§1212. Confidential information

The following information pertaining to department employees and independent contractors is confidential ~~and that part of any record of the department containing this information is not a public record, as defined in Title 1, section 402, subsection 3~~: [PL 1991, c. 281 (NEW).]

1. Addresses and telephone numbers. Nonbusiness addresses and telephone numbers;
[PL 1991, c. 281 (NEW).]

2. Information regarding other persons. The existence, names, addresses and telephone numbers of family members, household members and persons to be notified in the event of an emergency; and
[PL 1991, c. 281 (NEW).]

3. Work schedules. Information pertaining to work schedules.
[PL 1991, c. 281 (NEW).]

SECTION HISTORY

PL 1991, c. 281 (NEW).

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§1216. Confidentiality of information

1. Limited disclosure. All orders of commitment, medical and administrative records, applications and reports, and facts contained in them, pertaining to any person receiving services from the department ~~must be kept~~ are confidential ~~and may not be disclosed by any person,~~ except that public records must be disclosed in accordance with Title 1, section 408-A; criminal history record information may be disseminated in accordance with Title 16, chapter 7; and documents other than those documents pertaining to information obtained by the department for the purpose of evaluating a client's ability to participate in a community-based program or from informants in a correctional or detention facility for the purpose of determining whether facility rules have been violated or pertaining to a victim's request for notice of release may, and must upon request, be disclosed:

A. To any person if the person receiving services, that person's legal guardian, if any, and, if that person is a minor, that person's parent or legal guardian give informed written consent to the disclosure of the documents referred to in this subsection after being given the opportunity to review the documents sought to be disclosed; [PL 2013, c. 588, Pt. A, §44 (RPR).]

B. To any state agency if necessary to carry out the statutory functions of that agency; [PL 2013, c. 588, Pt. A, §44 (RPR).]

C. If ordered by a court of record, subject to any limitation in the Maine Rules of Evidence, Rule 503; [PL 2013, c. 588, Pt. A, §44 (RPR).]

D. To any criminal justice agency if necessary to carry out the administration of criminal justice as defined in Title 16, section 703, subsection 1, the administration of criminal justice as defined in Title 16, section 803, subsection 2 or the administration of juvenile justice as defined in Title 15, section 3003, subsection 1-A or for criminal justice agency employment; [PL 2021, c. 365, §35 (AMD); PL 2021, c. 365, §37 (AFF).]

E. To persons engaged in research if:

(1) The research plan is first submitted to and approved by the commissioner;

(2) The disclosure is approved by the commissioner; and

(3) Neither original records nor identifying data are removed from the facility or office that prepared the records.

The commissioner and the person doing the research shall preserve the anonymity of the person receiving services from the department and may not disseminate data that refer to that person by name or number or in any other way that might lead to the person's identification; [PL 2013, c. 588, Pt. A, §44 (RPR).]

F. To persons who directly supervise or report on the health, behavior or progress of a juvenile, to the superintendent of a juvenile's school and the superintendent's designees and to agencies that are or might become responsible for the health or welfare of a juvenile if the information is relevant to and disseminated for the purpose of creating or maintaining an individualized plan for the juvenile's rehabilitation, including reintegration into the school; or [PL 2013, c. 588, Pt. A, §44 (RPR).]

G. To any state agency engaged in statistical analysis for the purpose of improving the delivery of services to persons who are or might become mutual clients if:

(1) The plan for the statistical analysis is first submitted to and approved by the commissioner; and

(2) The disclosure is approved by the commissioner.

The commissioner and the state agency requesting the information shall preserve the anonymity of the persons receiving services from the department and may not disseminate data that refer to any

person by name or number or that in any other way might lead to a person's identification. [PL 2013, c. 588, Pt. A, §44 (RPR).]

Notwithstanding any other provision of law, the department may release the names, dates of birth and social security numbers of persons receiving services from the department and, if applicable, eligibility numbers and the dates on which those persons received services to any state or federal agency for the sole purpose of determining eligibility and billing for services and payments under federally funded programs administered by the agency. The department may also release to the agency information required for and to be used solely for audit or research purposes, consistent with federal law, for those services provided by or through the department. Agency personnel shall treat this information as confidential in accordance with federal and state law and shall return the records when their purpose has been served.
[PL 2021, c. 365, §35 (AMD); PL 2021, c. 365, §37 (AFF).]

2. Release of certain information to victims. Notwithstanding subsection 1, upon the request of a person who was the victim of a crime for which a client was incarcerated, as verified by the department or the prosecuting attorney, the department shall disclose the following information to the victim:

A. Whether the client has been charged with committing any crime while incarcerated and, if so, the crime with which the client has been charged; and [PL 2003, c. 205, §10 (NEW).]

B. Whether the client has been disciplined while incarcerated and, if so, the offense for which the disciplinary action was taken and the type of disciplinary action taken. [PL 2003, c. 205, §10 (NEW).]
[PL 2003, c. 205, §10 (NEW).]

3. Civil violation. A person who discloses information in violation of this section commits a civil violation for which a fine not to exceed $1,000 may be adjudged.
[PL 2003, c. 205, §10 (NEW).]

4. Disclosure of confidential information. The disclosure of confidential information as provided by this section is also governed by Title 5, section 9057, subsection 6.
[PL 2003, c. 205, §10 (NEW).]

5. Disclosure of information. Nothing in this section permits or requires the disclosure of information to the extent it is designated confidential by another provision of law.
[PL 2003, c. 205, §10 (NEW).]

6. Assessment tools. Documents in the possession of the department used to screen or assess clients, including, but not limited to, questionnaires and test materials, are ~~not public records for purposes of Title 1, chapter 13, subchapter 1. The~~ confidential except that the department shall release these documents on request to any other state agency if necessary to carry out the statutory functions of that agency and to any committee or study commission established by the Legislature with authority to examine issues related to mental health.
[PL 2003, c. 205, §10 (NEW).]

SECTION HISTORY

PL 2003, c. 205, §10 (NEW). PL 2003, c. 689, §B6 (REV). PL 2005, c. 487, §§2-4 (AMD). PL 2011, c. 515, §2 (AMD). PL 2011, c. 662, §22 (AMD). PL 2013, c. 267, Pt. B, §27 (AMD). PL 2013, c. 424, Pt. B, §13 (AMD). PL 2013, c. 588, Pt. A, §44 (AMD). PL 2015, c. 470, §18 (AMD). PL 2017, c. 432, Pt. F, §2 (AMD). PL 2021, c. 365, §35 (AMD). PL 2021, c. 365, §37 (AFF).

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§11221. Maintenance of sex offender registry

1. Maintenance of registry. The bureau shall establish and maintain a registry of persons required to register pursuant to this subchapter. The registry must include the following information on each registrant:

A. The registrant's name, aliases, date of birth, sex, race, height, weight, eye color, mailing address and physical location of expected domicile and residence; [PL 2005, c. 423, §9 (AMD).]

B. Place of employment and college or school being attended, if applicable, and the corresponding address and location; [PL 2003, c. 371, §4 (AMD).]

C. Offense history; [PL 1999, c. 437, §2 (NEW).]

D. Notation of any treatment received for a mental abnormality or personality disorder; [PL 1999, c. 437, §2 (NEW).]

E. A photograph and set of fingerprints; [PL 1999, c. 437, §2 (NEW).]

F. A description of the offense for which the registrant was convicted, the date of conviction and the sentence imposed; and [PL 2003, c. 711, Pt. C, §17 (AMD); PL 2003, c. 711, Pt. D, §2 (AFF).]

G. Any other information the bureau determines important. [PL 1999, c. 437, §2 (NEW).]
[PL 2005, c. 423, §9 (AMD).]

2. National or regional registry. The bureau is authorized to make the registry available to and accept files from a national or regional registry of registrants for the purpose of sharing information.
[PL 2003, c. 711, Pt. C, §18 (AMD); PL 2003, c. 711, Pt. D, §2 (AFF).]

3. Registration form. The bureau shall develop a standardized registration form to be made available to the appropriate reporting authorities and persons required to register.
[PL 1999, c. 437, §2 (NEW).]

4. Verification form. The bureau shall develop and mail a nonforwardable verification form to the last reported mailing address of each person required to meet the verification requirements of this chapter.
[PL 1999, c. 437, §2 (NEW).]

5. Sexually violent predator directory.
[PL 2003, c. 371, §5 (RP).]

6. Distribution of information to department and law enforcement agencies. The bureau shall distribute information described in subsection 1 to the department and law enforcement agencies having jurisdiction over the address and location of the registrant's domicile, residence, place of employment and college or school being attended.
[PL 2005, c. 423, §10 (AMD).]

7. Rules.
[PL 2005, c. 423, §11 (RP).]

8. Criminal justice agency access to information. The bureau shall provide access to the information described in subsection 1 to criminal justice agencies. For purposes of this subsection, "criminal justice agency" has the same meaning as in Title 16, section 703, subsection 4.
[PL 2013, c. 267, Pt. B, §28 (AMD).]

9. Public access to information. The bureau shall provide information to the public as follows.

A. The bureau shall post on the Internet for public inspection the following information concerning a registrant:

(1) The registrant's name, date of birth and photograph;

(2) The registrant's city or town of domicile and residence;

(3) The registrant's place of employment and college or school being attended, if applicable, and the corresponding address and location;

(4) The statutory citation and name of the offense for which the registrant was convicted; and

(5) The registrant's designation as a 10-year registrant or a lifetime registrant. [PL 2011, c. 307, §1 (AMD).]

B. Upon receiving a written request that includes the name and date of birth of a registrant, the bureau shall provide the following information concerning a registrant to the requestor:

(1) The registrant's name, aliases, date of birth, sex, race, height, weight, eye color, mailing address and physical location of domicile and residence;

(2) The registrant's place of employment and college or school being attended, if applicable, and the corresponding address and location;

(3) A description of the offense for which the registrant was convicted, the date of conviction and the sentence imposed; and

(4) The registrant's photograph. [PL 2005, c. 423, §12 (AMD).]

[PL 2011, c. 307, §1 (AMD).]

9-A. Registry information. Registry information created, collected or maintained by the bureau, including, but not limited to, information relating to the identity of persons accessing the registry, is confidential, except ~~the following are public records~~:

A. Information provided to the public pursuant to subsection 9; and [PL 2011, c. 299, §1 (NEW).]

B. Applications and bureau decisions, including any documents made part of those decisions, pursuant to section 11202-A. [PL 2011, c. 299, §1 (NEW).]

[PL 2011, c. 299, §1 (NEW).]

10. Registrant access to information. The bureau shall provide all information described in subsection 1, paragraphs A to F to a registrant who requests that person's own information. The process for access and review of that information is governed by Title 16, section 709.

[PL 2013, c. 267, Pt. B, §29 (AMD).]

11. Maintenance by bureau. Only the bureau is authorized to maintain a sex offender registry on the Internet for purposes of public access as described in subsection 9.

[PL 2005, c. 545, §1 (AMD).]

12. Law enforcement agency website. A law enforcement agency may maintain its own sex offender website and may make that information available for use by the public if:

A. A notice is prominently posted on the website that expressly states that the website is not the official state sex offender registry under subsection 1 and that the law enforcement agency posting the website is solely responsible for the website's content; [PL 2005, c. 545, §2 (NEW).]

B. The website provides a link to the bureau's Internet sex offender registry under subsection 1; [PL 2005, c. 545, §2 (NEW).]

C. The website contains information regarding only registrants who are domiciled, reside, attend college or school or work within the posting law enforcement agency's jurisdiction; and [PL 2005, c. 545, §2 (NEW).]

D. The information on the website is updated by the law enforcement agency as frequently as available resources permit, but no less than every 7 days. The law enforcement agency shall also prominently post on the website the date and time of the most recent update to the website. [PL 2005, c. 545, §2 (NEW).]

[PL 2005, c. 545, §2 (NEW).]

13. Access to registrant information existing in electronic form restricted. Notwithstanding Title 1, chapter 13:

A. The bureau may not disseminate in electronic form information about a registrant that is created, collected or maintained in electronic form by or for the bureau, except as made available to the public through the bureau's Internet website pursuant to subsection 9 and made available to the Background Check Center established pursuant to Title 22, chapter 1691; and [PL 2015, c. 299, §26 (AMD).]

B. Except as made available to the public through an Internet website maintained by a law enforcement agency pursuant to subsection 12, a law enforcement agency may not disseminate in electronic form information about a registrant that is collected or maintained in electronic form by or for the law enforcement agency. [PL 2011, c. 299, §3 (NEW).]

[PL 2015, c. 299, §26 (AMD).]

SECTION HISTORY

PL 1999, c. 437, §2 (NEW). PL 2003, c. 371, §§4-7 (AMD). PL 2003, c. 711, §§C17-20 (AMD). PL 2003, c. 711, §D2 (AFF). PL 2005, c. 423, §§9-13 (AMD). PL 2005, c. 545, §§1,2 (AMD). PL 2011, c. 299, §§1-3 (AMD). PL 2011, c. 307, §1 (AMD). PL 2013, c. 267, Pt. B, §§28, 29 (AMD). PL 2015, c. 299, §26 (AMD).

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§1207. Confidentiality of information

1. Generally. All orders of commitment, medical and administrative records, applications and reports, and facts contained in them, pertaining to any client ~~shall be kept~~ are confidential and may ~~not~~ be disclosed only as follows ~~by any person, except that~~:

A. A client, a client's legal guardian, if any, or, if the client is a minor, the client's parent or legal guardian may give informed written consent to the disclosure of information; [RR 2019, c. 2, Pt. B, §86 (COR).]

B. Information may be disclosed if necessary to carry out the statutory functions of the department; the hospitalization provisions of chapter 3, subchapter 4; the purposes of section 3608; the purposes of Title 5, section 19506; the purposes of United States Public Law 99-319, dealing with the investigatory function of the independent agency designated with advocacy and investigatory functions under United States Public Law 88-164, Title I, Part C or United States Public Law 99-319; the investigation and hearing pursuant to Title 15, section 393, subsection 4-A; or the provision of mental health services by the Department of Corrections pursuant to Title 34-A, section 3031, 3069-A or 3069-B; [PL 2017, c. 475, Pt. A, §57 (AMD).]

B-1. [PL 2005, c. 397, Pt. A, §48 (RP).]

B-2. [PL 2007, c. 466, Pt. A, §56 (RP).]

B-3. [PL 2017, c. 475, Pt. A, §58 (RP).]

C. Information may be disclosed if ordered by a court of record, subject to any limitation in the Maine Rules of Evidence, Rule 503; [PL 1983, c. 459, §7 (NEW).]

C-1. Within 48 hours of a death reportable by the commissioner to the Chief Medical Examiner pursuant to Title 22, section 3025, subsection 1, paragraph E, the commissioner shall provide information on that death to the chairs of the joint standing committee of the Legislature having jurisdiction over health and human services matters. Within 30 days of the reportable death, the commissioner shall provide the members of the committee with a copy of the death report. Information and reports provided pursuant to this paragraph must maintain the confidentiality of the identity of all persons mentioned or referred to in the information and reports. [PL 1997, c. 605, §1 (NEW).]

D. Nothing in this subsection precludes disclosure, upon proper inquiry, of information relating to the physical condition or mental status of a client to that client's spouse or next of kin; [RR 2019, c. 2, Pt. B, §87 (COR).]

E. Nothing in this subsection precludes the disclosure of biographical or medical information concerning a client to commercial or governmental insurers, or to any other corporation, association or agency from which the department or a licensee of the department may receive reimbursement for the care and treatment, education, training or support of the client, if the recipient of the information uses it for no other purpose than to determine eligibility for reimbursement and, if eligibility exists, to make reimbursement; [PL 1989, c. 335, §2 (AMD).]

F. Nothing in this subsection precludes the disclosure or use of any information, including recorded or transcribed diagnostic and therapeutic interviews, concerning any client in connection with any educational or training program established between a public hospital and any college, university, hospital, psychiatric or counseling clinic or school of nursing, as long as, in the disclosure or use of the information as part of a course of instruction or training program, the client's identity remains undisclosed; [PL 2011, c. 691, Pt. A, §39 (AMD).]

G. [PL 2011, c. 691, Pt. A, §40 (RP).]

H. The names and dates of death of individuals who died while patients at the Augusta Mental Health Institute, the Bangor Mental Health Institute, the Dorothea Dix Psychiatric Center, the Riverview Psychiatric Center or the Pineland Hospital and Training Center may be made available to the public in accordance with rules adopted by the department. The rules must require the department to notify the public regarding the release of the information and to maintain the confidentiality of information concerning any deceased individual whose surviving relatives notify the department that they object to public disclosure. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A; and [PL 2015, c. 189, §1 (AMD).]

I. Nothing in this subsection precludes the disclosure of any information, except psychotherapy notes as defined in 45 Code of Federal Regulations, Section 164.501(2010), concerning a client to a state-designated statewide health information exchange that provides and maintains an individual protection mechanism by which a client may choose to opt in to allow the state-designated statewide health information exchange to disclose that client's health care information covered under this section to a health care practitioner or health care facility for purposes of treatment, payment and health care operations, as those terms are defined in 45 Code of Federal Regulations, Section 164.501. A state-designated statewide health information exchange also must satisfy the requirement in Title 22, section 1711-C, subsection 18, paragraph C of providing a general opt-out provision to a client at all times.

