[2015, c. 299, §25 (NEW) .]

7. **Providers; mandatory use.** Use of the Background Check Center is mandatory for the following providers:

A. Child care facilities; [2015, c. 299, §25 (NEW).]

B. Child placing agencies; [2015, c. 299, §25 (NEW).]

C. Children's residential care facilities; [2015, c. 299, §25 (NEW).]

D. Family child care providers; [2015, c. 299, §25 (NEW).]

E. Nursery schools; [2015, c. 299, §25 (NEW).]

F. Hospice providers; [2015, c. 299, §25 (NEW).]

G. Home health care providers; [2015, c. 299, §25 (NEW).]

H. Nursing facilities; [2015, c. 299, §25 (NEW).]

I. Personal care agencies and placement agencies; [2015, c. 299, §25 (NEW).]

J. Temporary nurse agencies; [2015, c. 299, §25 (NEW).]

K. Adult day care programs; [2015, c. 299, §25 (NEW).]

L. Assisted housing programs; [2015, c. 299, §25 (NEW).]

M. Residential care facilities; [2015, c. 299, §25 (NEW).]

N. Intermediate care facilities for individuals with intellectual disabilities; [2015, c. 299, §25 (NEW).]

O. Mental health services facilities or providers; and [2015, c. 299, §25 (NEW).]

P. Drug treatment centers. [2015, c. 299, §25 (NEW).]

[2015, c. 299, §25 (NEW) .]

8. **Background Check Center responsibilities.** The Background Check Center's responsibilities include, but are not limited to, the following:

A. Operating an online portal used by employers to secure background checks for individuals employed as direct access workers; [2015, c. 299, §25 (NEW).]

B. Coordinating with the bureau and other federal or state agencies as applicable to obtain data regarding criminal record information and notations that represent disqualifying offenses on relevant databases and registries; [2015, c. 299, §25 (NEW).]

C. Generating background check reports for employers regarding the presence of disqualifying offenses, including criminal charges without disposition, in a direct access worker's background; [2015, c. 299, §25 (NEW).]

D. Monitoring and enforcing compliance with the requirements of this chapter; [2015, c. 299, §25 (NEW).]

E. Providing for a process by which an individual subject to actions taken by the Background Check Center may challenge the accuracy of information in a background check report and correct the information in accordance with rules adopted pursuant to this chapter; [2015, c. 299, §25 (NEW).]

F. Specifying offenses, including offenses that may appear in publicly available criminal record information, that disqualify an individual from employment as a direct access worker, including, but not limited to, convictions and other events or notations; [2015, c. 299, §25 (NEW).]

G. Coordinating with federal and state criminal justice agencies as required to facilitate a criminal record rap back monitoring program; and [2015, c. 299, §25 (NEW).]

H. Providing for an independent process for a waiver based on a criminal conviction that gives an individual with a disqualifying offense who has been banned from employment pursuant to this chapter the opportunity to demonstrate that the ban should be waived because the individual does not pose a risk to patients, facilities, property or others. [2015, c. 299, §25 (NEW).]

[2015, c. 299, §25 (NEW) .]

9. **Background check reports.** A background check report under this chapter is considered preliminary until the individual subject to the background check has had the opportunity to challenge or decline to challenge the accuracy of the records obtained, after which the report is considered final.

[2015, c. 299, §25 (NEW) .]

10. **Background check report content.** The background check report must inform employers whether the individual submitted for a background check has offenses that disqualify the individual for employment as a direct access worker. The background check report must include information specific to the individual along with information about the source and type of offense sufficient to allow the individual named in the report to challenge the information. The content of the background check report must include, but is not limited to, notice that the individual submitted for a background check has:

A. No disqualifying offenses; [2015, c. 299, §25 (NEW).]

B. A disqualifying offense; or [2015, c. 299, §25 (NEW).]

C. A criminal charge without disposition that upon final disposition may result in a disqualifying offense. [2015, c. 299, §25 (NEW).]

[2015, c. 299, §25 (NEW) .]

