



# 125th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2012

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Legislative Document

No. 1888

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S.P. 665

In Senate, March 19, 2012

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

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Reference to the Committee on Health and Human Services suggested and ordered printed.

*Joseph G. Carleton Jr.*

JOSEPH G. CARLETON, JR.  
Secretary of the Senate

Presented by Senator McCORMICK of Kennebec. (GOVERNOR'S BILL)

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

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

3 **§905-C. Misuse of public benefits instrument**

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

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

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

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

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

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

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

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

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

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

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

22 **B. Notwithstanding paragraph A, the department may terminate or suspend the**  
23 **participation of a provider in the MaineCare program pursuant to federal regulation**  
24 **and state rule. This authority includes, but is not limited to, provider payment**  
25 **suspensions required under section 1714-D.**

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

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

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

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

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

4 A. A retail establishment where 50% or more of the gross revenue of the  
5 establishment is derived from the sale of liquor as defined in Title 28-A, section 2,  
6 subsection 16;

7 B. A gambling facility, as defined in Title 8, section 1001, subsection 16, except that  
8 use of the electronic benefits transfer system is permitted in any portion of the  
9 premises of a gambling facility that is set aside separately for the sale primarily of  
10 staple foods as defined in 7 United State Code, Section 2012(r); or

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

13 **2. Rulemaking.** The department shall adopt rules to implement this section. Rules  
14 adopted under this subsection are routine technical rules as defined in Title 5, chapter  
15 375, subchapter 2-A.

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

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

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

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

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

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

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

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

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

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

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

4 (3) An interim cost report has:

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

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

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

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

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

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

24 **§1714-D. Credible allegations of fraud; provider payment suspensions**

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

27 **1. Suspension of payments.** The department shall suspend payment in whole or in  
28 part to a MaineCare provider when a suspension is necessary to comply with Section  
29 6402(h)(2) of the federal Patient Protection and Affordable Care Act of 2010, Public Law  
30 111-148 and 42 Code of Federal Regulations, Section 455.23.

31 **2. Administrative hearing; scope.** A provider may administratively appeal the  
32 department's decision to suspend payment under subsection 1. The scope of the  
33 administrative hearing must be limited to determining whether the department violated  
34 state or federal law in suspending payments and whether the provider timely  
35 demonstrated to the department good cause for an exception to the suspension authorized  
36 by federal law or regulation. The administrative hearing may not consider the likelihood  
37 that a fraud has occurred.

38 **3. No stay during administrative appeal.** A suspension of payments under  
39 subsection 1 may not be stayed during an administrative appeal of the department's  
40 decision to suspend payment.

1           **4. Final determination; offset.** Upon a final determination that fraud has occurred  
2 and that money is owed by the provider to the department, and 31 days after exhaustion  
3 of all administrative appeals and any judicial review available under Title 5, chapter 375,  
4 the department may retain and apply as an offset to amounts determined to be owed to the  
5 department any payments to the provider that were suspended by the department pursuant  
6 to this section.

7           **5. Rules.** The department may adopt emergency rules to implement this section  
8 without the necessity of demonstrating that immediate adoption is necessary to avoid a  
9 threat to public health or safety or the general welfare.

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

12           **12. Penalty.** The unauthorized issuance, redemption, use, transfer, acquisition,  
13 alteration or possession of coupons or other program access device, including an  
14 electronic benefits transfer card, may subject an individual, partnership, corporation or  
15 other legal entity to prosecution by the State in accordance with Sections 15 (b) and 15  
16 (c) of the federal Food Stamp Act of 1977 and the federal Food and Nutrition Act of  
17 2008. Penalties are in accordance with those outlined in federal law or regulations. A  
18 person who knowingly engages in trafficking in benefits as defined by 7 Code of Federal  
19 Regulations, Section 271.2 commits a Class D crime.

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

22           **3. Overpayment.** "Overpayment" means program benefits ~~that an individual or~~  
23 ~~assistance unit receives~~ that exceed the amount of program benefits for which ~~the an~~  
24 individual or assistance unit is eligible when the department or a court has determined  
25 that the benefits were ~~received~~ provided as a result of an intentional program violation, an  
26 unintentional error by the individual or household or an error by the department.  
27 "Overpayment" includes any overpayment made before or after the effective date of this  
28 subsection.

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

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

39           **Sec. 13. Appropriations and allocations.** The following appropriations and  
40 allocations are made.

1           **HEALTH AND HUMAN SERVICES, DEPARTMENT OF**  
 2           **Office of Family Independence Z020**

3           Initiative: Establishes 8 Fraud Investigator positions and 2 Office Associate II positions  
 4           and related All Other funded 50% from the General Fund and 50% from Other Special  
 5           Revenue Funds in the Office of Family Independence.

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8	<b>GENERAL FUND</b>	<b>2011-12</b>	<b>2012-13</b>
9	Personal Services	\$0	\$313,011
10	All Other	\$0	\$19,643
11			
12	<b>GENERAL FUND TOTAL</b>	<u>\$0</u>	<u>\$332,654</u>

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15	<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2011-12</b>	<b>2012-13</b>
16	POSITIONS - LEGISLATIVE COUNT	0.000	10.000
17	Personal Services	\$0	\$313,011
18	All Other	\$0	\$28,837
19			
20	<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<u>\$0</u>	<u>\$341,848</u>

21

**SUMMARY**

22           This bill provides successor liability for all health care providers in the MaineCare  
 23           program; prohibits misuse of public benefits instruments; authorizes administrative  
 24           recovery of improperly received municipal general assistance and MaineCare benefits;  
 25           bans the use of electronic benefits transfer system benefits at liquor stores, gambling  
 26           facilities and adult entertainment businesses; criminalizes the trafficking of electronic  
 27           benefits by making the unauthorized transfer or possession of electronic benefits devices  
 28           a Class D crime; conforms Maine law to federal requirements regarding suspension of  
 29           payments to MaineCare providers upon determination of a credible allegation of fraud;  
 30           and adds 8 Fraud Investigator and 2 Office Associate II positions to the Department of  
 31           Health and Human Services, Office of Family Independence.