A state-designated statewide health information exchange may disclose a client's health care information covered under this section even if the client has not chosen to opt in to allow the state-designated statewide health information exchange to disclose the individual's health care information when, in a health care provider's judgment, disclosure is necessary to:

(1) Avert a serious threat to the health or safety of others, if the conditions, as applicable, described in 45 Code of Federal Regulations, Section 164.512(j)(2010) are met; or

(2) Prevent or respond to imminent and serious harm to the client and disclosure is to a provider for diagnosis or treatment. [PL 2011, c. 347, §11 (NEW).]

[RR 2019, c. 2, Pt. B, §§86, 87 (COR).]

2. Statistical compilations and research. Confidentiality of records used for statistical compilations or research is governed as follows.

A. Persons engaged in statistical compilation or research may have access to treatment records of clients when needed for research, if:

(1) The access is approved by the chief administrative officer of the mental health facility or the chief administrative officer's designee;

(2) The research plan is first submitted to and approved by the chief administrative officer of the mental health facility, or the chief administrative officer's designee, where the person engaged in research or statistical compilation is to have access to communications and records; and

(3) The records are not removed from the mental health facility that prepared them, except that data that do not identify clients or coded data may be removed from a mental health facility if the key to the code remains on the premises of the facility. [RR 2019, c. 2, Pt. B, §88 (COR).]

B. The chief administrative officer of the mental health facility and the person doing the research shall preserve the anonymity of the client and may not disseminate data that refer to the client by name, number or combination of characteristics that together could lead to the client's identification. [RR 2019, c. 2, Pt. B, §88 (COR).]

[RR 2019, c. 2, Pt. B, §88 (COR).]

3. Use by the commissioner. Confidentiality of information and records used by the commissioner for administration, planning or research is governed as follows.

A. A facility or a provider that receives funds from the department to provide services for persons eligible for such services under this Title shall send information and records to the commissioner, if requested by the commissioner pursuant to the department's obligation to maintain the overall responsibility for the care and treatment of persons receiving mental health services funded in full or in part by the State. [PL 2011, c. 542, Pt. A, §61 (RPR).]

B. The commissioner may collect and use the information and records for administration, planning or research, under the following conditions.

(1) The use of the information is subject to subsection 1, paragraph C.

(2) Data identifying particular clients by means other than case number or code shall be removed from all records and reports of information before issuance from the mental health facility which prepared the records and reports.

(3) A code shall be the exclusive means of identifying clients and shall be available to the commissioner and only the commissioner.

(4) The key to the code shall remain in the possession of the issuing facility and shall be available to the commissioner and only the commissioner.

(5) Members of the department may not release or disseminate to any other person, agency or department of government any information which refers to a client by name, numbers, address, birth date or other characteristics or combination of characteristics which could lead to the client's identification, except as otherwise required by law. [PL 1983, c. 459, §7 (NEW).]

[PL 2011, c. 542, Pt. A, §61 (AMD).]

4. Prohibited acts.

[PL 2007, c. 310, §1 (RP).]

4-A. Violation. Disclosure of client information in violation of this section is an offense under the licensing standards of the mental health professional committing the violation and must be promptly reported to the licensing board with jurisdiction for review, hearing and disciplinary action.
[PL 2007, c. 310, §2 (NEW).]

5. Permitted disclosure.

[PL 2007, c. 310, §3 (RP).]

5-A. Disclosure to family, caretakers. Under the following circumstances, a licensed mental health professional providing care to an adult client may disclose to a family member, to another relative, to a close personal friend or caretaker of the client or to anyone identified by the client, the client's health information that is directly relevant to the person's involvement with the client's care.

A. If a client with capacity to make health care decisions is either present or available prior to disclosure, the professional may disclose the information:

(1) When the client gives oral or written consent;

(2) When the client does not object in circumstances in which the client has the opportunity to object; or

(3) When the professional may reasonably infer from the circumstances that the client does not object. [PL 2007, c. 310, §4 (NEW).]

B. The professional may disclose the information if in the professional's judgment it is in the client's best interests to make the disclosure and the professional determines either that the client

lacks the capacity to make health care decisions or an emergency precludes the client from participating in the disclosure. [PL 2007, c. 310, §4 (NEW).]

[PL 2007, c. 310, §4 (NEW).]

6. Duty to provide information.

[PL 2007, c. 310, §5 (RP).]

6-A. Disclosure of danger. A licensed mental health professional shall disclose protected health information that the professional believes is necessary to avert a serious and imminent threat to health or safety when the disclosure is made in good faith to any person, including a target of the threat, who is reasonably able to prevent or minimize the threat.

[PL 2009, c. 451, §7 (AMD).]

7. Disclosure to law enforcement. A licensed mental health professional shall disclose protected health information when the disclosure is made in good faith for a law enforcement purpose to a law enforcement officer if the conditions, as applicable, are met as described in 45 Code of Federal Regulations, Section 164.512(f) (2008).

[PL 2009, c. 451, §8 (NEW).]

8. Disclosure of knowledge of firearms. A licensed mental health professional shall notify law enforcement when the notification is made in good faith that the licensed mental health professional has reason to believe that a person committed to a state mental health institute has access to firearms.

[PL 2009, c. 451, §9 (NEW).]

9. Disclosure for care management or coordination of care. Notwithstanding any provision of this section to the contrary, a health care practitioner may disclose without authorization health information for the purposes of care management or coordination of care pertaining to a client as provided in this subsection.

A. Disclosure is permitted to a health care practitioner or health care facility as defined in Title 22, section 1711-C, subsection 1. [PL 2013, c. 326, §2 (NEW).]

B. Disclosure is permitted to a payor or person engaged in payment for health care for the purpose of care management or coordination of care. [PL 2013, c. 326, §2 (NEW).]

C. Disclosure of psychotherapy notes is governed by 45 Code of Federal Regulations, Section 164.508(a)(2). [PL 2013, c. 326, §2 (NEW).]

D. A person who has made a disclosure under this subsection shall make a reasonable effort to notify the individual or the authorized representative of the individual of the disclosure. [PL 2013, c. 326, §2 (NEW).]

[PL 2013, c. 326, §2 (NEW).]

SECTION HISTORY

PL 1983, c. 459, §7 (NEW). PL 1983, c. 580, §4 (AMD). PL 1983, c. 626 (AMD). PL 1985, c. 495, §23 (AMD). PL 1985, c. 582 (AMD). PL 1989, c. 7, §N3 (AMD). PL 1989, c. 190 (AMD). PL 1989, c. 335, §§2,3 (AMD). PL 1991, c. 250 (AMD). PL 1993, c. 593, §1 (AMD). PL 1995, c. 497, §5 (AMD). PL 1995, c. 560, §K19 (AMD). PL 1995, c. 691, §4 (AMD). PL 1997, c. 422, §2 (AMD). PL 1997, c. 605, §1 (AMD). PL 2001, c. 354, §3 (AMD). PL 2003, c. 563, §§1-3 (AMD). RR 2005, c. 2, §22 (COR). PL 2005, c. 397, §§A47,48 (AMD). PL 2005, c. 683, §A57 (AMD). PL 2007, c. 286, §2 (AMD). PL 2007, c. 310, §§1-6 (AMD). PL 2007, c. 466, Pt. A, §56 (AMD). PL 2007, c. 609, §1 (AMD). PL 2007, c. 670, §17 (AMD). PL 2009, c. 415, Pt. A, §20 (AMD). PL 2009, c. 451, §§7-9 (AMD). PL 2011, c. 347, §§9-11 (AMD). PL 2011, c. 420, Pt. C, §§6, 7 (AMD). PL 2011, c. 542, Pt. A, §61 (AMD). PL 2011, c. 691, Pt. A, §§39, 40 (AMD). PL 2013, c. 132, §1 (AMD). PL 2013, c. 326, §2 (AMD). PL 2013, c. 434, §§7, 8 (AMD). PL 2015, c. 189, §1

(AMD). PL 2015, c. 329, Pt. A, §§21, 22 (AMD). PL 2017, c. 93, §1 (AMD). PL 2017, c. 147, §§6, 7 (AMD). PL 2017, c. 475, Pt. A, §§57, 58 (AMD). RR 2019, c. 2, Pt. B, §§86-88 (COR).

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§3864. Judicial procedure and commitment

1. Application. An application to the District Court to admit a person to a psychiatric hospital, filed under section 3863, subsection 5-A, must be accompanied by:

A. The emergency application under section 3863, subsection 1; [PL 1983, c. 459, §7 (NEW).]

B. The accompanying certificate of the medical practitioner under section 3863, subsection 2; [PL 2009, c. 651, §20 (AMD).]

C. The certificate of the medical practitioner under section 3863, subsection 7; [PL 2021, c. 389, §3 (AMD).]

D. A written statement, signed by the chief administrative officer of the psychiatric hospital, certifying that a copy of the application and the accompanying documents have been given personally to the patient and that the patient and the patient's guardian or next of kin, if any, have been notified of:

(1) The patient's right to retain an attorney or to have an attorney appointed;

(2) The patient's right to select or to have the patient's attorney select an independent examiner; and

(3) How to contact the District Court; and [PL 2009, c. 651, §20 (AMD).]

E. A copy of the notice and instructions given to the patient. [PL 1997, c. 422, §14 (NEW).]
[PL 2021, c. 389, §3 (AMD).]

1-A. Involuntary treatment. An application under this section may also include a request for an order of involuntary treatment under subsection 7-A.
[PL 2007, c. 446, §2 (NEW); PL 2007, c. 446, §7 (AFF).]

2. Detention pending judicial determination. Notwithstanding any other provisions of this subchapter, a person, with respect to whom an application for the issuance of an order for hospitalization has been filed, may not be released or discharged during the pendency of the proceedings, unless:

A. The District Court orders release or discharge upon the request of the patient or the patient's guardian, parent, spouse or next of kin; [PL 2007, c. 319, §10 (AMD).]

B. The District Court orders release or discharge upon the report of the applicant that the person may be discharged with safety; [PL 1995, c. 496, §3 (AMD).]

C. A court orders release or discharge upon a writ of habeas corpus under section 3804; [PL 2015, c. 309, §6 (AMD).]

D. Upon request of the commissioner, the District Court orders the transfer of a patient in need of more specialized treatment to another psychiatric hospital. In the event of a transfer, the court shall transfer its file to the District Court having territorial jurisdiction over the receiving psychiatric hospital; or [PL 2015, c. 309, §7 (AMD).]

E. The person has capacity to make an informed decision for informal voluntary admission, agrees to informal voluntary admission and the chief administrative officer of the hospital determines that informal voluntary admission is suitable. [PL 2015, c. 309, §8 (NEW).]
[PL 2015, c. 309, §§6-8 (AMD).]

3. Notice of receipt of application. The giving of notice of receipt of application and date of hearing under this section is governed as follows.

A. Upon receipt by the District Court of the application and accompanying documents specified in subsection 1, the court shall cause written notice of the application and date of hearing:

(1) To be mailed within 2 days of filing to the person; and

(2) To be mailed to the person's guardian, if known, and to the person's spouse, parent or one of the person's adult children or, if none of these persons exist or if none of those persons can be located, to one of the person's next of kin or a friend, except that if the chief administrative officer has reason to believe that notice to any of these individuals would pose risk of harm to the person who is the subject of the application, notice to that individual may not be given. [PL 1997, c. 422, §15 (AMD).]

B. A docket entry is sufficient evidence that notice under this subsection has been given. [PL 1983, c. 459, §7 (NEW).]

[PL 1997, c. 422, §15 (AMD).]

4. Examination. Examinations under this section are governed as follows.

A. Upon receipt by the District Court of the application and the accompanying documents specified in subsection 1 and at least 3 days after the person who is the subject of the examination was notified by the psychiatric hospital of the proceedings and of that person's right to retain counsel or to select an examiner, the court shall cause the person to be examined by a medical practitioner. If the application includes a request for an order for involuntary treatment under subsection 7-A, the practitioner must be a medical practitioner who is qualified to prescribe medication relevant to the patient's care. If the person under examination or the counsel for that person selects a qualified examiner who is reasonably available, the court shall give preference to choosing that examiner. [PL 2009, c. 651, §21 (AMD).]

B. The examination must be held at a psychiatric hospital or at any other suitable place not likely to have a harmful effect on the mental health of the person. [PL 2009, c. 651, §21 (AMD).]

C. [PL 2007, c. 319, §10 (RP).]

D. [PL 2007, c. 319, §10 (RP).]

E. The examiner shall report to the court on:

(1) Whether the person is a mentally ill person within the meaning of section 3801, subsection 5;

(2) When the establishment of a progressive treatment plan under section 3873-A is at issue, whether a person is suffering from a severe and persistent mental illness within the meaning of section 3801, subsection 8-A;

(3) Whether the person poses a likelihood of serious harm within the meaning of section 3801, subsection 4-A;

(4) When involuntary treatment is at issue, whether the need for such treatment meets the criteria of subsection 7-A, paragraphs A and B;

(5) Whether adequate community resources are available for care and treatment of the person's mental illness; and

(6) Whether the person's clinical needs may be met by an order under section 3873-A to participate in a progressive treatment program. [PL 2009, c. 651, §21 (AMD).]

F. [PL 2007, c. 446, §3 (RP); PL 2007, c. 446, §7 (AFF).]

G. Opinions of the examiner may be based on personal observation or on history and information from other sources considered reliable by the examiner. [PL 2009, c. 651, §21 (NEW).]

[PL 2009, c. 651, §21 (AMD).]

5. Hearing. Hearings under this section are governed as follows.

A. The District Court shall hold a hearing on the application not later than 14 days from the date of the application. The District Court may separate the hearing on commitment from the hearing on involuntary treatment.

(1) For good cause shown, on a motion by any party or by the court on its own motion, the hearing on commitment or on involuntary treatment may be continued for a period not to exceed 21 additional days.

(2) If the hearing on commitment is not held within the time specified, or within the specified continuance period, the court shall dismiss the application and order the person discharged forthwith.

(2-A) If the hearing on involuntary treatment is not held within the time specified, or within the specified continuance period, the court shall dismiss the application for involuntary treatment.

(3) In computing the time periods set forth in this paragraph, the Maine Rules of Civil Procedure apply. [PL 2009, c. 651, §22 (AMD).]

A-1. Prior to the commencement of the hearing, the court shall inform the person that if an order of involuntary commitment is entered, that person is a prohibited person and may not own, possess or have under that person's control a firearm pursuant to Title 15, section 393, subsection 1. [PL 2007, c. 670, §18 (NEW).]

B. The hearing must be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have harmful effect on the mental health of the person. If the setting is outside the psychiatric hospital to which the patient is currently admitted, the Department of Health and Human Services shall bear the responsibility and expense of transporting the patient to and from the hearing. If the patient is to be admitted to a psychiatric hospital following the hearing, then the hospital from which the patient came shall transport the patient to the admitting psychiatric hospital. If the patient is to be released following the hearing, then the hospital from which the patient came shall return the patient to that hospital or, at the patient's request, return the patient to the patient's place of residence. [PL 2007, c. 319, §10 (AMD).]

C. The court shall receive all relevant and material evidence that may be offered in accordance with accepted rules of evidence and accepted judicial dispositions.

(1) The person, the applicant and all other persons to whom notice is required to be sent must be afforded an opportunity to appear at the hearing to testify and to present and cross-examine witnesses.

(2) The court may, in its discretion, receive the testimony of any other person and may subpoena any witness. [PL 2007, c. 319, §10 (AMD).]

D. The person must be afforded an opportunity to be represented by counsel, and, if neither the person nor others provide counsel, the court shall appoint counsel for the person. [PL 2007, c. 319, §10 (AMD).]

E. In addition to proving that the patient is a mentally ill individual, the applicant must show:

(1) By evidence of the patient's recent actions and behavior, that due to the patient's mental illness the patient poses a likelihood of serious harm; and

(2) That, after full consideration of less restrictive treatment settings and modalities, inpatient hospitalization is the best available means for the treatment of the person. [PL 2005, c. 519, Pt. BBBB, §10 (AMD); PL 2005, c. 519, Pt. BBBB, §20 (AFF).]

F. In each case, the applicant shall submit to the court, at the time of the hearing, testimony, including expert psychiatric testimony, indicating the individual treatment plan to be followed by

the psychiatric hospital staff, if the person is committed under this section, and shall bear any expense for witnesses for this purpose. [PL 2007, c. 319, §10 (AMD).]

G. A stenographic or electronic record must be made of the proceedings in all judicial hospitalization hearings.

(1) The record and all notes, exhibits and other evidence are confidential.

(2) The record and all notes, exhibits and other evidence must be retained as part of the District Court records for a period of 2 years from the date of the hearing. [PL 2007, c. 319, §10 (AMD).]

H. The hearing is confidential and a report of the proceedings may not be released to the public or press, except by permission of the person or the person'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 person or the person's counsel. [PL 2007, c. 319, §10 (AMD).]

[PL 2009, c. 651, §22 (AMD).]