11. **List of disqualifying offenses.** The department shall adopt rules under section 9065 in accordance with the requirements of this chapter and other federal and state laws to create and maintain a list of disqualifying offenses that adversely affect an individual's eligibility for employment as a direct access worker. Disqualifying offenses that prohibit employment as a direct access worker include, but are not limited to:

A. Convictions or notations involving crimes or abuse related to a federally funded health care program or a state-funded health care program that mandate a disqualification from participation or employment with the program; [2015, c. 299, §25 (NEW).]

B. Substantiated findings that the individual has committed an act of patient or resident abuse or neglect, exploitation or a misappropriation of patient or resident property or other types of acts that the department may specify for purposes of protecting vulnerable individuals receiving care or services; [2015, c. 299, §25 (NEW).]

C. Convictions under federal or state law of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service; [2015, c. 299, §25 (NEW).]

D. Convictions under federal or state law of a criminal offense relating to the health and safety of vulnerable individuals receiving care or services; [2015, c. 299, §25 (NEW).]

E. Convictions relating to health care fraud in connection with the delivery of a health care item or service or with respect to any act or omission in a health care program operated by or financed in whole or in part by any federal, state or local government agency or convictions of a criminal offense consisting of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility or other financial misconduct; [2015, c. 299, §25 (NEW).]

F. Convictions for a Class A, B or C crime in this State or similar crime in another jurisdiction for an offense relating to the unlawful manufacture, distribution, prescription or dispensing of a controlled substance; and [2015, c. 299, §25 (NEW).]

G. Convictions relating to other federal or state laws, provisions of this chapter or rules adopted under this chapter that otherwise mandate an employment prohibition. [2015, c. 299, §25 (NEW).]

[2015, c. 299, §25 (NEW) .]

12. **Appeal by individual.** The department shall establish procedures in accordance with the provisions of the Maine Administrative Procedure Act to ensure that each individual submitted for a background check in compliance with this chapter has the opportunity to challenge and correct errors in records created and generated by the Background Check Center.

[2015, c. 299, §25 (NEW) .]

13. **Waiver; disqualifying offense.** In the event that no other federal or state law mandates an employment prohibition by an employer subject to this chapter, an individual who is banned from employment because of a disqualifying offense may initiate a request for a waiver under subsection 8, paragraph H in accordance with a process established by rules adopted pursuant to this chapter under the following circumstances:

A. The individual is seeking to be employed or is currently employed by an employer subject to the requirements of this chapter; [2015, c. 299, §25 (NEW).]

B. The employer has chosen to sponsor the individual's request for the removal of the ban in order to create or maintain an employment relationship; and [2015, c. 299, §25 (NEW).]

C. The employer must attest to the department that the decision to sponsor the waiver request occurred after the employer considered the objectively reasonable factors under subsection 15 and the following factors:

(1) The nature and gravity of the disqualifying offense or offenses;

(2) The time that has passed since the disqualifying offense or offenses;

(3) The nature of the employment held or sought;

(4) Whether the criminal conduct was employment-related; and

(5) A reasonable conclusion that the individual does not pose a threat of harm to a protected individual or others in the care and support of the individual. [2015, c. 299, §25 (NEW).]

The waiver must be sought with respect to the prospective or continued employment by a specific employer that is willing to sponsor the individual's request. An employee seeking a waiver may be conditionally employed in accordance with section 9057, subsection 4 and section 9058, subsection 3 until the waiver is denied.

[2015, c. 299, §25 (NEW) .]

14. **Approval of waiver.** The department shall specify in rule the criteria for issuing a waiver for a disqualifying offense. The waiver determination is based on a consideration of the facts and circumstances of the specific individual's conviction that include the passage of time, extenuating circumstances, a demonstration of rehabilitation and the relevancy of the particular disqualifying offense with respect to the current or prospective employment with a sponsoring employer. All waivers are contingent on a final determination by the department that the employer has reasonably determined that the health and safety of a protected individual is not in jeopardy and a denial of a waiver request is not otherwise warranted in accordance with federal or state law.

[2015, c. 299, §25 (NEW) .]

