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Date: (Filing No. S-)

HEALTH AND HUMAN SERVICES

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**STATE OF MAINE
SENATE
125TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 665, L.D. 1888, Bill, “An Act To Strengthen the State's Ability To Investigate and Prosecute Misuse of Public Benefits”

Amend the bill by striking out all of section 9 and inserting the following:

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

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

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

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

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

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

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

5. Confidentiality. Except as necessary for purposes of the investigation of fraud or the administration of the MaineCare program, the department's records regarding a determination of a credible allegation of fraud are confidential until the relevant

COMMITTEE AMENDMENT

1 MaineCare provider has been given notice of a suspension of payments under subsection
2 1.

3 **6. Rules.** The department shall adopt rules to implement this section, including rules
4 to define "credible allegation of fraud" and to provide exception and appeal procedures as
5 required by and in accordance with the requirements of federal law and regulations. If the
6 department provides a procedure for expedited relief from suspension of payments, as
7 authorized in subsection 3, the rules must include that procedure. Rules adopted pursuant
8 to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter
9 2-A.

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

13 Amend the bill by striking out all of section 11 and inserting the following:

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

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

27 Amend the bill by inserting after section 12 the following:

28 '**Sec. 13. Emergency rules.** Notwithstanding the Maine Revised Statutes, Title 5,
29 section 8054, the department may adopt emergency rules to implement Title 22, section
30 1714-D without the necessity of demonstrating that immediate adoption is necessary to
31 avoid a threat to public health or safety or the general welfare, if notice is given through a
32 MaineCare provider list and 5 days or more are allowed for comment prior to adoption of
33 the rules.'

34 Amend the bill by striking out all of section 13 and inserting the following:

35 '**Sec. 13. Appropriations and allocations.** The following appropriations and
36 allocations are made.

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

38 **Office for Family Independence Z020**

39 Initiative: Provides funding for 8 Fraud Investigator positions and 2 Office Associate
40 positions and related All Other costs funded 50% from the General Fund and 50% from
41 Other Special Revenue Funds in the Office for Family Independence.

1	GENERAL FUND	2011-12	2012-13
2	Personal Services	\$0	\$313,011
3	All Other	\$0	\$19,643
4			
5	GENERAL FUND TOTAL	\$0	\$332,654

6	OTHER SPECIAL REVENUE FUNDS	2011-12	2012-13
7	POSITIONS - LEGISLATIVE COUNT	0.000	10.000
8	Personal Services	\$0	\$313,011
9	All Other	\$0	\$28,837
10			
11	OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$341,848

13 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
 14 section number to read consecutively.

15 **SUMMARY**

16 This amendment is the majority report of the committee. The amendment removes
 17 from the bill a provision regarding the scope of administrative hearings with regard to
 18 appeals of suspensions of payments for credible allegations of fraud. The amendment
 19 adds a provision on confidentiality. The amendment authorizes the Department of Health
 20 and Human Services to adopt by rule a procedure for expedited relief from suspension of
 21 payments. The amendment revises the requirement on adoption of rules and requires
 22 rules to define "credible allegation of fraud" and to provide exception and appeal
 23 procedures as required by and in accordance with the requirements of federal law and
 24 regulations. The amendment narrows the definition of "overpayment" with respect to
 25 certain public assistance program benefits. The amendment provides that the provisions
 26 concerning credible allegations of fraud and MaineCare provider payment suspensions
 27 are repealed if Section 6402(h)(2) of the federal Patient Protection and Affordable Care
 28 Act of 2010 and 42 Code of Federal Regulations, Part 455 are invalidated by the United
 29 States Supreme Court.

30 **FISCAL NOTE REQUIRED**

31 **(See attached)**