6. Court findings. Procedures dealing with the District Court's findings under this section are as follows.

A. The District Court shall so state in the record, if it finds upon completion of the hearing and consideration of the record:

(1) Clear and convincing evidence that the person is mentally ill and that the person's recent actions and behavior demonstrate that the person's illness poses a likelihood of serious harm;

(1-A) That adequate community resources for care and treatment of the person's mental illness are unavailable;

(2) That inpatient hospitalization is the best available means for treatment of the patient; and

(3) That it is satisfied with the individual treatment plan offered by the psychiatric hospital to which the applicant seeks the patient's involuntary commitment. [PL 2009, c. 651, §23 (AMD).]

B. If the District Court makes the findings in paragraph A, subparagraphs (1), (1-A) and (2), but is not satisfied with the individual treatment plan as offered, it may continue the case for not longer than 10 days, pending reconsideration and resubmission of an individual treatment plan by the psychiatric hospital. [PL 2009, c. 651, §23 (AMD).]

C. If the District Court makes the findings in section 3873-A, subsection 1, the court may issue an order under section 3873-A requiring the person to participate in a progressive treatment program. [PL 2009, c. 651, §23 (NEW).]

[PL 2009, c. 651, §23 (AMD).]

7. Commitment. Upon making the findings described in subsection 6, paragraph A, the court may order commitment to a psychiatric hospital for a period not to exceed 4 months in the first instance and not to exceed one year after the first and all subsequent hearings.

A. The court may issue an order of commitment immediately after the completion of the hearing, or it may take the matter under advisement and issue an order within 24 hours of the hearing. [PL 1983, c. 459, §7 (NEW).]

B. If the court does not issue an order of commitment within 24 hours of the completion of the hearing, it shall dismiss the application and order the patient discharged immediately. [PL 1995, c. 496, §6 (AMD).]

[PL 2009, c. 651, §24 (AMD).]

7-A. Involuntary treatment. This subsection governs involuntary treatment.

A. The court may grant a psychiatric hospital power to implement a recommended treatment plan without a person's consent for up to 120 days or until the end of the commitment, whichever is sooner, if upon application the court finds:

(1) That the person lacks the capacity to make an informed decision regarding treatment;

(2) That the person is unable or unwilling to comply with recommended treatment;

(3) That the need for the treatment outweighs the risks and side effects; and

(4) That the recommended treatment is the least intrusive appropriate treatment option.

Alternatively, the court may appoint a surrogate to make treatment decisions on the person's behalf for the duration of the commitment if the court is satisfied that the surrogate is suitable, willing and reasonably available to act in the person's best interests. [PL 2007, c. 446, §4 (NEW); PL 2007, c. 446, §7 (AFF).]

B. The need for involuntary treatment under paragraph A may be based on findings that include, but are not limited to, the following:

(1) That a failure to treat the illness is likely to produce lasting or irreparable harm to the person; or

(2) That without the recommended treatment the person's illness or involuntary commitment may be significantly extended without addressing the symptoms that cause the person to pose a likelihood of serious harm. [PL 2007, c. 446, §4 (NEW); PL 2007, c. 446, §7 (AFF).]

C. The parties may agree to change, terminate or extend the treatment plan during the time period of an order for involuntary treatment. [PL 2009, c. 651, §25 (AMD).]

D. For good cause shown, any party may apply to the court to change or terminate the treatment plan. [PL 2009, c. 651, §26 (AMD).]

[PL 2009, c. 651, §§25, 26 (AMD).]

8. Continued involuntary hospitalization. If the chief administrative officer of the psychiatric hospital to which a person has been committed involuntarily by the District Court recommends that continued involuntary hospitalization is necessary for that person, the chief administrative officer shall notify the commissioner. The commissioner may then, not later than 21 days prior to the expiration of a period of commitment ordered by the court, make application in accordance with this section to the District Court that has territorial jurisdiction over the psychiatric hospital designated for treatment in the application by the commissioner for a hearing to be held under this section.
[PL 2007, c. 319, §10 (AMD).]

9. Transportation. Except for transportation expenses paid by the District Court pursuant to subsection 10, a continued involuntary hospitalization hearing that requires transportation of the patient to and from any psychiatric hospital to a court that has committed the person must be provided at the expense of the Department of Health and Human Services. Transportation of an individual to a psychiatric hospital under these circumstances must involve the least restrictive form of transportation available that meets the clinical needs of that individual and be in compliance with departmental regulations.
[PL 2007, c. 319, §10 (AMD).]

10. Expenses. With the exception of expenses incurred by the applicant pursuant to subsection 5, paragraph F, the District Court is responsible for any expenses incurred under this section, including witness and notice fees and expenses of transportation for the person but not fees of appointed counsel.
[PL 2025, c. 511, §17 (AMD).]

11. Appeals. A person ordered by the District Court to be committed to a psychiatric hospital may appeal from that order to the Superior Court.

A. The appeal is on questions of law only. [PL 1983, c. 459, §7 (NEW).]

B. Any findings of fact of the District Court may not be set aside unless clearly erroneous. [PL 1983, c. 459, §7 (NEW).]

C. The order of the District Court remains in effect pending the appeal. [PL 2007, c. 319, §10 (AMD).]

D. The District Court Civil Rules and the Maine Rules of Civil Procedure apply to the conduct of the appeals, except as otherwise specified in this subsection. [PL 1983, c. 459, §7 (NEW).]

[PL 2007, c. 319, §10 (AMD).]

12. Transmission of abstract of court ruling to the State Bureau of Identification. Notwithstanding any other provision of this section or section 1207, a court shall transmit to the Department of Public Safety, State Bureau of Identification an abstract of any order for involuntary commitment issued by the court pursuant to this section. The abstract must include:

A. The name, date of birth and gender of the person who is the subject of the order for involuntary commitment; [PL 2007, c. 670, §19 (NEW).]

B. The court's ruling that the person has been involuntarily committed; and [PL 2007, c. 670, §19 (NEW).]

C. A notation that the person has been notified by the court in accordance with subsection 5, paragraph A-1 and subsection 13. [PL 2007, c. 670, §19 (NEW).]

The abstract required in this subsection is confidential ~~and is not a "public record" as defined in Title 1, chapter 13; however,~~ except that a copy of the abstract may be provided by the State Bureau of Identification to a criminal justice agency for legitimate law enforcement purposes, to the Federal Bureau of Investigation, National Instant Criminal Background Check System or to an issuing authority for the purpose of processing concealed firearm permit applications.

For the purposes of this subsection, "criminal justice agency" means a federal, state, tribal, district, county or local government agency or any subunit thereof that performs the administration of criminal justice under a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice. Courts and the Department of the Attorney General are considered criminal justice agencies. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government.

[PL 2007, c. 670, §19 (NEW).]

13. Firearms possession prohibition notification. A court that orders a person to be committed involuntarily pursuant to this section shall inform the person that possession, ownership or control of a firearm by that person is prohibited pursuant to Title 15, section 393, subsection 1. As used in this subsection, "firearm" has the same meaning as in Title 17-A, section 2, subsection 12-A.

[PL 2007, c. 670, §20 (NEW).]

SECTION HISTORY

PL 1983, c. 459, §7 (NEW). PL 1995, c. 496, §§3-6 (AMD). PL 1997, c. 422, §§13-19 (AMD). PL 2001, c. 354, §3 (AMD). PL 2003, c. 689, §B6 (REV). PL 2005, c. 519, §§BBBB9,10 (AMD). PL 2005, c. 519, §BBBB20 (AFF). PL 2007, c. 319, §10 (AMD). PL 2007, c. 446, §§2-4 (AMD). PL 2007, c. 446, §7 (AFF). PL 2007, c. 472, §1 (AMD). PL 2007, c. 670, §§18-20 (AMD). PL 2009, c. 281, §3 (AMD). PL 2009, c. 651, §§20-26 (AMD). PL 2015, c. 309, §§6-8 (AMD). PL 2021, c. 389, §3 (AMD). PL 2025, c. 511, §17 (AMD).

REF #15 – No Changes Recommended (sub-§5)
REF #16 – Drafting Changes Recommended (sub-§12)

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§5005-A. Advocacy agency

1. Agency. The department shall contract with the agency designated pursuant to Title 5, section 19502, referred to in this section as "the agency," to provide the services described in subsection 2 to individuals with intellectual disabilities or autism.
[PL 2011, c. 657, Pt. EE, §5 (NEW).]

2. Duties. The department shall contract with the agency to perform the following duties statewide in at least 5 geographically dispersed locations.

A. The agency shall receive complaints made by or on behalf of individuals with intellectual disabilities or autism and represent their interests in any matter pertaining to their rights and dignity. [PL 2013, c. 310, §2 (AMD).]

B. The agency shall investigate the claims, grievances and allegations of violations of the rights of individuals with intellectual disabilities or autism. [PL 2013, c. 310, §2 (AMD).]

C. The agency may pursue legal, administrative and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of individuals with intellectual disabilities or autism who are or may be eligible for services administered, licensed or funded by the department, except that the agency may refuse to take action on any complaint that it considers to be trivial, to be moot or to lack merit or for which there is clearly another remedy available. [PL 2013, c. 310, §2 (AMD).]

D. [PL 2013, c. 310, §2 (RP).]

E. The agency may refer individuals with intellectual disabilities or autism to other agencies or entities and collaborate with those agencies or entities for the purpose of advocating for the rights and dignity of those individuals. [PL 2013, c. 310, §2 (AMD).]

F. The agency shall act as an information source regarding the rights of all individuals with intellectual disabilities or autism, keeping itself informed about all laws, administrative rules and institutional and other policies relating to the rights and dignity of those individuals and about relevant legal decisions and other developments related to the fields of mental health, intellectual disabilities and autism, both in this State and in other parts of the country. [PL 2013, c. 310, §2 (AMD).]

G. The agency may make and publish reports necessary to the performance of the duties described in this section. The agency may report its findings to groups outside the department, such as legislative bodies, advisory committees, commissions, law enforcement agencies and the press. At least annually, the agency shall report both in person and in writing to the joint standing committee of the Legislature having jurisdiction over health and human services matters and the department regarding the performance of the duties described in this section. [PL 2013, c. 310, §2 (AMD).]

H. The agency may monitor the delivery of services, supports and other assistance or residential services or treatment provided to persons with intellectual disabilities or autism for the purpose of ensuring that services, supports and assistance meet the needs of those persons and are delivered in conformity with laws, regulations, rules and other standards regarding quality of care. [PL 2013, c. 310, §2 (NEW).]
[PL 2013, c. 310, §2 (AMD).]

3. Participate in personal planning. The agency may participate in personal planning when the agency has concerns regarding the rights or dignity of a person with intellectual disabilities or autism. A person has the right to refuse such participation.
[PL 2011, c. 657, Pt. EE, §5 (NEW).]

4. Access to files and records. The agency has access, limited only by the Civil Service Law, to the files, records and personnel of any provider of services, including the files and records of any person

with an intellectual disability or autism held by any provider of service, administered, licensed or funded by the department and to all reports and related documents submitted pursuant to section 5604-A.
[RR 2025, c. 2, Pt. A, §151 (COR).]

4-A. Access to individuals. The agency has access to individuals pursuant to Title 5, section 19506.
[PL 2013, c. 310, §4 (NEW).]

5. Confidentiality. The following provisions govern confidentiality.

A. Any request by or on behalf of an individual with intellectual disabilities or autism for action by the agency and all written records or accounts related to the request are confidential as to the identity of the individual. [PL 2011, c. 657, Pt. EE, §5 (NEW).]

B. The records and accounts under paragraph A may be released only as provided by law. [PL 2011, c. 657, Pt. EE, §5 (NEW).]

C. Records maintained by the agency are the sole property of the individual with intellectual disabilities or autism to whom the records pertain and the agency shall protect the records from loss, damage, tampering or use by unauthorized individuals. ~~The agency shall keep the records confidential and may not release them without~~ The records are confidential and may only be released by the agency with the written consent from the individual with intellectual disabilities or autism or the individual's guardian. [PL 2013, c. 310, §5 (NEW).]
[PL 2013, c. 310, §5 (AMD).]

SECTION HISTORY

PL 2011, c. 657, Pt. EE, §5 (NEW). PL 2013, c. 310, §§2-5 (AMD). RR 2025, c. 2, Pt. A, §151 (COR).

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§5605. Rights and basic protections of a person with an intellectual disability, autism or an acquired brain injury

A person with an intellectual disability or autism is entitled to the following rights and basic protections. A person with an acquired brain injury is entitled to the rights and basic protections outlined in subsections 1 to 11. [PL 2021, c. 284, Pt. A, §11 (AMD).]

1. Humane treatment. A person with an intellectual disability, autism or an acquired brain injury is entitled to dignity, privacy and humane treatment.
[PL 2021, c. 284, Pt. A, §12 (AMD).]

2. Practice of religion. A person with an intellectual disability, autism or an acquired brain injury is entitled to religious freedom and practice without any restriction or forced infringement on that person's right to religious preference and practice.
[PL 2021, c. 284, Pt. A, §13 (AMD).]

3. Communications. A person with an intellectual disability, autism or an acquired brain injury is entitled to private communications.

A. A person with an intellectual disability, autism or an acquired brain injury is entitled to receive, send and mail sealed, unopened correspondence. A person who is a provider may not delay, hold or censor any incoming or outgoing correspondence of any person with an intellectual disability, autism or an acquired brain injury, nor may any such correspondence be opened without the consent of the person or the person's legal guardian. [PL 2021, c. 284, Pt. A, §14 (AMD).]

B. A person with an intellectual disability, autism or an acquired brain injury is entitled to reasonable opportunities for telephone and Internet communication. [PL 2021, c. 284, Pt. A, §14 (AMD).]

C. A person with an intellectual disability, autism or an acquired brain injury is entitled to an unrestricted right to visitations during reasonable hours unless this right has been restricted pursuant to rules adopted pursuant to section 5604. [PL 2021, c. 284, Pt. A, §14 (AMD).]
[PL 2021, c. 284, Pt. A, §14 (AMD).]

4. Work. A person with an intellectual disability, autism or an acquired brain injury engaged in work programs that require compliance with state and federal wage and hour laws is entitled to fair compensation for labor in compliance with regulations of the United States Department of Labor.
[PL 2021, c. 284, Pt. A, §15 (AMD).]

5. Vote. A person with an intellectual disability, autism or an acquired brain injury may not be denied the right to vote.
[PL 2021, c. 284, Pt. A, §16 (AMD).]

6. Personal property. A person with an intellectual disability, autism or an acquired brain injury is entitled to the possession and use of that person's own clothing, personal effects and money, except when temporary custody of clothing or personal effects by a provider is necessary to protect the person or others from imminent injury or unless this right has been restricted pursuant to rules adopted pursuant to section 5604.
[PL 2021, c. 284, Pt. A, §17 (AMD).]

7. Nutrition. A person with an intellectual disability, autism or an acquired brain injury is entitled to nutritious food in adequate quantities and meals may not be withheld for disciplinary reasons.
[PL 2021, c. 284, Pt. A, §18 (AMD).]

8. Medical care. A person with an intellectual disability, autism or an acquired brain injury is entitled to receive prompt and appropriate medical and dental treatment and care for physical and mental ailments and for the prevention of any illness or disability, and medical treatment must be

consistent with the accepted standards of medical practice in the community, unless the religion of the person with an intellectual disability, autism or an acquired brain injury so prohibits.

A. Medication may be administered only at the written order of a physician. [PL 1983, c. 459, §7 (NEW).]

B. Medication may not be used as punishment, for the convenience of staff, as a substitute for a habilitation plan or in unnecessary or excessive quantities. [PL 1983, c. 459, §7 (NEW).]

C. Daily notation of medication received by each person with an intellectual disability, autism or an acquired brain injury must be kept in the records of the person with an intellectual disability, autism or an acquired brain injury. [PL 2021, c. 284, Pt. A, §19 (AMD).]

D. Periodically, but no less frequently than every 6 months, the drug regimen of each person with an intellectual disability, autism or an acquired brain injury must be reviewed by a physician or other appropriate monitoring body, consistent with appropriate standards of medical practice. [PL 2021, c. 284, Pt. A, §19 (AMD).]

E. All prescriptions must have a termination date. [PL 1993, c. 326, §9 (AMD).]

F. [PL 2011, c. 186, Pt. A, §24 (RP).]

G. Prior to instituting a plan of experimental medical treatment or carrying out any surgical procedure, express and informed consent must be obtained from the person with an intellectual disability, autism or an acquired brain injury, unless the person has been found to be legally incompetent, in which case the person's guardian may consent.

(1) Before making a treatment or surgical decision, the person must be given information, including, but not limited to, the nature and consequences of the procedures, the risks, benefits and purposes of the procedures and the availability of alternate procedures.

(2) The person or, if legally incompetent, that person's guardian may withdraw express and informed consent at any time, with or without cause, before treatment or surgery. [PL 2021, c. 284, Pt. A, §19 (AMD).]

H. Notwithstanding the absence of express and informed consent, emergency medical care or treatment may be provided to any person with an intellectual disability, autism or an acquired brain injury who has been injured or who is suffering from an acute illness, disease or condition if delay in initiation of emergency medical care or treatment would endanger the health of the person. [PL 2021, c. 284, Pt. A, §19 (AMD).]