15. **Waivers; factors.** The department shall specify in rule the minimum factors that an employer must consider when sponsoring a waiver under subsection 13. Any factors that an employer chooses to consider must be objectively reasonable in supporting the attestation that the individual to whom the waiver would apply is unlikely to cause harm to a protected individual or others in the employer's care. Objectively reasonable factors include:

A. The age of the individual applying for a waiver at the time of the disqualifying offense; [2015, c. 299, §25 (NEW).]

B. The amount of time that has passed since the disqualifying offense occurred; [2015, c. 299, §25 (NEW).]

C. The total number and type of disqualifying offenses; [2015, c. 299, §25 (NEW).]

D. Any proven mitigating circumstances surrounding the disqualifying offense; [2015, c. 299, §25 (NEW).]

E. Objective evidence that the individual has successfully completed a criminal rehabilitation program; [2015, c. 299, §25 (NEW).]

F. The relevance of the circumstances pertaining to the disqualifying offense with respect to the nature of the proposed employment; [2015, c. 299, §25 (NEW).]

G. The length and consistency of similar employment post-conviction if applicable; [2015, c. 299, §25 (NEW).]

H. Whether the individual is bonded under federal or state law; and [2015, c. 299, §25 (NEW).]

I. Personal references or recommendations from employers on behalf of the individual. [2015, c. 299, §25 (NEW).]

[2015, c. 299, §25 (NEW) .]

16. **Denial or revocation of waiver.** The department shall establish by rule informal and formal review procedures for denial or revocation of a waiver. Denial or revocation of waiver procedures must comply with the Maine Administrative Procedures Act and final determinations may be appealed pursuant to the Maine Administrative Procedures Act in Title 5, Part 18, Chapter 375, subchapter 4. Rules concerning the denial or revocation of waiver procedures include, but are not limited to, the following:

A. The process of filing a waiver request; [2015, c. 299, §25 (NEW).]

B. The time frame for filing a waiver request; [2015, c. 299, §25 (NEW).]

C. The time frame for issuing a waiver request decision; [2015, c. 299, §25 (NEW).]

D. The rules for employment during the waiver request process; and [2015, c. 299, §25 (NEW).]

E. A written determination stating the objectively reasonable factors under subsection 15 explaining the department's determination to grant, deny or revoke a waiver. [2015, c. 299, §25 (NEW).]

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2015, c. 299, §25 (NEW) .]

17. **Immunity.** A provider that denies employment for an individual selected for hire or continued employment as a direct access worker, including during any period of conditional employment, and that reasonably relies upon information obtained through a final background check report regarding the individual is not liable in an action brought by the individual based on an employment determination resulting from the information.

[2015, c. 299, §25 (NEW) .]

18. **Presumption of good faith.** In a proceeding regarding immunity from liability, there is a rebuttable presumption of good faith.

[2015, c. 299, §25 (NEW) .]

SECTION HISTORY
2015, c. 299, §25 (NEW).

§9055. BACKGROUND CHECK CENTER FUNDING AND FEES

After the initial construction and operational phase, the Background Check Center is funded through user fees as provided in this section. [2015, c. 299, §25 (NEW).]

1. **User fee.** The department shall adopt rules to establish Background Check Center user fees. The user fee must reasonably reflect the necessary costs to maintain, operate and develop the Background Check Center. The user fee must be no less than $25 and no more than $150. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2015, c. 299, §25 (NEW) .]

2. **Special revenue account.** Revenue generated pursuant to this section must be deposited in a special revenue account in the Division of Licensing and Regulatory Services and dedicated for Background Check Center operations.

[2015, c. 299, §25 (NEW) .]

SECTION HISTORY
2015, c. 299, §25 (NEW).

§9056. NEW EVENT MONITORING; RAP BACK MONITORING PROGRAM

1. **New disqualifying offenses.** A direct access worker's data must be searched and monitored for new events that may disqualify the individual from employment as a direct access worker.

A. The department shall establish procedures regarding the exchange of data among federal or state criminal justice agencies and the Background Check Center, including criminal offenses not reported in earlier background check reports that upon final disposition disqualify the individual from employment as a direct access worker. [2015, c. 299, §25 (NEW).]

B. The department shall establish procedures to search and monitor applicable registries and databases for notations or new information not reported in earlier background check reports that prohibit or disqualify employment as a direct access worker. [2015, c. 299, §25 (NEW).]

[2015, c. 299, §25 (NEW) .]

2. **Rap back monitoring program.** The bureau is authorized to initiate and provide services pursuant to federal or state rap back monitoring to report new criminal record events to the Background Check Center for noncriminal justice purposes.

[2015, c. 299, §25 (NEW) .]

3. **Collection of identifier data.** The bureau shall coordinate with the Background Check Center to collect the personally identifiable information and relevant data of individuals as needed to meet the requirements of the rap back monitoring program or as otherwise required by this chapter and other laws.

[2015, c. 299, §25 (NEW) .]

4. **Dissemination and storage of data.** The Background Check Center and the bureau shall follow protocols established by federal or state law for the use and exchange of information with the rap back monitoring program, the Background Check Center and criminal justice agencies as applicable. The bureau shall:

A. Maintain the personally identifiable information in the criminal history records repository; [2015, c. 299, §25 (NEW).]

B. Compare the personally identifiable data or other data or both to criminal records to conduct a criminal record check and disseminate the results of this record check to authorized entities; [2015, c. 299, §25 (NEW).]

C. Exchange data through the rap back monitoring program with the Background Check Center for noncriminal justice purposes; [2015, c. 299, §25 (NEW).]

D. Disseminate criminal record event information, including notifications from the rap back monitoring program, to an authorized entity or in a manner consistent with the requirements of this chapter and federal and state laws; and [2015, c. 299, §25 (NEW).]

E. Secure and coordinate services as needed to effect the provisions and purposes of this chapter. [2015, c. 299, §25 (NEW).]

[2015, c. 299, §25 (NEW) .]

SECTION HISTORY
2015, c. 299, §25 (NEW).

§9057. EMPLOYMENT

1. **Contingent offer of employment.** An employer that has made a contingent offer of employment to a direct access worker shall secure a background check and receive a final background check report prior to allowing the individual to commence employment as a direct access worker, except where the individual is conditionally employed as described in this chapter.

[2015, c. 299, §25 (NEW) .]

2. **Opportunity to challenge inaccurate records.** An employer that has made a contingent offer of employment under subsection 1 shall provide the individual subject to a background check a copy of the background check report and afford the individual a reasonable amount of time up to the 60th calendar day of conditional employment as described in subsection 4 to allow that individual an opportunity to challenge inaccurate information in the background check report.

[2015, c. 299, §25 (NEW) .]

3. **Employment determination.** An employer that has made a contingent offer of employment under subsection 1 shall obtain a final nondisqualifying background check report after an individual has been allowed an opportunity to correct or update that individual's record prior to making an employment determination.

[2015, c. 299, §25 (NEW) .]

4. **Conditional employment.** In accordance with subsection 2, an employer may employ an individual as a direct access worker on a conditional basis for up to 60 calendar days before the employer receives a final background check report or from the date the employer receives a disqualifying background report on the following conditions:

A. The employer initiates the background check by entering the individual into the Background Check Center database as a conditionally employed worker; [2015, c. 299, §25 (NEW).]

B. The individual is not identified in the Background Check Center database as a disqualified person based on an earlier background check; [2015, c. 299, §25 (NEW).]

C. The individual has agreed to submit to the steps necessary to comply with this chapter, including taking substantial steps toward correcting inaccurate data in the disqualifying background check report if applicable; [2015, c. 299, §25 (NEW).]

D. The individual signs a statement declaring that a background check will not reveal a disqualifying offense or that an offense that appears is inaccurate; [2015, c. 299, §25 (NEW).]

E. The employer verifies and documents that the individual has submitted the mandatory identity verification and employment eligibility documents required by rules adopted in accordance with this chapter; and [2015, c. 299, §25 (NEW).]

F. The individual is subject to direct personal supervision during the course of the conditional employment as described in rules adopted pursuant to this chapter. [2015, c. 299, §25 (NEW).]

[2015, c. 299, §25 (NEW) .]

SECTION HISTORY
2015, c. 299, §25 (NEW).