I. Notwithstanding the absence of express and informed consent, emergency surgical procedures may be provided to any person with an intellectual disability, autism or an acquired brain injury who has been injured or who is suffering from an acute illness, disease or condition if delay in initiation of emergency surgery would substantially endanger the health of the person. [PL 2021, c. 284, Pt. A, §19 (AMD).]

[PL 2021, c. 284, Pt. A, §19 (AMD).]

9. Sterilization. A person with an intellectual disability, autism or an acquired brain injury may not be sterilized, except in accordance with chapter 7.

[PL 2021, c. 284, Pt. A, §20 (AMD).]

10. Social activity. A person with an intellectual disability, autism or an acquired brain injury is entitled to opportunities for behavioral and leisure time activities that include social interaction in the community, as set out in section 5610. This right may be waived or restricted only under the rules adopted pursuant to section 5604 or pursuant to a treatment plan approved pursuant to section 5603, subsection 1.

[PL 2021, c. 284, Pt. A, §21 (AMD).]

11. Physical exercise. A person with an intellectual disability, autism or an acquired brain injury is entitled to opportunities for appropriate physical exercise, including the use of available indoor and outdoor facilities and equipment.
[PL 2021, c. 284, Pt. A, §22 (AMD).]

12. Discipline. Discipline of persons with intellectual disabilities or autism is governed as follows.

A. [PL 2011, c. 186, Pt. A, §26 (RP).]

B. Corporal punishment or any form of inhumane discipline is not permitted. [PL 1983, c. 459, §7 (NEW).]

C. Seclusion as a form of discipline is not permitted. [PL 2011, c. 186, Pt. A, §26 (AMD).]

D. [PL 1993, c. 326, §9 (RP).]

E. [PL 2025, c. 276, §1 (RP); PL 2025, c. 276, §10 (AFF).]
[PL 2011, c. 542, Pt. A, §129 (AMD); PL 2025, c. 276, §1 (AMD); PL 2025, c. 276, §10 (AFF).]

13. Behavioral health support, modification and management for children. Behavior modification and behavior management of and supports for a person who has not attained 18 years of age with an intellectual disability or autism and who is not a patient in a psychiatric unit of an acute hospital or a psychiatric hospital as defined in section 3801, subsection 7-B are governed as follows.

A. A person who has not attained 18 years of age with an intellectual disability or autism may not be subjected to a behavior modification or behavior management program to eliminate dangerous or maladaptive behavior without first being assessed by a physician to determine if the proposed program is medically contraindicated and that the dangerous or maladaptive behavior could not be better treated medically. [PL 2025, c. 276, §2 (AMD); PL 2025, c. 276, §10 (AFF).]

A-1. Support programs may contain both behavior modification and behavior management components. [PL 2011, c. 186, Pt. A, §27 (AMD).]

A-2. The following practices are prohibited as elements of behavior modification or behavior management programs:

(1) Seclusion;

(2) Corporal punishment;

(3) Actions or language intended to humble, dehumanize or degrade the person;

(4) Restraints that do not conform to rules adopted pursuant to this section;

(5) Totally enclosed cribs or beds; and

(6) Painful stimuli. [PL 2011, c. 186, Pt. A, §27 (NEW).]

B. Behavior modification and behavior management programs may be used only to correct behavior more harmful to the person than the program and only:

(1) On the recommendation of the person's personal planning team; and

(3) With the approval, following a case-by-case review, of a review team composed of a representative from the advocacy agency designated pursuant to Title 5, section 19502, a team leader of the department's children's services division and the children's services medical director or the director's designee. The advocacy agency representative serves as a nonvoting member of the review team and shall be present to advocate on behalf of the person. The department shall provide sufficient advance notice of all scheduled review team meetings to the advocacy agency and provide the advocacy agency with any plans for which approval is sought along with any supporting documentation. Until rules are adopted by the department to govern behavioral treatment reviews for children, the team may not approve techniques any more

aversive or intrusive than are permitted in rules adopted by the United States Secretary of Health and Human Services regarding treatment of children and youth in nonmedical community-based facilities funded under the Medicaid program. [PL 2025, c. 276, §2 (AMD); PL 2025, c. 276, §10 (AFF).]

C. [PL 2011, c. 186, Pt. A, §27 (RP).]

[PL 2025, c. 276, §2 (AMD); PL 2025, c. 276, §10 (AFF).]

13-A. Behavioral health support, modification and management for adults. Behavioral supports for an adult with an intellectual disability or autism who is not a patient in a psychiatric unit of an acute hospital or a psychiatric hospital as defined in section 3801, subsection 7-B are governed as follows.

A. An adult with an intellectual disability or autism may have a positive behavioral health support plan if recommended by the individual's person-centered support team or requested by the adult. If the positive support plan is to address dangerous or maladaptive behavior, it must be preceded by an assessment by a medical practitioner, as defined in section 3801, subsection 4-B, to rule out medical reasons for the behavior. [PL 2025, c. 276, §3 (NEW); PL 2025, c. 276, §10 (AFF).]

B. A positive behavioral health support plan designed to support the adult to participate meaningfully in that adult's community life cannot include a waiver of any rights provided in this section and may be implemented upon recommendation of the adult's person-centered planning team. [PL 2025, c. 276, §3 (NEW); PL 2025, c. 276, §10 (AFF).]

C. A modifying behavioral health support plan designed to modify or redirect the adult's behavior may include a waiver of rights with informed consent of the adult subject to the plan and must be approved by the department for approval prior to implementation. The plan must be reviewed and approved by a licensed clinical social worker or psychologist who is employed by or under contract with the department. [PL 2025, c. 276, §3 (NEW); PL 2025, c. 276, §10 (AFF).]

D. The following practices are prohibited as elements of positive behavioral health support plans and modifying behavioral health support plans for adults:

(1) Seclusion;

(2) Corporal punishment;

(3) Actions or language intended to humble, dehumanize or degrade the person;

(4) Planned use of restraints;

(5) Totally enclosed cribs or beds; and

(6) Painful stimuli. [PL 2025, c. 276, §3 (NEW); PL 2025, c. 276, §10 (AFF).]

The department shall convene a support and safety committee, at least quarterly, to review data on the number and types of plans implemented for adults under this subsection. The department shall provide to the committee deidentified copies of positive behavioral health support plans for all individuals transitioning from a modifying behavioral health support plan to a positive behavioral health support plan. The committee must include, at a minimum, a self-advocate, a family member of the individual receiving services, a representative of the advocacy agency designated pursuant to Title 5, section 19502, a member of the Maine Developmental Services Oversight and Advisory Board established pursuant to Title 5, section 12004-J, subsection 15 and the licensed clinical social worker or psychologist employed by or under contract with the department under paragraph C.

For the purposes of this subsection, "adult" means a person 18 years of age or older; "modifying behavioral health support plan" means a support plan that outlines strategies to encourage positive behavior and address challenges, incorporating both proactive and corrective interventions; and "positive behavioral health support plan" means a behavioral health support plan that emphasizes using

positive reinforcement and proactive strategies to address behaviors that negatively impact the health, safety and well-being of the person.

For the purposes of this subsection, "restraint" does not include blocking or physical redirection. Blocking is a momentary deflection of a person's movement without holding when that movement would be destructive or harmful. Physical redirection is steering a person without holding or coercion. [PL 2025, c. 276, §3 (NEW); PL 2025, c. 276, §10 (AFF).]

13-B. Safety devices for adults. The use of a safety device for an adult with an intellectual disability or autism is governed as follows.

A. For the purposes of this subsection, "safety device" means an implement, garment, gate, barrier, lock or locking apparatus, video monitoring or video recording device, helmet, mask, glove, strap, belt or protective glove, the effect of which is to reduce or inhibit the adult's movement with the sole purpose of maintaining the safety of the adult. "Safety device" does not include anything used as a means of behavior modification. [PL 2025, c. 276, §4 (NEW); PL 2025, c. 276, §10 (AFF).]

B. The use of a safety device must be pursuant to a written recommendation from a licensed physician, certified nurse practitioner or licensed physician associate. [PL 2025, c. 276, §4 (NEW); PL 2025, c. 276, §10 (AFF); PL 2025, c. 316, §3 (REV).]

C. The use of a safety device must be approved by the adult's personal planning team, and that approval must be recorded in a document that is part of the adult's planning record. [PL 2025, c. 276, §4 (NEW); PL 2025, c. 276, §10 (AFF).]

D. The adult or the adult's guardian must consent to the use of the safety device. [PL 2025, c. 276, §4 (NEW); PL 2025, c. 276, §10 (AFF).]

E. When a safety device is in use and that safety device may affect other adults residing in the home or participating in the program by restricting their rights, accommodations must be identified and implemented to minimize the effect on the other adults. The personal plan of each adult affected by the use of the safety device must indicate how that adult will be supported to minimize the negative effect of the restriction. [PL 2025, c. 276, §4 (NEW); PL 2025, c. 276, §10 (AFF).]

F. When a video monitoring device or video recording device is in use and other adults residing in the home or participating in the program may trigger or appear on the video monitoring device or video recording device, the consent of that adult must be obtained. [PL 2025, c. 276, §4 (NEW); PL 2025, c. 276, §10 (AFF).]

[PL 2025, c. 276, §4 (NEW); PL 2025, c. 276, §10 (AFF); PL 2025, c. 316, §3 (REV).]

14. Physical restraints.

[PL 2007, c. 573, §1 (RP).]

14-A. Restraints for children. A person who has not attained 18 years of age with an intellectual disability or autism is entitled to be free from restraint unless:

A. The restraint is a short-term step to protect the person from imminent injury to that person or others; or [PL 2011, c. 186, Pt. A, §28 (AMD).]

B. The restraint has been approved as a behavior management program in accordance with this section. [PL 2011, c. 186, Pt. A, §28 (AMD).]

A restraint may not be used as punishment, for the convenience of the staff or as a substitute for habilitative services. A restraint may impose only the least possible restriction consistent with its purpose and must be removed as soon as the threat of imminent injury ends. A restraint may not cause physical injury to the person receiving services and must be designed to allow the greatest possible comfort and safety.

Daily records of the use of restraints identified in paragraph A must be kept, which may be accomplished by meeting reportable event requirements.

Daily records of the use of restraints identified in paragraph B must be kept, and a summary of the daily records pertaining to the person must be made available for review by the person's planning team, as defined in section 5461, subsection 8-C, on a schedule determined by the team. The review by the personal planning team may occur no less frequently than quarterly. The summary of the daily records must state the type of restraint used, the duration of the use and the reasons for the use. A monthly summary of all daily records pertaining to all persons must be relayed to the advocacy agency designated pursuant to Title 5, section 19502.
[PL 2025, c. 276, §5 (AMD); PL 2025, c. 276, §10 (AFF).]

14-B. Mechanical supports.
[PL 2011, c. 186, Pt. A, §29 (RP).]

14-C. Safety devices.
[PL 2011, c. 186, Pt. A, §30 (RP).]

14-D. Reimbursement provided. Notwithstanding any other provision of law, the department shall provide reimbursement within available resources for durable medical equipment that provides a safe sleeping environment for individuals under 16 years of age if:

A. The durable medical equipment is necessary to correct or ameliorate a behavioral health condition; [PL 2009, c. 100, §1 (NEW).]

B. The durable medical equipment is the least restrictive alternative for the treatment of the behavioral health condition; [PL 2009, c. 100, §1 (NEW).]

C. The durable medical equipment is approved on a case-by-case basis by a review team composed of the same representatives as the team conducting children's behavioral treatment reviews under subsection 13, paragraph B, subparagraph (3); and [PL 2009, c. 100, §1 (NEW).]

D. The department determines that the durable medical equipment is cost-effective in comparison to the provision of other covered services or equipment that can sufficiently correct or ameliorate the behavioral health condition. [PL 2009, c. 100, §1 (NEW).]

The department may adopt rules as necessary to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
[PL 2009, c. 100, §1 (NEW).]

14-E. Restraints for adults. An adult with an intellectual disability or autism is entitled to be free from restraint unless the restraint is an emergency short-term step to protect the adult from imminent injury to that adult or others. Each use of restraint must be documented in accordance with the department's reportable event requirements. For the purposes of this subsection, "restraint" does not include blocking or physical redirection. Blocking is a momentary deflection of a person's movement without holding when that movement would be destructive or harmful. Physical redirection is steering a person without holding or coercion.
[PL 2025, c. 276, §6 (NEW); PL 2025, c. 276, §10 (AFF).]

15. Records. All records of persons receiving services ~~must remain~~ are confidential as provided in section 1207.

A. The person with an intellectual disability or autism or, if the person is incompetent, a parent or guardian is entitled to have access to the records upon request. [PL 2011, c. 542, Pt. A, §129 (AMD).]

B. The commissioner is entitled to have access to the records of a provider if necessary to carry out the statutory functions of the commissioner's office. [PL 2011, c. 186, Pt. A, §31 (AMD).]
[PL 2011, c. 542, Pt. A, §129 (AMD).]

16. Therapeutic devices or interventions. Therapeutic devices or interventions must be prescriptively designed by a qualified professional and applied with concern for principles of good body alignment and circulation and allowance for change of position. The department may adopt rules concerning the use of therapeutic devices or interventions. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
[PL 2011, c. 186, Pt. A, §32 (NEW).]

17. Safety devices and practices. A safety device or practice must be prescribed by a physician. A safety device must be designed and applied with concern for principles of good body alignment and circulation and allowance for change of position. The department may adopt rules concerning the use and approval of safety devices or practices. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
[PL 2011, c. 186, Pt. A, §33 (NEW).]

The department may adopt rules as 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. [PL 2011, c. 186, Pt. A, §34 (NEW).]

SECTION HISTORY

PL 1983, c. 459, §7 (NEW). PL 1987, c. 769, §A129 (AMD). PL 1993, c. 326, §9 (AMD). PL 2001, c. 245, §§1-4 (AMD). PL 2003, c. 368, §§1,2 (AMD). PL 2003, c. 564, §§1-3 (AMD). PL 2007, c. 356, §25 (AMD). PL 2007, c. 356, §31 (AFF). PL 2007, c. 573, §§1-4 (AMD). PL 2007, c. 695, Pt. D, §3 (AFF). PL 2009, c. 100, §1 (AMD). PL 2011, c. 186, Pt. A, §§18-34 (AMD). PL 2011, c. 542, Pt. A, §129 (AMD). PL 2011, c. 657, Pt. EE, §§9, 10 (AMD). PL 2013, c. 310, §7 (AMD). PL 2013, c. 500, §1 (AMD). PL 2021, c. 284, Pt. A, §§10-22 (AMD). PL 2025, c. 276, §§1-6 (AMD). PL 2025, c. 276, §10 (AFF). PL 2025, c. 316, §3 (REV).

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§114. Utility personnel records

1. Confidential. The following records of public utilities are confidential ~~and,~~ except as otherwise provided in subsection 3~~, are excluded from the books, accounts, papers, records, memoranda, documents and information otherwise available to the commission under this Title and may not be open to public inspection~~:

A. Materials prepared for and used specifically in the examination or evaluation of applicants for positions with a public utility, including working papers, research materials, records and examinations; [PL 1987, c. 141, Pt. A, §6 (NEW).]

B. Records containing the following:

(1) Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;

(2) Performance evaluations and personal references;

(3) Information pertaining to the credit worthiness of a named employee;

(4) Information pertaining to the personal history, general character or conduct of members of an employee's immediate family; or

(5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations or any other information or materials that may result in disciplinary action; or [PL 1987, c. 141, Pt. A, §6 (NEW).]

C. Other information to which access by the general public is prohibited by law. [PL 1987, c. 141, Pt. A, §6 (NEW).]

[PL 1987, c. 141, Pt. A, §6 (NEW).]

2. Compliance. Failure or refusal by any public utility or any officer, agent or attorney of any public utility to comply with any order, data request or subpoena calling for the production of those records other than an order issued pursuant to subsection 3, shall not serve as the basis for any civil or criminal fine, penalty or forfeiture.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

3. In camera inspection. Upon request by the commission staff, the Public Advocate or intervenor in a matter before the commission or upon the commission's own motion and for good cause shown, the commission may order a public utility to produce for in camera inspection by the commission or hearing examiner the records designated confidential under subsection 1. The employee whose records are the subject of such a request shall be notified by the commission of the request and shall be given the opportunity to be heard before an order to produce is issued. If the commission or hearing examiner determines after in camera inspection that a record is reasonably relevant to the matter before it and that production of the record is not unjust or unlawful and that the materiality of the record outweighs any harm to the employee from its disclosure, the commission or hearing examiner may order that the record be made a part of the discovery or evident aspects of the proceedings, subject to the terms and conditions that are just, due consideration being given to the privacy interests of the employee involved.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW).

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§704. Termination of utility services

The following provisions apply to termination of a customer's utility service. [PL 1987, c. 141, Pt. A, §6 (NEW).]

1. Residential customers. The commission shall adopt and promulgate reasonable rules after a hearing concerning the termination or disconnection of any residential customer's service by a transmission and distribution, gas, water or telephone utility of the State. These rules apply generally to all such utilities within the commission's jurisdiction and must provide for adequate written notice by that utility to the residential customer that the customer's utility bill has not been paid, and a notice of the prospective termination or disconnection and the right, prior to disconnection, to enter into reasonable installment payment arrangements with that utility; to settle any dispute concerning the proposed disconnection at an informal hearing with that utility and to appeal the results of that utility's decision to the commission. The rules must also provide that there may be no termination or disconnection during a limited medical emergency and for a just and reasonable procedure regarding reconnections of utility service and deposit requirements.
[PL 1999, c. 398, Pt. A, §18 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

1-A. Agreements with landlords. A transmission and distribution utility shall, upon request of a landlord, enter into an agreement with that landlord with respect to a residential rental property receiving transmission and distribution service in the name of that landlord's tenant to automatically transfer the service to the name of the landlord if the service would otherwise be disconnected. The transmission and distribution utility must notify the landlord within 72 hours of the transfer of the service to the landlord's name. Except upon the consent of the tenant, the transmission and distribution utility may not disclose to the landlord any personal or confidential information regarding the tenant or the tenant's account, except that a utility may disclose to the landlord that the service has been transferred to the landlord's name and any other information necessary to enable the utility to continue service to the premises.

The transmission and distribution utility may charge a reasonable fee for the costs associated with the transfer of the service to the landlord's name.
[PL 2013, c. 250, §1 (NEW).]

2. Nonresidential customers. Each public utility shall file with the commission schedules containing its terms and conditions applicable to termination of utility services to any nonresidential customer, which terms and conditions shall be subject to the commission's power under this Title. Every public utility shall comply with its terms and conditions. The commission shall adopt rules which provide a procedure for resolution by the commission or its delegate of disputes as to whether a proposed termination by a public utility is in compliance with its terms and conditions. A public utility may not terminate service to a nonresidential customer if the commission or its delegate rules within 7 days of receipt of the request for ruling that the proposed termination is not in compliance with the utility's terms and conditions. If the rules authorize a delegate to resolve disputes, the rule shall include a procedure for appeal of the decision to the commission.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

3. Violation of rules.
[PL 2003, c. 505, §15 (RP).]

4. Property loss suffered by a customer. Upon a finding by the District Court of a property loss suffered by a customer causally related to a willful or reckless violation by a public utility of any substantive rule adopted by the commission pursuant to the authority granted in this section, the court may order the public utility to compensate the customer for the actual loss, less any setoff for a balance found to be due the utility by the customer for unpaid utility service. That loss may not include consequential damages. No action for damages resulting from a termination that was in willful or reckless violation of the commission's rules may be commenced until at least 60 days after notice of a

claim setting forth the nature of the termination and the damages suffered has been provided to the utility. That notice must be provided to the utility in writing within 30 days of the termination. [PL 2003, c. 505, §16 (AMD).]

5. Confidentiality of customer information. The following provisions apply to the confidentiality of customer information.

A. Records containing the following information are confidential ~~and are not public records for the purpose of Title 1, section 402, subsection 3~~:

(1) Information acquired by the consumer assistance and safety division regarding the payment and credit history and financial condition of a customer who has requested the assistance of the division; and

(2) Information acquired by the consumer assistance and safety division regarding the medical condition of a customer or member of a customer's family. [PL 2015, c. 8, §6 (AMD).]

B. Notwithstanding paragraph A, any person, agency or public utility directly involved in the investigation of an individual customer matter shall be given access to the information which is pertinent to the complaint. [PL 1987, c. 614, §2 (NEW).]

C. Compilations of information in which the customer's identity is not disclosed are not confidential. [PL 1987, c. 614, §2 (NEW).]

D. The consumer assistance and safety division shall prepare its decisions or abstracts of decisions in a manner that protects the confidentiality of customer information as provided by this subsection. Those decisions or abstracts of decisions must be available for public access. [PL 2015, c. 8, §6 (AMD).]

[PL 2015, c. 8, §6 (AMD).]

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). PL 1987, c. 614, §2 (AMD). PL 1999, c. 398, §A18 (AMD). PL 1999, c. 398, §§A104,105 (AFF). PL 1999, c. 547, §§B76,78 (AMD). PL 1999, c. 547, §B80 (AFF). PL 2003, c. 505, §§15,16 (AMD). PL 2013, c. 250, §1 (AMD). PL 2015, c. 8, §6 (AMD).

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§1311-A. Protective orders; confidential information

Records placed under a protective order by the commission pursuant to the Maine Rules of Civil Procedure, Rule 26 (c) in accordance with this section, are within the scope of a privilege against discovery within the meaning of Title 1, section 402, subsection 3, paragraph B and ~~are not public records~~ confidential while under the protective order. [PL 1997, c. 691, §5 (AMD); PL 1997, c. 691, §10 (AFF).]

1. Issuance of protective orders. The following provisions govern the commission's issuance of protective orders.

A. The commission may issue protective orders to protect the interests of parties in confidential or proprietary information, trade secrets or similar matters as provided by the Maine Rules of Civil Procedure, Rule 26 (c). When issued, a protective order must be served on the party seeking the order. Service must be in accordance with the Maine Rules of Civil Procedure, Rule 5 (b). A requirement to disclose information pursuant to a protective order does not take effect until 24 hours after service of the protective order on the party seeking the protective order. [PL 1997, c. 691, §5 (NEW); PL 1997, c. 691, §10 (AFF).]

B. In granting protective orders, the commission shall balance the need to keep the information confidential with the policies of conducting its proceedings in an open and fair manner where all parties have the right and opportunity to participate effectively as provided under the Maine Administrative Procedure Act, the Maine Rules of Civil Procedure, the Maine Rules of Evidence and the Maine freedom of access laws. [PL 1997, c. 691, §5 (NEW); PL 1997, c. 691, §10 (AFF).]

C. The party requesting a protective order bears the burden of demonstrating the need for protection. The commission may partially and temporarily grant a request for a protective order, consistent with the provisions of paragraph D, to expedite the release of confidential information to certain parties, but the party seeking protection bears the burden of demonstrating that release of the information to other parties should be restricted. The commission may not issue a final order prohibiting or restricting access to a party without notice and an opportunity to be heard. [PL 1997, c. 691, §5 (NEW); PL 1997, c. 691, §10 (AFF).]

D. If the commission issues a protective order that denies a party access to information, the commission shall provide the information to the party's attorney, if any, subject only to the restriction that the attorney use the information solely for the purpose of the proceeding and not disclose the information to others, except that:

(1) The commission may deny an attorney access to information relating to bids if the attorney represents a party that made a competing bid; and

(2) The commission may impose further limitations if the commission finds that an attorney has a direct, personal and substantial financial interest that could be benefited by access to the information to the detriment of the party that provided the information.

Unless the commission finds that the conditions of subparagraph (1) or (2) are met, the obligations of attorneys under the ethical rules, including the obligation to decline representation in certain cases, the authority of the commission to discipline attorneys who appear before the commission, including the authority, under section 1502, to punish for contempt persons who fail to comply with a protective order, and the commission's ability to recommend sanctions by other bodies, including the discipline of attorneys by the courts and the Board of Overseers of the Bar, is sufficient security to permit the attorney to have access to information in order to represent a party before the commission. [PL 2023, c. 646, Pt. A, §42 (AMD).]

E. The commission may prohibit or restrict the disclosure of information under protective order to a party's independent consultant only for compelling reasons and to the least extent necessary, except that the commission may require that the information be used only for the purposes of the proceeding in which it is disclosed and may prohibit disclosure of the information by the independent consultant to others. [PL 1997, c. 691, §5 (NEW); PL 1997, c. 691, §10 (AFF).]

F. Notwithstanding any other provision of this subsection:

(1) The commission may deny all parties, including the commission and its staff, access to information if the commission finds that the potential for harm from disclosure of the information outweighs its probative value in the proceeding;

(2) The commission may deny an attorney access to information under protective order if the commission finds that the attorney's request for access to the information is not made in good faith or that the attorney will not respect the terms of the protective order; and

(3) The commission may deny or limit access by an attorney to information under protective order in a proceeding involving one or more special contracts under section 703 if:

(a) The information is customarily regarded as confidential business information and relates to the reasons for the parties' entering into the special contract; and

(b) The party represented by the attorney is not a party to the special contract with the utility.

The commission may deny or limit access to information by any attorney under this subparagraph after providing the attorney with an opportunity to be heard and upon finding that the potential for harm from disclosure of the information outweighs the need for disclosure. [PL 2023, c. 64, §1 (AMD).]

[PL 2023, c. 646, Pt. A, §42 (AMD).]

2. Appeal. A party required to disclose information pursuant to a protective order issued by a hearing examiner in accordance with subsection 1 may appeal to the commissioners sitting as the commission in accordance with this subsection.

A. The basis for an appeal brought pursuant to this subsection is that the potential for damage resulting from the disclosure of the information in accordance with the protective order clearly exceeds the probative value of the information in the proceeding. [PL 1997, c. 691, §5 (NEW); PL 1997, c. 691, §10 (AFF).]

B. A party bringing an appeal pursuant to this subsection must file the appeal within 24 hours of service of the protective order. [PL 1997, c. 691, §5 (NEW); PL 1997, c. 691, §10 (AFF).]

C. If a party appeals in accordance with this subsection, the party is not required to disclose the information during the pendency of the appeal. [PL 1997, c. 691, §5 (NEW); PL 1997, c. 691, §10 (AFF).]

D. The commission shall render a decision on the appeal brought pursuant to this subsection within 7 business days of the filing of the appeal. [PL 1997, c. 691, §5 (NEW); PL 1997, c. 691, §10 (AFF).]

E. Notwithstanding subsection 1, the commission may impose limits on the disclosure of information beyond the limits imposed by the protective order issued in accordance with subsection 1 only if the commission finds that potential for damage resulting from disclosure of the information in accordance with the protective order clearly exceeds the probative value of the information in the proceeding. [PL 1997, c. 691, §5 (NEW); PL 1997, c. 691, §10 (AFF).]

For purposes of this subsection, the term "hearing examiner" means a commission staff person authorized to issue a protective order in a commission proceeding.

[PL 1997, c. 691, §5 (NEW); PL 1997, c. 691, §10 (AFF).]

SECTION HISTORY

PL 1993, c. 535, §1 (NEW). PL 1997, c. 691, §5 (AMD). PL 1997, c. 691, §10 (AFF). PL 1999, c. 127, §D5 (AFF). PL 2023, c. 64, §1 (AMD). PL 2023, c. 646, Pt. A, §42 (AMD).

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§1311-B. Security of certain utility information

1. Designation of information as confidential. If the commission, on its own motion or on petition of any person or entity, determines that public access to specific information about public utility technical operations in the State could compromise the security of public utility systems to the detriment of the public interest, the commission shall issue an order designating that information as confidential. Information designated as confidential pursuant to this section may include, but is not limited to, emergency response plans and network diagrams. ~~Information designated as confidential under this section is not a public record under Title 1, section 402, subsection 3.~~
[PL 2001, c. 135, §1 (NEW).]

2. Treatment of information by commission; generally. Except as otherwise provided in this section, the commission may not release information designated as confidential under subsection 1 and shall take appropriate steps to protect such information in its possession.
[PL 2001, c. 135, §1 (NEW).]

3. Access to information by parties in proceeding. Designation of information as confidential under subsection 1 does not limit the right of a party in a proceeding before the commission to obtain discovery of that information. Notwithstanding section 1311-A, subsection 1, paragraphs A and C, the commission may issue a protective order limiting discovery of information designated as confidential pursuant to subsection 1 if the commission finds that specific limits are necessary to protect the public interest.
[PL 2001, c. 135, §1 (NEW).]

4. Release of information to other state agencies. The commission may release information designated as confidential pursuant to subsection 1 or require the release of that information by a public utility to another state agency to the extent necessary to support emergency preparedness or response, law enforcement or other public health and safety activities. The commission shall consult with a public utility before releasing or requiring the release of confidential information about that utility to a state agency unless the commission determines that the public health and welfare require immediate release without such consultation. The commission shall notify a public utility within 2 business days of providing information about that utility to a state agency pursuant to this subsection. As soon as practicable after receiving notice from a state agency pursuant to subsection 5, paragraph B of the agency's intent to release the information, the commission shall notify the public utility of the agency's intent.
[PL 2001, c. 135, §1 (NEW).]

5. Release by other state agencies. A state agency that receives information about a public utility pursuant to subsection 4:

A. May not use that information for any purpose other than for the support of emergency preparedness or response, law enforcement or other public health and safety activities; [PL 2001, c. 135, §1 (NEW).]

B. May not release that information to any other person or entity without prior notice to the commission unless the agency determines that immediate release of the information to one or more persons or entities is necessary for the protection of public health and safety; and [PL 2001, c. 135, §1 (NEW).]

C. Shall, when finished with the use of any documents received from the commission or from a public utility pursuant to subsection 4, return the documents to the commission or the public utility, as appropriate. [PL 2001, c. 135, §1 (NEW).]

[PL 2001, c. 135, §1 (NEW).]

SECTION HISTORY

PL 2001, c. 135, §1 (NEW).

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§7221. Designation of service providers

1. Initial designation of service providers. An entity that was an incumbent local exchange carrier as of January 1, 2012 shall provide provider of last resort service within its service area. [PL 2011, c. 623, Pt. A, §18 (NEW).]

2. Reassignment of service provider obligation. A service provider may petition the commission for authorization to assign its provider of last resort service obligation for a given geographic area to another voice service provider. The commission shall by rule develop a process for identifying and approving replacement service providers, but in no event may a voice service provider be designated as a replacement service provider without the express consent of the voice service provider. Before authorizing the reassignment of the provider of last resort service obligation to another voice service provider, the commission shall ensure that the voice service provider possesses the financial and technical capability to meet all provider of last resort service standards set by the commission by rule. The commission may not reassign the provider of last resort service obligation to any entity that would provide the service only as a reseller, as determined by the commission by rule. [PL 2011, c. 623, Pt. A, §18 (NEW).]

3. Modification of service obligations. Notwithstanding section 7201, subsection 7, the commission, in an adjudicatory proceeding, may relieve a service provider of the requirement that it have the capacity to maintain uninterrupted voice service during a power failure, either through the incorporation into the network or network interface devices of suitable battery backup or through electric current. The commission may grant the relief only if it finds that doing so is in the public interest. In determining that granting relief under this section is in the public interest, the commission must find that the benefits that would accrue to customers of the provider of last resort service from providing the relief would exceed the benefits to those customers of preserving the requirement. [PL 2011, c. 623, Pt. A, §18 (NEW).]

4. Removal of the provider of last resort service obligation in select municipalities. This subsection governs the removal of the obligation of a price cap ILEC to provide provider of last resort service in certain municipalities.

A. Thirty days after the effective date of this subsection a price cap ILEC is not obligated to provide provider of last resort service in the following municipalities:

(1) Portland;

(2) Lewiston;

(3) Bangor;

(4) South Portland;

(5) Auburn;

(6) Biddeford; and

(7) Sanford. [PL 2015, c. 462, §3 (NEW).]

B. Every 6 months after the effective date of this subsection, the commission shall examine the service quality reports of a price cap ILEC under section 7225-A for the immediately preceding 2 consecutive quarters and, if the service quality requirements of section 7225-A have been met, the commission shall issue a certificate relieving the price cap ILEC of the obligation to provide provider of last resort service in 5 of the municipalities listed in this paragraph. The order in which a price cap ILEC may be relieved of the obligation to provide provider of last resort service in a municipality under this paragraph is as follows:

(1) Scarborough;

(2) Gorham;

(3) Waterville;

(4) Kennebunk;

(5) Cape Elizabeth;

(6) Old Orchard Beach;

(7) Yarmouth;

(8) Bath;

(9) Westbrook;

(10) Freeport;

(11) Brewer;

(12) Kittery;

(13) Windham;

(14) Brunswick; and

(15) Augusta. [PL 2015, c. 462, §3 (NEW).]

C. For one year from the date a price cap ILEC is relieved of the obligation to provide provider of last resort service in a municipality in accordance with this subsection, the price cap ILEC shall continue to offer to each provider of last resort service customer in that municipality to whom it was providing the service on the date the obligation ceased a telephone service with the same rates, terms and conditions as it provides to provider of last resort service customers to whom it is obligated to provide provider of last resort service. [PL 2015, c. 462, §3 (NEW).]

D. Prior to the removal of the obligation to provide provider of last resort service in any municipality pursuant to this subsection, the commission shall hold a public meeting in the municipality to allow customers of the price cap ILEC to obtain information about the upcoming changes to service. [PL 2015, c. 462, §3 (NEW).]

E. The price cap ILEC shall give advance notice in its monthly billing statement to each customer in a municipality listed in this subsection in which the obligation to provide provider of last resort service will be removed. That notice must include the following information:

(1) An existing customer will still be provided service for one year from the date on which the obligation to provide provider of last resort service is removed at the same rates, terms and conditions as the price cap ILEC provides to provider of last resort service customers to whom the price cap ILEC is obligated to provide provider of last resort service; and

(2) The date, time and location of the public meeting required under paragraph D, which will be hosted by the commission in the municipality. [PL 2015, c. 462, §3 (NEW).]