§9058. GRANDFATHERED EMPLOYEES

1. **Background check.** An employer employing direct access workers on the effective date of this chapter shall use the Background Check Center to secure a background check and a background check report for each direct access worker within 365 calendar days after the Background Check Center becomes operational.

[2015, c. 299, §25 (NEW) .]

2. **Gradual implementation of grandfathered employee background checks.** The department shall adopt rules under section 9065 describing a staged and orderly process based on the type of provider and the number of direct access workers employed that employers must follow to implement the background checks for grandfathered employees consistent with this chapter. The department may grant an employer a deadline extension for good cause shown, which may not be unreasonably withheld.

[2015, c. 299, §25 (NEW) .]

3. **Initial background check deadline.** A grandfathered employee may continue to work in direct access employment for up to 60 calendar days from the date the grandfathered employee's first background check is initiated in accordance with subsection 2 and if:

A. The grandfathered employee signs a consent to release information and agrees in writing to submit to the background check process; [2015, c. 299, §25 (NEW).]

B. The grandfathered employee signs a statement declaring that a background check will not reveal any disqualifying offenses or that an offense that appears is inaccurate; [2015, c. 299, §25 (NEW).]

C. The employer verifies and documents that the grandfathered employee has submitted the mandatory identity verification and employment eligibility documents required by rules adopted in accordance with section 9065; [2015, c. 299, §25 (NEW).]

D. The employer initiates the background check by entering the individual into the Background Check Center database as a grandfathered employee; and [2015, c. 299, §25 (NEW).]

E. The grandfathered employee is not identified in the Background Check Center database as a disqualified person. [2015, c. 299, §25 (NEW).]

[2015, c. 299, §25 (NEW) .]

4. **Disqualified grandfathered employees.** A grandfathered employee who receives a disqualifying background check report is subject to the provisions of subsection 3 and must be able to correct disqualifying offense information that appears in the background check report through the inaccurate records corrections process within 60 calendar days after the disqualifying report is issued. The grandfathered employee is subject to direct personal supervision during the conditional employment period as described in rules adopted pursuant to this chapter until a final background check report indicates that no disqualifying offenses appear in the updated records.

[2015, c. 299, §25 (NEW) .]

5. **Termination; disqualified grandfathered employees.** An employer shall terminate or remove from direct access employment any grandfathered employee who has not submitted the documents required in subsection 3 or who fails to receive a final nondisqualifying background check report in accordance with subsection 4.

[2015, c. 299, §25 (NEW) .]

SECTION HISTORY
2015, c. 299, §25 (NEW).

§9059. PROHIBITIONS

1. **Prohibited employment.** An employer is subject to the penalties imposed by this chapter for hiring, placing or continuing to employ, other than conditionally as described in this chapter or by rule, an unsupervised direct access worker who has a known disqualifying offense or who has not been subject to a background check and issued a nondisqualifying report from the Background Check Center or who has not been granted a waiver as described in this chapter.

[2015, c. 299, §25 (NEW) .]

2. **Refusal to participate; employer.** The Background Check Center shall issue a disqualifying background check report for individuals who refuse to participate in the background check reporting process as described in this chapter, and the employer is subject to the penalties imposed by this chapter for allowing the individual to commence or continue direct access employment.

[2015, c. 299, §25 (NEW) .]

3. **Good cause termination.** A disqualifying offense that appears in the record of an individual submitted for a background check or a disqualifying offense that was not reported in an earlier background check report or an offense that an individual concealed from the employer or a failure to obtain or maintain a waiver constitutes good cause for termination of the individual's direct access employment.

[2015, c. 299, §25 (NEW) .]

4. **Refusal to participate; employee.** An employee's refusal to participate in the background check reporting process under this chapter constitutes good cause for termination of direct access employment.

[2015, c. 299, §25 (NEW) .]

SECTION HISTORY
2015, c. 299, §25 (NEW).

§9060. DOCUMENTATION

1. **Employer documentation.** An employer subject to this chapter shall conduct and document the background check process in accordance with the requirements of this chapter and rules adopted pursuant to this chapter.

[2015, c. 299, §25 (NEW) .]