[PL 2015, c. 462, §3 (NEW).]

5. Relief of provider of last resort service obligation. After a price cap ILEC has been relieved of the obligation to provide provider of last resort service in all the municipalities listed in subsection 4, the price cap ILEC may petition the commission under this subsection to be relieved of its provider of last resort service obligation in one or more additional municipalities.

A. The commission shall approve the petition if the commission finds:

(1) With respect to a municipality, that, pursuant to the following standards, there is sufficient competition in that municipality to ensure access to affordable telephone service by households in the municipality:

(a) In addition to the price cap ILEC, there is at least one wireline-facilities-based voice network service provider that offers service to at least 95% of the households in the municipality; and

(b) One or more mobile telecommunications services providers offer, on a combined basis, mobile telecommunications services to at least 97% of the households in the municipality; and

(2) The price cap ILEC prior to filing the petition has met service quality requirements under section 7225-A in the immediately preceding 2 consecutive quarters. [PL 2015, c. 462, §3 (NEW).]

B. The commission shall establish by rule the sources of information and a methodology it will use to reasonably calculate the percentage of households served by wireline-facilities-based voice network service providers and mobile telecommunications services providers for purposes of making a determination under paragraph A. The commission may not require wireline-facilities-based voice network service providers and mobile telecommunications services providers to provide competitive information to the commission but may rely on other available sources for this information, including information available from the Federal Communications Commission. Competitive information about the extent of service provided by wireline-facilities-based voice network service providers and mobile telecommunications services providers used to make this determination is confidential ~~and is not a public record under Title 1, section 402, subsection 3~~ and may not be disclosed to any person outside the commission. In developing the methodology under this paragraph, the commission may allow for reasonable adjustments to the information it receives if it is aware that actual availability of competitive services differs from what is reflected in the information. If the application of the commission's methodology results in a finding that the standards in paragraph A, subparagraph (1) have been met, there is a rebuttable presumption of sufficient competition in a municipality to ensure access to affordable telephone service by households in the municipality. [PL 2015, c. 462, §3 (NEW).]

C. Ninety days prior to filing a petition under this subsection, a price cap ILEC shall notify the commission and the Office of the Public Advocate of the price cap ILEC's intent to file a petition. The price cap ILEC shall also give advance notice of its intent to file a petition in its monthly billing statement to each customer in the municipality in which it will be seeking relief from the obligation to provide provider of last resort service.

The commission shall hold a public hearing in each affected municipality to allow customers of the price cap ILEC as well as other residents of the affected municipality to testify. The price cap ILEC shall give advance notice of the hearing to each customer in the municipality in its monthly billing statement and publish this notice in a newspaper of general circulation in that municipality. [PL 2015, c. 462, §3 (NEW).]

D. The commission shall issue an order granting or denying a petition within 180 days of receiving a petition under this subsection, except that the commission, at its discretion, may extend this period for up to an additional 30 days. [PL 2015, c. 462, §3 (NEW).]

E. For one year from the date the commission issues an order granting a price cap ILEC relief from the obligation to provide provider of last resort service in a municipality, the price cap ILEC shall continue to offer to each provider of last resort service customer in that municipality to whom it was providing the service on the date of that order a telephone service with the same rates, terms and conditions as it provides to provider of last resort service customers to whom it is obligated to provide provider of last resort service. [PL 2015, c. 462, §3 (NEW).]

For purposes of this subsection, "voice network service provider" has the same meaning as in section 7104.
[PL 2015, c. 462, §3 (NEW).]

6. Abandonment. A price cap ILEC may not discontinue, reduce or impair the service that it provides in a municipality, or part of a municipality, where it has previously served as the provider of provider of last resort service unless the commission approves the discontinuance, reduction or impairment. The commission may approve the discontinuance, reduction or impairment only if it finds that neither the present nor future public convenience and necessity will be adversely affected by such discontinuance, reduction or impairment of service.

In granting its approval under this subsection, the commission may impose such terms, conditions or requirements as in its judgment are necessary to protect the public interest. A price cap ILEC abandoning all or part of its plant, property or system or discontinuing service pursuant to authority granted by the commission under this subsection is deemed to have waived all objections to the terms, conditions or requirements imposed by the commission in its approval. A discontinuance approved under this subsection is not subject to further approval under section 1104.
[PL 2015, c. 462, §3 (NEW).]

7. Rules. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.
[PL 2015, c. 462, §3 (NEW).]

SECTION HISTORY

PL 2011, c. 623, Pt. A, §18 (NEW). PL 2015, c. 462, §3 (AMD).

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§7225-A. Price cap ILEC service quality requirements

1. Service quality metrics reporting. A price cap ILEC shall report to the commission quarterly on service quality using the following metrics, using rolling one-year averages, in areas where provider of last resort service is available:

A. Network trouble rates; [PL 2015, c. 462, §5 (NEW).]

B. The percentage of network troubles not cleared in 48 hours; [PL 2015, c. 462, §5 (NEW).]

C. The percentage of installation appointments not met; and [PL 2015, c. 462, §5 (NEW).]

D. The average delay, in days, for missed installation appointments. [PL 2015, c. 462, §5 (NEW).]

A report submitted under this subsection is confidential ~~and not a public record under Title 1, section 402, subsection 3~~ and may not be disclosed to any person outside the commission, except as provided in subsection 3.
[PL 2015, c. 462, §5 (NEW).]

2. Minimum requirements. A price cap ILEC shall provide service that meets the following minimum requirements, based on rolling one-year averages, in the areas in which it serves as provider of provider of last resort service:

A. Less than 3 network troubles per 100 customers; [PL 2015, c. 462, §5 (NEW).]

B. Less than 20% of network troubles not cleared within 48 hours; [PL 2015, c. 462, §5 (NEW).]

C. Less than 12% of all installation appointments not met; and [PL 2015, c. 462, §5 (NEW).]

D. Less than a 9-day average delay for missed installation appointments. [PL 2015, c. 462, §5 (NEW).]
[PL 2015, c. 462, §5 (NEW).]

3. Failure to meet service quality requirements. If a price cap ILEC fails to meet any service quality requirement in this section for any 2 consecutive quarters, the results for these service quality requirements for these quarters are no longer confidential ~~and become public records~~. The commission shall investigate a failure to meet a service quality requirement. If the commission concludes after investigation that the failure to meet a service quality requirement is due to factors within the control of the price cap ILEC, the commission shall, by order, direct the price cap ILEC to take such steps as the commission determines necessary to meet the requirement. If the provider fails to comply with the commission's order, the commission shall impose a penalty in accordance with section 1508-A, subsection 1, paragraph A in an amount sufficient to ensure compliance with that order. Nothing in this subsection limits the commission's authority to direct a price cap ILEC to act to improve service under any other provision of this chapter.
[PL 2015, c. 462, §5 (NEW).]

SECTION HISTORY

PL 2015, c. 462, §5 (NEW).

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§9207. Collection of data

Subject to the provisions in this section, the authority shall collect annually from communications service providers and any wireless providers that own or operate advanced communications technology infrastructure in the State data concerning infrastructure deployment for the purpose of developing mapping information to assist the authority in implementing the provisions of section 9202-A; pricing data for advertised retail pricing for broadband services offered in the State; and revenue data for the purpose of assessing communications service providers subject to section 9211. The authority shall permit providers that have provided data to the authority at a level of detail that the authority has determined acceptable to continue to provide the data in the same format. For mapping data, the authority, whenever possible, shall use data formats consistent with data formats used for mapping at the federal level. [PL 2019, c. 625, §9 (AMD).]

1. Confidential information. Data provided to the authority pursuant to this section is confidential. The authority, upon request or on its own motion, may initiate a proceeding to determine whether to remove the confidential designation of specific information provided under this section. The authority shall adopt rules pursuant to section 9205, subsection 3 defining the criteria it will use to satisfy the requirements of this paragraph and the types of information that would satisfy the criteria. The authority may not remove the confidential designation under this subsection until those rules are finally adopted.

~~Information designated as confidential under this subsection is not a public record under Title 1, section 402, subsection 3.~~

[PL 2019, c. 625, §9 (AMD).]

2. Protection of information. A communications service provider may request that confidential or proprietary information provided to the authority under this section not be viewed by those members of the authority who could gain a competitive advantage from viewing the information. Upon such a request, the authority shall ensure that the information provided is viewed only by those members of the authority and staff who do not stand to gain a competitive advantage and that there are adequate safeguards to protect that information from members of the authority who could gain a competitive advantage from viewing the information.

[PL 2019, c. 625, §9 (AMD).]

SECTION HISTORY

PL 2005, c. 665, §3 (NEW). PL 2019, c. 625, §9 (AMD).

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§9408. Collection of data

Subject to the provisions of this section, the authority may collect data from communications service providers and any wireless providers that own or operate advanced communications technology infrastructure in the State concerning infrastructure deployment and costs, revenues and subscribership. [PL 2021, c. 364, §3 (NEW).]

1. Confidential information. If the authority, on its own or upon request of any person or entity, determines that public access to specific information about communications service providers or wireless providers in the State could compromise the security of public utility systems to the detriment of the public interest or that specific information is of a competitive or proprietary nature, the authority shall issue an order that sets forth its designation of the information as confidential. Information that may be designated as confidential pursuant to this subsection includes, but is not limited to, network diagrams. The authority may designate information as confidential under this subsection only to the minimum extent necessary to protect the public interest and the legitimate competitive or proprietary interests of a communications service provider or a wireless provider. The authority may not designate any information as confidential under this subsection until it has adopted rules to implement this subsection.

~~Information designated as confidential under this subsection is not a public record under Title 1, section 402, subsection 3.~~

[PL 2021, c. 364, §3 (NEW).]

2. Protection of information. A communications service provider or a wireless provider may request that information provided to the authority that the provider requests be designated as confidential under subsection 1 not be viewed by those members of the authority who could gain a competitive advantage from viewing the information. Upon such a request, the authority shall ensure that the information provided is viewed only by those members of the authority and staff who do not stand to gain a competitive advantage and that there are adequate safeguards to protect that information from members of the authority who could gain a competitive advantage from viewing the information. [PL 2021, c. 364, §3 (NEW).]

SECTION HISTORY

PL 2021, c. 364, §3 (NEW).

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§10106. Freedom of access; confidentiality

The proceedings of the board and records of the trust are subject to the freedom of access laws, Title 1, chapter 13, except as specifically provided in this section. [RR 2009, c. 1, §25 (COR).]

1. Confidential records. The following records are designated as confidential ~~for purposes of Title 1, section 402, subsection 3, paragraph A~~:

A. A record obtained or developed by the trust that:

(1) A person, including the trust, to whom the record belongs or pertains has requested be designated confidential and that the board has determined contains information that gives the owner or a user an opportunity to obtain a business or competitive advantage over another person who does not have access to the information, except through the trust's records, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment, other than loss or denial of financial assistance from the trust, to any person to whom the record belongs or pertains; or

(3) Contains information about the energy usage profile of an identifiable customer of a transmission and distribution utility in the State or an identifiable customer of a distributor of heating fuel or other energy source; and [PL 2017, c. 163, §2 (AMD).]

B. A financial statement or tax return. [PL 2009, c. 372, Pt. B, §3 (NEW).]

The social security number, address, telephone number or e-mail address of a customer that has participated or may participate in a program of the trust is confidential.

The trust shall provide to a legislative committee, on written request signed by the chairs of that committee, any information or records, including information designated confidential under this subsection, specified in the written request. The information or records may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by it.
[PL 2017, c. 163, §2 (AMD).]

2. Exceptions. Notwithstanding subsection 1, the following are ~~not confidential and are~~ public records:

A. Any otherwise confidential information the confidentiality of which the board determines to have been satisfactorily and effectively waived; [PL 2009, c. 372, Pt. B, §3 (NEW).]

B. Any otherwise confidential information that has already lawfully been made available to the public; and [PL 2009, c. 372, Pt. B, §3 (NEW).]

C. Impersonal, statistical or general information. [PL 2009, c. 372, Pt. B, §3 (NEW).]
[PL 2009, c. 372, Pt. B, §3 (NEW).]

3. Disclosure prohibited; further exceptions. The director or a trustee, officer, employee, agent, other representative of the trust or other person may not knowingly divulge or disclose records designated confidential by this section, except that the board, in its discretion and in conformity with legislative freedom of access criteria in Title 1, chapter 13, subchapter 1-A, may make or authorize any disclosure of information of the following types or under the following circumstances:

A. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person; [PL 2009, c. 372, Pt. B, §3 (NEW).]

B. To a financing institution or credit reporting service; [PL 2009, c. 372, Pt. B, §3 (NEW).]

C. Information necessary to comply with any federal or state law or rule or with any agreement pertaining to financial assistance; [PL 2009, c. 372, Pt. B, §3 (NEW).]

D. If necessary to ensure collection of any obligation in which the trust has or may have an interest; [PL 2009, c. 372, Pt. B, §3 (NEW).]

E. In any litigation or proceeding in which the trust has appeared, introduction for the record of any information obtained from records designated confidential by this section; and [PL 2009, c. 372, Pt. B, §3 (NEW).]

F. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, as long as any such order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as any such order appears on its face or otherwise to have been issued or made upon lawful authority. [PL 2009, c. 372, Pt. B, §3 (NEW).]

[PL 2009, c. 372, Pt. B, §3 (NEW).]

SECTION HISTORY

RR 2009, c. 1, §25 (COR). PL 2009, c. 372, Pt. B, §3 (NEW). PL 2011, c. 343, §1 (AMD). PL 2017, c. 163, §2 (AMD).

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§579. Schedule, investigation

The owner or owners of forest land subject to valuation under this subchapter shall submit a signed schedule, on or before April 1st of the year in which that land first becomes subject to valuation under this subchapter, to the assessor upon a form prescribed by the State Tax Assessor, identifying the land to be valued under this subchapter, listing the number of acres of each forest type, showing the location of each forest type and representing that the land is used primarily for the growth of trees to be harvested for commercial use. Those schedules may be required at such other times as the assessor may designate upon 120 days' written notice. [PL 2011, c. 240, §6 (AMD).]

The assessor shall determine whether the land is subject to valuation and taxation under this subchapter and shall classify the land as to forest type. [PL 2011, c. 240, §6 (AMD).]

The assessor or the assessor's duly authorized representative may enter and examine the forest lands under this subchapter and may examine any information submitted by the owner or owners. A copy of the forest management and harvest plan required under section 574-B must be available to the assessor to review upon request and to the Director of the Bureau of Forestry within the Department of Agriculture, Conservation and Forestry or the director's designee to review upon request when the assessor seeks assistance in accordance with section 575-A. For the purposes of this paragraph, "to review" means to see or possess a copy of a plan for a reasonable amount of time to verify that the plan exists or to facilitate an evaluation as to whether the plan is appropriate and is being followed. Upon completion of the review, the plan must be returned to the owner or an agent of the owner. A forest management and harvest plan provided in accordance with this section is confidential ~~and is not a public record as defined in Title 1, section 402, subsection 3~~. [PL 2003, c. 30, §1 (AMD); PL 2011, c. 657, Pt. W, §§5, 7 (REV); PL 2013, c. 405, Pt. A, §23 (REV).]

Upon notice in writing by certified mail, return receipt requested, or by another method that provides actual notice, any owner or owners shall appear before the assessor, at such reasonable time and place as the assessor may designate and answer questions or interrogatories the assessor considers necessary to obtain material information about those lands. [PL 2011, c. 240, §6 (AMD).]

If the owner or owners of any parcel of forest land subject to valuation under this subchapter fails to submit the schedules as provided under this section or fails to provide information after notice duly received as provided under this section, such owner or owners are deemed to have waived all rights of appeal pursuant to section 583 for that property tax year, except for the determination that the land is subject to valuation under this subchapter. [PL 2011, c. 240, §6 (AMD).]

It is the obligation of the owner or owners to report to the assessor any change of use or change of forest type of land subject to valuation under this subchapter. [PL 2011, c. 240, §6 (AMD).]

If the owner or owners fail to report to the assessor a change of use as required by the foregoing paragraph, the assessor shall assess the taxes that should have been paid, shall assess the penalty provided in section 581 and shall assess an additional penalty equal to 25% of the penalty provided in section 581. The assessor may waive the additional penalty for cause. [PL 2011, c. 240, §6 (AMD).]

For the purposes of this section, the acts of owners specified in this section may be taken by an authorized agent of an owner. [PL 1979, c. 666, §16 (NEW).]

SECTION HISTORY

PL 1971, c. 616, §8 (NEW). PL 1973, c. 308, §§10,11 (AMD). PL 1975, c. 765, §§10,11 (AMD). PL 1977, c. 509, §§6,7 (AMD). PL 1979, c. 666, §16 (RPR). PL 1981, c. 625, §3 (AMD). PL 1981, c. 706, §9 (AMD). PL 1987, c. 852, §2 (AMD). PL 1987, c. 861, §41 (AMD). PL 1989, c. 555, §17 (AMD). PL 2001, c. 603, §6 (AMD). PL 2003, c. 30, §1 (AMD). PL 2007, c. 438, §17 (AMD). PL 2011, c. 240, §6 (AMD). PL 2011, c. 657, Pt. W, §§5, 7 (REV). PL 2013, c. 405, Pt. A, §23 (REV).

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§4316. Receivers of wild blueberries

1. Record keeping required. A shipper or processor who transports or receives wild blueberries shall keep a permanent record of each lot or load of wild blueberries. The record must include the name of the driver of the vehicle used to deliver the wild blueberries, the date of delivery, the delivery point, the total pounds of wild blueberries delivered, the origin of the delivery and, if the origin is a location in the State, the name and address of the grower or seller and the grower's or seller's certificate number if the grower or seller is certified under section 4305.
[PL 2023, c. 18, §9 (AMD).]

2. Inspection of permit required.
[PL 2023, c. 18, §10 (RP).]

2-A. Tracking. Wild blueberries must be uniquely identified during transportation to a receiving facility by the field from which they were harvested.
[PL 2019, c. 222, §5 (NEW); PL 2019, c. 222, §7 (AFF).]

3. Violation; civil. The failure to keep the permanent records of wild blueberries transported or received as required in this section or any other violation of this section is a civil violation punishable by a fine of not more than $5,000 for a first-time violation and punishable by a fine of not more than $10,000 when the person is found to have committed a prior civil violation of this section within the prior 5 years.
[PL 2023, c. 18, §11 (AMD).]

3-A. Violation; criminal. A shipper or processor who violates this section when the shipper or processor is found to have committed 2 prior civil violations of this section commits a Class D crime. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence.
[PL 2007, c. 694, §10 (NEW).]

3-B. Strict liability crime. Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.
[PL 2007, c. 694, §10 (NEW).]

4. Audits. The Wild Blueberry Commission of Maine may request the Department of Agriculture, Conservation and Forestry to conduct, and the department at its own discretion may conduct, an audit of the records of a shipper or a processor for the purpose of ascertaining compliance with this section. The Commissioner of Agriculture, Conservation and Forestry, or a duly authorized agent, has free access, during normal business hours, to all records required to be kept by shippers or processors pursuant to this section and also to shippers' or processors' accounts payable, accounts receivable, records of inventories, actual inventories, records of shipments and such other business records as are needed to ascertain compliance with this section. Any documents inspected or taken by the department in furtherance of the audit functions or any other information collected by the department pursuant to the audit ~~must be kept~~ are confidential notwithstanding any provision to the contrary contained in Title 1, chapter 13, subchapter 1. This confidential status does not apply to any documents, records or information that is needed as evidence in any civil or criminal proceeding to enforce any law under this chapter or any other criminal law.
[PL 2019, c. 222, §6 (AMD); PL 2019, c. 222, §7 (AFF).]

SECTION HISTORY

PL 1989, c. 214, §2 (NEW). PL 1989, c. 859, §§2,3 (AMD). PL 1997, c. 511, §24 (AMD). PL 2007, c. 694, §10 (AMD). PL 2011, c. 657, Pt. W, §5 (REV). PL 2019, c. 222, §§4-6 (AMD). PL 2019, c. 222, §7 (AFF). PL 2023, c. 18, §§9-11 (AMD).

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§470-D. Filing of reports by users; aggregation of data

Unless exempted under section 470-C, a person withdrawing more than the threshold volume of water established in this article must file an annual water withdrawal report on December 1, 2003 and on every December 1st thereafter as provided in this section. [PL 2001, c. 619, §1 (NEW).]

Water withdrawal reports must be submitted to either the Commissioner of Environmental Protection, the Commissioner of Agriculture, Conservation and Forestry or the Commissioner of Health and Human Services in a form or manner prescribed by that commissioner. No later than January 1, 2003, those commissioners shall jointly publish a list indicating which classes of users are to report to which department. The form and manner of reporting must be determined by each commissioner except that the required information must be collected from each user above the threshold and in a manner that allows that data to be combined with data collected by the other commissioners. The reports must include information on actual and anticipated water use, the identification of the water source, the location of the withdrawal including the distance of each groundwater withdrawal from the nearest surface water source, the volume of the withdrawals that might be reasonably anticipated under maximum high-demand conditions and the number of days those withdrawals may occur each month and the location and volume of each point of discharge. The reporting may allow volumes to be reported in ranges established by the commissioners and reported volumes may be calculated estimates of volumes. The board, the Department of Agriculture, Conservation and Forestry and the Department of Health and Human Services may adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A as necessary to implement the reporting provisions of this article. [PL 2011, c. 120, §7 (AMD); PL 2011, c. 657, Pt. W, §5, 6 (REV).]

Individual water withdrawal reports filed under this article are confidential ~~and are not public records as defined in Title 1, section 402, subsection 3~~. [PL 2001, c. 619, §1 (NEW).]

SECTION HISTORY

PL 2001, c. 619, §1 (NEW). PL 2003, c. 689, §§B6,7 (REV). PL 2011, c. 120, §7 (AMD). PL 2011, c. 657, Pt. W, §5, 6 (REV).

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§1310-B. Confidential information

1. Public records. Except as provided in subsections 2 and 3, information obtained by the department under this chapter is a public record as provided by Title 1, chapter 13, subchapter I.

In addition to remedies provided under Title 1, chapter 13, subchapter I, the Superior Court may assess against the department reasonable attorney fees and other litigation costs reasonably incurred by an aggrieved person who prevails in the appeal of the department's denial for a request for information under subchapter V.
[PL 1989, c. 794, §3 (AMD).]

2. Hazardous waste information and information on mercury-added products and electronic devices; chemicals; recyclables. Information relating to hazardous waste submitted to the department under this subchapter, information relating to mercury-added products submitted to the department under chapter 16-B, information relating to electronic devices submitted to the department under section 1610, subsection 6-A, information related to priority toxic chemicals submitted to the department under chapter 27, information related to products that contain the "deca" mixture of polybrominated diphenyl ethers submitted to the department under section 1609 or information related to reporting on reportable recyclable materials submitted to the department under section 2145 may be designated by the person submitting it as being only for the confidential use of the department, its agents and employees, the Department of Agriculture, Conservation and Forestry and the Department of Health and Human Services and their agents and employees, other agencies of State Government, as authorized by the Governor, employees of the United States Environmental Protection Agency and the Attorney General and, for waste information, employees of the municipality in which the waste is located. The designation must be clearly indicated on each page or other portion of information. The commissioner shall establish procedures to ensure that information so designated is segregated from public records of the department. The department's public records must include the indication that information so designated has been submitted to the department, giving the name of the person submitting the information and the general nature of the information. Upon a request for information, the scope of which includes information so designated, the commissioner shall notify the submittor. Within 15 days after receipt of the notice, the submittor shall demonstrate to the satisfaction of the department that the designated information should not be disclosed because the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submittor and would make available information not otherwise publicly available. Unless such a demonstration is made, the information must be disclosed and becomes a public record. The department may grant or deny disclosure for the whole or any part of the designated information requested and within 15 days shall give written notice of the decision to the submittor and the person requesting the designated information. A person aggrieved by a decision of the department may appeal only to the Superior Court in accordance with the provisions of section 346. All information provided by the department to the municipality under this subsection is confidential ~~and not a public record under Title 1, chapter 13~~. In the event a request for such information is submitted to the municipality, the municipality shall submit that request to the commissioner to be processed by the department as provided in this subsection.
[PL 2019, c. 291, Pt. B, §1 (AMD).]

3. Release of information. The commissioner shall not release the designated information prior to the expiration of the time allowed for the filing of an appeal or to the rendering of the decision on any appeal.
[PL 1979, c. 699, §17 (NEW).]

4. License and enforcement information. Information required by the department for the purpose of obtaining a permit, license, certification or other approval may not be designated or treated as designated information under subsection 2.

[PL 1979, c. 699, §17 (NEW).]

5. Rules. The board may adopt rules to carry out the purposes of this section. The rules shall be consistent with the provisions of Title 1, chapter 13, subchapter I.
[PL 1981, c. 470, Pt. A, §173 (AMD).]

6. Prohibition; penalties.

A. It is unlawful to disclose designated information to any person not authorized by this section. [PL 1979, c. 699, §17 (NEW).]

B. Any person who solicits, accepts or agrees to accept, or who promises, offers or gives any pecuniary benefit in return for the disclosure of designated information is guilty of a Class D crime and to the civil penalty of paragraph C. [PL 1979, c. 699, §17 (NEW).]

C. Any person who knowingly discloses designated information, knowing that the person is not authorized to do so, is subject to a civil penalty of not more than $5,000. [RR 2021, c. 2, Pt. B, §285 (COR).]

D. In any action under this subsection, the court shall first declare that the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submittor and would make available information not otherwise publicly available. [PL 1979, c. 699, §17 (NEW).]
[RR 2021, c. 2, Pt. B, §285 (COR).]

SECTION HISTORY

PL 1979, c. 699, §17 (NEW). PL 1981, c. 470, §§A172,A173 (AMD). PL 1985, c. 267, §2 (AMD). PL 1987, c. 517, §24 (AMD). PL 1989, c. 794, §3 (AMD). PL 1989, c. 890, §§A40,B233 (AMD). PL 2001, c. 373, §1 (AMD). PL 2003, c. 661, §1 (AMD). PL 2003, c. 689, §B6 (REV). PL 2005, c. 561, §7 (AMD). PL 2005, c. 590, §3 (AMD). PL 2007, c. 466, Pt. A, §72 (AMD). PL 2009, c. 397, §1 (AMD). PL 2009, c. 579, Pt. A, §1 (AMD). PL 2009, c. 610, §1 (AMD). PL 2011, c. 420, Pt. A, §35 (AMD). PL 2011, c. 657, Pt. W, §5 (REV). PL 2015, c. 250, Pt. C, §10 (AMD). PL 2019, c. 291, Pt. B, §1 (AMD). RR 2021, c. 2, Pt. B, §285 (COR).

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§403. Insurance by assenting employer; requirements as to self-insurers

An employer subject to this Act shall secure compensation and other benefits to the employer's employees in one or more of the ways described in this section. The failure of any employer subject to this Act to procure insurance coverage for the payment of compensation and other benefits to the employer's employees in one of the ways described in this section constitutes failure to secure payment of compensation provided for by this Act within the meaning of section 324, subsection 3 and subjects the employer to the penalties prescribed by that section. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

1. Insuring under workers' compensation insurance policy. The employer may comply with this section by insuring and keeping insured the payment of such compensation and other benefits under a workers' compensation insurance policy. The insurance company shall file with the board notice, in the form required by the board, of the issuance of any workers' compensation policy to an employer. The insurance may not be cancelled within the time limited in such policy for its expiration until at least 30 days after the insurance company mails to the board and to the employer a notice of the cancellation of the insurance. In the event that the employer has obtained a workers' compensation policy from another insurance company, or has otherwise secured compensation as provided in this section, and such insurance or other security becomes effective prior to the expiration of the 30-day notice period, cancellation takes effect on the effective date of the other insurance or on receipt of security.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

2. Pilot projects.
[PL 2001, c. 48, §1 (AMD); PL 2001, c. 48, §2 (AFF); MRSA T. 39-A §403, sub-§2, ¶ D (RP).]

3. Proof of solvency and financial ability to pay; trust. The employer may comply with this section by furnishing satisfactory proof to the Superintendent of Insurance of solvency and financial ability to pay the compensation and benefits, and depositing cash, satisfactory securities, irrevocable standby letters of credit issued by a qualified financial institution or a surety bond with the superintendent, in such sum as the superintendent may determine pursuant to subsection 8, the Treasurer of State to be listed as beneficiary of the bond or the irrevocable standby letter of credit and the bond or the irrevocable standby letter of credit to be conditional upon the faithful performance of this Act relating to the payment of compensation and benefits to any injured employee. In case of cash or securities being deposited, or drawn on a surety bond or letter of credit, the cash or securities must be placed in an account at interest by the Treasurer of State, and the accumulation of interest on the cash or securities so deposited must be credited to the account and may not be paid to the employer to the extent that the interest is required to secure the employer's self-insurance obligations, including the amount needed to support any present value discounting in the determination of the amount of the deposit. Any security deposit must be held by the Treasurer of State in trust for the benefit of the self-insurer's employees for the purposes of making payments under this Act. If the superintendent determines that the self-insurer has experienced a deterioration in financial condition that adversely affects the self-insurer's ability to pay obligations under this Act, the security amount may be in excess of the minimum amount required by this Title.

Except as provided in subsection 5, paragraph A-1, a self-insurer may, with the approval of the Superintendent of Insurance, use the following types of security to satisfy the self-insurer's responsibility to post security required by the superintendent: a surety bond; an irrevocable standby letter of credit; cash deposits and acceptable securities; and an actuarially determined fully funded trust. For purposes of this section, "tangible net worth" means equity less assets that have no physical existence and depend on expected future benefits for their ascribed value.

A. A self-insurer providing an irrevocable standby letter of credit as security shall file with the Superintendent of Insurance a letter of credit, on a form approved by the superintendent, copies of any agreements or other documents establishing the terms and conditions of the employer's or

group's reimbursement obligations to the financial institution issuing the letter of credit, together with copies of any required security agreements, mortgages or other agreements or documents granting security for the employer's or group's reimbursement obligations and any other agreements that contain conditions, restrictions or limitations of any kind upon the employer or group, the superintendent or the Treasurer of State. The form of letter of credit approved by the superintendent must include, but is not limited to, all terms specifically required by this subsection and all terms reasonably required to secure the payment of compensation and benefits to claimants as required under this Act.

In order to issue an irrevocable standby letter of credit as security under this paragraph, a financial institution or its parent company must either:

(1) Maintain a long-term unsecured debt rating of at least A by either Moody's Investors Service, Inc. or Standard and Poor's Corporation;

(2) Maintain a short-term commercial paper rating within the 3 highest categories established by Moody's Investors Service, Inc. or Standard and Poor's Corporation; or

(3) Be certified in writing by the Superintendent of Financial Institutions to be well capitalized and well managed in accordance with the criteria set forth in Title 9-B, section 446-A, subsections 1 and 2. The Superintendent of Insurance shall keep the certification confidential, except from the subject financial institution, in accordance with Title 9-B, section 226.

The Superintendent of Insurance may adopt rules to establish additional qualifications for financial institutions issuing irrevocable standby letters of credit. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

The irrevocable standby letter of credit must be the individual obligation of the issuing financial institution, may not be subject to any agreement, condition, qualification or defense between the financial institution and the employer or group and may not in any way be contingent on reimbursement by the employer or group. If the rating of an issuing financial institution that has issued an irrevocable standby letter of credit pursuant to this section falls below the required standard, the employer or group shall obtain a new irrevocable standby letter of credit from a qualified financial institution or shall provide other eligible security of equal value approved by the Superintendent of Insurance. The irrevocable standby letter of credit is automatically extended for one year from the date of expiration unless, at least 90 days prior to any expiration date, the issuing financial institution notifies the Superintendent of Insurance that the financial institution elects not to renew the irrevocable standby letter of credit.

An irrevocable standby letter of credit that has been issued by a qualified financial institution and accepted by the Superintendent of Insurance binds the issuing financial institution to pay one or more drafts drawn by the Treasurer of State, as directed by the superintendent, as long as the draft does not exceed the total amount of the irrevocable standby letter of credit. [PL 2025, c. 53, §§2-6 (AMD).]

A-1. The Superintendent of Insurance may instruct the Treasurer of State to draw on an irrevocable standby letter of credit if:

(1) Any obligation under this chapter has not been paid by the employer or group when due;

(2) A proceeding in bankruptcy has been initiated by or with respect to the employer or group in a court of competent jurisdiction; or

(3) The following conditions have been met:

(a) The superintendent has received notice that that the financial institution elects not to renew the irrevocable standby letter of credit;

(b) The self-insurer has had at least 15 days' notice to replace the security with other eligible security of equal value approved by the superintendent; and

(c) The self-insurer has not replaced the irrevocable standby letter of credit with a new letter of credit or other approved security.

The issuing financial institution shall promptly honor a draft on an irrevocable standby letter presented by the Treasurer of State. Any proceeds from a draw on such an irrevocable standby letter of credit by the treasurer must be held by the treasurer on behalf of workers' compensation claimants to secure payment of claims until either the superintendent authorizes the treasurer to release those proceeds to the employer or group upon provision by the employer or group of replacement security adequate to meet the requirements for security set by the superintendent, or the superintendent directs distribution of the proceeds in accordance with this Title.

To the extent not inconsistent with state law, the letter of credit is subject to and governed by the International Standby Practices 1998 or successor practices governing standby letters of credit duly adopted by the International Chamber of Commerce. If any legal proceedings are initiated with respect to payment of the letter of credit, those proceedings are subject to the State's courts and law. [PL 2025, c. 53, §7 (NEW).]