2. **Data storage.** An employer shall manage and store, electronically or on paper, the data provided by the Background Check Center in a manner that allows for verification that the employer conducted the background check in compliance with this chapter and other relevant state and federal laws. Employer documentation must be made available to the department upon request.

[2015, c. 299, §25 (NEW) .]

SECTION HISTORY
2015, c. 299, §25 (NEW).

§9061. CONFIDENTIALITY

A criminal background check record and other personally identifiable information provided to an employer in compliance with this chapter are confidential. An employer may use this information only to determine the eligibility of an individual for new or continued employment, and the personally identifiable information or background check record may not be disseminated in any way that does not comply with this chapter or other applicable laws. [2015, c. 299, §25 (NEW).]

SECTION HISTORY
2015, c. 299, §25 (NEW).

§9062. PENALTIES

1. **Conduct subject to penalties.** An employer may be subject to the penalties under this chapter for any of the following:

A. Failure to conduct a mandatory background check; [2015, c. 299, §25 (NEW).]

B. Failure or refusal to terminate or remove from direct access employment an employee who is disqualified for employment based on the requirements of this chapter; and [2015, c. 299, §25 (NEW).]

C. Substantial noncompliance with the procedures established by this chapter. [2015, c. 299, §25 (NEW).]

[2015, c. 299, §25 (NEW) .]

2. **Fines.** An employer who fails to comply with the provisions of this chapter is subject to the penalties set out under this subsection.

A. An employer who fails to secure a background check in accordance with this chapter or knowingly employs a disqualified individual for direct access employment commits a civil violation for which a fine of not less than $500 but not more than $10,000 per day may be adjudged, beginning on the first day the violation occurs and for each day of continued violation. Each day constitutes a separate offense. [2015, c. 299, §25 (NEW).]

B. An employer is subject to the penalties under paragraph A if that employer conditionally employs an individual before receiving verification that the individual has met the requirements of conditional employment described in this chapter. [2015, c. 299, §25 (NEW).]

C. An employer who fails to comply with the confidentiality requirements and conditional employment requirements of this chapter commits a civil violation for which a fine of not less than $500 but not more than $5,000 may be adjudged for each violation. [2015, c. 299, §25 (NEW).]

[2015, c. 299, §25 (NEW) .]

SECTION HISTORY
2015, c. 299, §25 (NEW).

§9063. ADMINISTRATIVE PENALTIES

1. **Licensing actions.** The penalties and fines described in this chapter do not limit the State's licensing authority to pursue an adverse action against an employer who fails to comply with or who commits a civil violation described in this chapter.

[2015, c. 299, §25 (NEW) .]

2. **Licensing penalties.** An employer's failure to comply with the requirements of this chapter may be subject to the following administrative penalties in addition to any other remedies authorized by law:

A. Denial of a license or certification or registration needed to provide services to protected individuals; [2015, c. 299, §25 (NEW).]

B. Termination or revocation of the license or certification or registration relied upon to provide services to protected individuals; and [2015, c. 299, §25 (NEW).]

C. Revocation of rate agreements or service contracts with the State relevant to services authorized by the license or certification. [2015, c. 299, §25 (NEW).]

[2015, c. 299, §25 (NEW) .]

SECTION HISTORY
2015, c. 299, §25 (NEW).

§9064. APPEAL BY EMPLOYER

The imposition of sanctions, other than licensing sanctions, pursuant to this chapter may be appealed by an employer pursuant to Title 5, chapter 375. [2015, c. 299, §25 (NEW).]

SECTION HISTORY
2015, c. 299, §25 (NEW).

§9065. RULES; CONTRACTS

1. **Rules.** The Department of Public Safety and the Department of Health and Human Services shall each adopt rules necessary to achieve the purposes of this chapter. As appropriate, each department shall keep the other department informed regarding rule-making activity. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2015, c. 299, §25 (NEW) .]

2. **Contract for services.** In accordance with state laws and rules governing contracting for services, the Department of Public Safety and the Department of Health and Human Services may contract with federal and state agencies and nongovernmental entities as necessary to carry out the purposes of this chapter.

[2015, c. 299, §25 (NEW) .]

SECTION HISTORY
2015, c. 299, §25 (NEW).

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