B. The Superintendent of Insurance shall prescribe the form of the surety bond that may be used to satisfy, in whole or in part, the self-insurer's responsibility under this section to post security. The bond must be continuous, be subject to nonrenewal only upon not less than 60 days' notice to the superintendent, cover payment of all present and future liabilities incurred under this Act while the bond is in force and cover payments that become due while the bond is in force that are attributable to injuries incurred in prior periods and otherwise unsecured by cash, irrevocable standby letters of credit or acceptable securities. A bond must be held until all payments secured by the bond have been made or until the bond has been replaced by other eligible security approved by the superintendent that covers all outstanding liabilities. Payments under the bond are due within 30 days after notice has been given to the surety by the board that the principal has failed to make a payment required under the terms of an award, agreement or governing law. A trust established to satisfy the requirements of this section may not be funded by a surety bond. [PL 2007, c. 75, §1 (AMD).]

C. A self-insurer may establish an actuarially determined fully funded trust, funded at a level sufficient to discharge those obligations incurred by the employer pursuant to this Act as they become due and payable from time to time, as long as the Superintendent of Insurance requires that the value of unencumbered trust assets be at least equal to the present value of ultimate expected incurred claims and claims settlement costs, plus required safety margins and, if determined necessary by the superintendent, administrative costs for the operation of the plan of self-insurance. For the purpose of determining whether a group self-insurer's trust is fully funded as required by this subsection, the superintendent shall consider, based upon the group's audit for all completed plan years, only the following assets held outside the trust account: cash up to $10,000; accounts receivable, limited to amounts collected and deposited in the trust account by the date of the surplus distribution; accrued interest on trust account assets that will be collected and deposited in the trust account within 6 months from the date of the surplus determination; tangible assets that will be converted to cash and deposited in the trust account prior to the distribution date of any surplus; and a letter of credit to be used to partially fund the trust to the extent allowed under this section and rules adopted by the superintendent, as supported in the actuarial review. The superintendent shall consider cash held outside the trust account in excess of $10,000 if the self-insurer provides, to the superintendent's satisfaction, documentation regarding why the money is being held outside the trust account. An actuarially determined fully funded trust must be funded as follows, as determined by the superintendent.

(1) For individual and group self-insurers, the amount of security must be determined based upon an actuarial review. The actuarial review must take into consideration the use by a group self-insurer of any irrevocable standby letter of credit. Except as provided in subparagraph (3), initial funding for each plan year must be maintained at the 90% or higher confidence level. Funding after the completion of the initial plan year may be established no lower than the 75% confidence level if the following has occurred:

(a) A year considered for reduction is completed;

(b) The supporting actuarial review includes an evaluation of the completed year experience with claims evaluated not less than 6 months from the end of the plan year, or in the case of a group self-insurer in existence for at least 36 months, not less than 4 months from the end of the plan year; and

(c) For individual self-insurers, prior approval from the superintendent is obtained.

For the purposes of determining the confidence level, all completed years at the same confidence level may be aggregated. For individual self-insurers, funds may not be released from the trust or transferred between years except as approved by the superintendent. The governing body of a group self-insurer may at any time declare a surplus of funds above the required confidence level, but may only release funds after the completion of any plan year. The superintendent may request information regarding any such declaration. Any distribution of surplus must be based upon an actuarial review of all outstanding obligations for all completed plan years, an audited financial statement of the group for all completed plan years and a surplus distribution worksheet for all completed plan years on a form approved by the superintendent. The group self-insurer must provide the required information within 10 days after the distribution. Any surplus declared or distributed pursuant to this paragraph is subject to adjustment after review by the superintendent within 60 days of the receipt of the required information. Any deficit below the required confidence level, as determined by the superintendent, that results from a distribution under this paragraph must be funded within 45 days from the date of the notice by the superintendent.

(1-A) A group self-insurer may secure its obligations to the confidence level required by the superintendent in the following manner:

(a) The obligations must be secured by an actuarially determined fully funded trust with unencumbered assets at least equal to the present value of ultimate expected incurred claims and claims settlement costs, or such higher amount as the superintendent may require in accordance with subparagraphs (5) and (6); and

(b) The balance may be secured by a letter of credit complying with paragraph A.

(2) A group self-insurer may elect to fund at a higher confidence level through the use of cash, marketable securities or reinsurance. If a member of a group self-insurer terminates membership in the group for any reason, that member shall fund the member's proportionate share of the liabilities and obligations of the trust to the 95% confidence level. If for any reason the departing member fails to fund the member's proportionate share of the trust's exposure to the 95% level of confidence, the trust is responsible for that member's liabilities and obligations to the trust. If the superintendent finds that a material risk to the trust's ability to satisfy its liabilities and obligations in full exists due to the failure of one or more departing members to fund the departing members' proportionate share of those liabilities and obligations to the 95% confidence level or due to the failure of the group trust to enforce the funding requirement, the superintendent shall consider the unfunded share of the trust's exposure when approving a determination of a surplus or deficit in the trust.

(3) Subject to prior approval by the superintendent in accordance with subparagraph (5), a self-insurer that has successfully maintained an actuarially determined fully funded trust for a period of 5 or more consecutive years may fund all years, including the prospective fund year, at the 75% or higher confidence level in the aggregate and a group self-insurer that has successfully maintained an actuarially determined fully funded trust for a period of 10 or more consecutive years may fund all years, including the prospective fund year, at the 65% or higher confidence level in the aggregate.

(4) Trust assets must consist of cash or marketable securities of a type and risk character as specified in subsection 9. The trustee shall submit a report to the superintendent not less frequently than quarterly that lists the assets comprising the corpus of the trust, including a statement of their market value and the investment activity during the period covered by the report. The trust must be established and maintained subject to the condition that trust assets may not be transferred or revert in any manner to the employer except to the extent that the superintendent finds that the value of the trust assets exceeds the present value of incurred claims and claims settlement costs with an actuarially indicated margin for future loss development. In all other respects, the trust instrument, including terms for certification, funding, designation of trustee and payout, must be as approved by the superintendent, except that the value of the trust account must be actuarially calculated at least annually by a casualty actuary who is a member of the American Academy of Actuaries and adjusted to the required level of funding.

(5) In determining whether a self-insurer that maintains an actuarially determined fully funded trust qualifies for a reduction in the required confidence level pursuant to subparagraph (1) or (3) or is subject to an enhanced confidence level pursuant to subparagraph (6), the superintendent shall consider the financial condition of the self-insurer in relation to the potential workers' compensation liabilities. The factors the superintendent may consider include the self-insurer's liquidity, leverage, tangible net worth, size and net income. For group self-insurers, the superintendent's review must be based on the aggregate financial condition of the group members. At the request of the superintendent, a group self-insurer shall report relevant financial information, on a form prescribed by the superintendent, at such intervals as the superintendent directs. The superintendent may establish additional review criteria or procedures by rule. Rules adopted pursuant to this subparagraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

(6) If the superintendent determines, based on an evaluation of a self-insurer's financial condition pursuant to subparagraph (5), that the confidence level at which the self-insurer has been authorized to fund its trust is not sufficient to provide adequate security for the self-insurer's reasonably anticipated potential workers' compensation liabilities, the superintendent shall make a determination of the appropriate confidence level and order the self-insurer to take prompt action to increase funding to that level within 60 days. [PL 2025, c. 53, §8 (AMD).]

D. Notwithstanding any provision of this chapter, authorization to self-insure may not be conditioned on a bond or security deposit that is in excess of $50,000 for the State, the University of Maine System or any county, city or town with a state-assessed valuation equal to or in excess of $300,000,000 and either a bond rating equal to or in excess of the 2nd highest standard as set by a national bond rating agency or a net worth equal to or in excess of $35,000,000. If a county, city or town that is a self-insurer relies upon a bond rating to qualify under this paragraph, it shall value or cause to be valued its unpaid workers' compensation claims pursuant to sound accepted actuarial principles. This value must be incorporated in the annual audit of the county, city or town, together with disclosure of funds appropriated to discharge incurred claims expenses. [PL 1997, c. 126, §7 (AMD).]

E. In consideration of a self-insuring entity's application for authorization to operate a plan of self-insurance, the Superintendent of Insurance may require or permit an applicant to employ valid risk transfer by the utilization of primary reinsurance, subject to the provisions of subsection 8. Standards respecting the application of reinsurance must be contained in a rule adopted by the superintendent pursuant to the Maine Administrative Procedure Act. Reinsurance must be defined as insurance covering workers' compensation exposures in excess of risk retained by a self-insurer. [PL 1995, c. 398, §2 (NEW).]

F. An employer may be eligible for approved self-insurance status pursuant to this Act if the employer submits a written guarantee of the obligations incurred pursuant to this Act, the guarantee to be issued by a United States or Canadian corporation that is a member of an affiliated group of which the employer is a member, and which corporation is solvent and demonstrates an ability to pay the compensation and benefits, and the guarantee is in a form acceptable to the Superintendent of Insurance. The guarantor shall provide audited annual financial statements and such other information as the superintendent may require, including quarterly financial statements, and the employer shall provide a cash deposit, satisfactory securities, irrevocable standby letters of credit issued by a qualified financial institution or a surety bond as otherwise required by this Act in an amount not less than $100,000. The guarantor is deemed to have submitted to the jurisdiction of the board and the courts of this State for purposes of enforcing the guarantee. The guarantor, in all respects, is bound by and subject to the orders, findings, decisions or awards rendered against the employer for payment of compensation and any penalties or forfeitures provided under this Act. The superintendent, following hearing, may revoke the self-insured status of the employer if at any time the assets of the guarantor become impaired or encumbered or are otherwise found to be inadequate to support the guarantee. [PL 1995, c. 398, §2 (NEW).]

G. A subsidiary employer may be eligible for approved self-insurance status pursuant to this Act if: the subsidiary employer files an application jointly with a qualified parent corporation that has direct ownership of a majority voting interest of the subsidiary employer; the parent corporation and subsidiary employer submit an irrevocable contract of assignment, on a form approved by the Superintendent of Insurance, of the subsidiary employer's obligations incurred pursuant to this Act; the parent corporation is solvent and demonstrates an ability to pay the compensation and benefits of the subsidiary employer; and the subsidiary employer meets all other requirements for application and qualification as a self-insurer under this chapter and under any applicable rules adopted by the superintendent. If the parent corporation is not a United States corporation, the superintendent may, in the superintendent's sole discretion, establish the conditions of any approval of the foreign parent corporation or deny the application of the foreign parent corporation. As part of its application for approval, a foreign parent corporation must provide the following information to the superintendent: evidence that its country of domicile has substantially similar laws with respect to submission to the jurisdiction of the board and the courts of this State for the purposes of payment of workers' compensation claims of the subsidiary employer; audited financial statements, as otherwise required by this Act, prepared in the English language by a certified public accountant licensed in a state in the United States in accordance with generally accepted auditing standards as prescribed by the American Institute of Certified Public Accountants; and security, as otherwise required by the Act, in United States currency. The irrevocable contract of assignment and application must be signed by a duly authorized officer of each corporation and the application must include a board of directors' resolution from each entity as evidence of each officer's authority to enter into the contract. The superintendent may determine the subsidiary employer's eligibility for self-insurance authority and the amount of required security based upon the parent corporation's consolidated financial statement, as long as the employer complies with paragraph H. A subsidiary employer currently authorized to self-insure need not pay the application fee required of a new applicant in order to file an application to qualify under this subsection, but the subsidiary employer and parent corporation must provide all information required under this subsection as if they were a

new applicant. Once the subsidiary employer becomes authorized to self-insure under this section, the parent corporation assumes liability for all prior workers' compensation liabilities incurred by the subsidiary employer during the period of self-insurance prior to the date of authorization under this subsection, unless the subsidiary employer files an alternative plan approved by the superintendent. The parent corporation and the subsidiary employer must both be named on the certificate of authorization for self-insurance authority. Upon issuance of a certificate of authorization pursuant to this subsection, the following applies.

(1) The parent corporation is deemed to have submitted to the jurisdiction of the board and the courts of the State for the purposes of payment of workers' compensation claims of the subsidiary employer and is deemed to have submitted to the jurisdiction of the superintendent for purposes of implementation of this Act. The parent corporation, in all respects, is bound by and subject to all orders, findings, decisions or awards rendered against the subsidiary employer for payment of compensation and any penalties or forfeitures provided under this Act.

(2) A subsidiary employer authorized under this subsection and the parent corporation are considered one employer for the purposes of membership in the Maine Self-Insurance Guarantee Association. In the event of termination, transfer, insolvency, dissolution or bankruptcy of a subsidiary employer qualifying under this subsection, the parent corporation assumes all assessment obligations of the subsidiary employer for its period of self-insurance and is not considered a new member of the association.

(3) If the subsidiary employer fails for any reason to pay compensation and benefits as required under this Act, the parent corporation stands in the place of the subsidiary employer and is deemed to be the employer, subject to all requirements and provisions of this Act. For the purposes of payment of benefits and compensation under this Act, an employee of the subsidiary employer is deemed to be concurrently employed by both corporations. Concerning notification of injury to an employee of the subsidiary employer, notice to or knowledge of the occurrence of the injury on the part of the subsidiary employer is deemed notice or knowledge on the part of the parent corporation. The transfer, insolvency, dissolution or bankruptcy of a subsidiary employer qualifying under this subsection does not relieve the parent corporation from payment of compensation for injuries or death sustained by an employee during the time the subsidiary employer was approved for self-insurance authority under this subsection and the parent corporation continues to be deemed an employer until such time as all outstanding workers' compensation claims have been discharged.

(4) The transfer, insolvency, dissolution or bankruptcy of a parent corporation causes the termination of the subsidiary employer's authorization to self-insure and a termination plan must be filed pursuant to subsection 14. [PL 1995, c. 398, §2 (NEW).]

H. Each individual self-insurer shall submit with its application, and not less frequently than annually thereafter, a financial statement of current origin that has been audited by a certified public accountant. When a self-insurer qualifies on the basis of a financial guarantee or on the basis of an irrevocable contract of assignment, the Superintendent of Insurance may accept an audited financial statement of the guarantor or parent corporation in satisfaction of this requirement and may also require combining statements provided in an array that is reconciled to the consolidated report. [PL 1995, c. 398, §2 (NEW).]

[PL 2025, c. 53, §§1-8 (AMD).]

4. Group self-insurers; application. Except for the provision relating to individual public employer self-insurers, subsection 3 is equally applicable in all respects to group self-insurers. Any employer or group of employers desiring to become a self-insurer shall submit to the Superintendent of Insurance with an application for self-insurance, in a form prescribed by the superintendent, the following:

A. A payroll report for each participating employer of the group for the 3 preceding annual fiscal periods; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. A report of compensation losses incurred, payments plus reserves, by each participating employer of the group for the periods described in paragraph A; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

C. A sworn itemized statement of the group's assets and liabilities; satisfactory proof of financial ability to pay compensation for the employers participating in the group plan; and the group's reserves, their source and assurance of continuance; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

D. A description of the safety organization maintained by the employer or group for the prevention of injuries; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

E. A statement showing the kind of operations performed or to be performed; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

F. An indemnity agreement in a form prescribed by the superintendent that jointly and severally binds the group and each member to comply with the provisions of this Act; and [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

G. Any other agreements, contracts or other pertinent documents relating to the organization of the employers in the group. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

If, upon examination of the sworn financial statement and other data submitted, the superintendent is satisfied as to the ability of the employer or group to make current compensation payments and that the employer's or group's tangible assets make reasonably certain the payment of all obligations that may arise under this Act, the application must be granted subject to the terms and conditions setting out the exposure of cash deposits or securities or an acceptable surety bond, as required by the superintendent. Except to the extent provided in subsection 4-A, security against shock or catastrophe loss must be provided either by depositing securities with the board in such amount as the superintendent may determine or by filing with the superintendent and the board an insurance carrier's certificate of a standard self-insurer's reinsurance contract issued to the self-insurer or group in a form approved by the superintendent, providing coverage against losses arising out of one occurrence in such amounts as the superintendent may determine, or a combination of the foregoing, satisfactory to the superintendent. Notwithstanding any provision of this chapter, no specific or aggregate reinsurance may be required of any individual public employer that is self-insured and qualifies for the alternative security requirements of subsection 3, paragraph D.

Yearly reports in a form prescribed by the superintendent must be filed by each self-insurer or group. The superintendent may, in addition, require the filing of quarterly financial status reports whenever the superintendent has reason to believe that there has been a deterioration in the financial condition of either an individual or group self-insurer that adversely affects the individual's or group's ability to pay expected losses. The reports must be filed within 30 days after the superintendent's request or at such time as the superintendent shall otherwise set.

After approving any application for self-insurance, the superintendent shall promptly notify the board and forward to it copies of the application and all supporting materials.
[PL 2003, c. 315, §1 (AMD).]

4-A. Group self-insurance reinsurance account. As an alternative to obtaining a reinsurance contract providing coverage against losses arising out of one occurrence, an individual or group self-insurer authorized under this section may, with the approval of the Superintendent of Insurance, participate in a group self-insurance reinsurance account, referred to in this subsection as "an account," as provided in this subsection. A group self-insurer authorized under the laws of another state may

participate in an account through a protected cell arrangement as provided in paragraph L. More than one account may be established pursuant to this subsection. An account established pursuant to this subsection may be established as either an independent private entity or an instrumentality of the State, but the debts and liabilities of an account established as an instrumentality of the State are not debts and liabilities of the State. An account established as an instrumentality of the State within 24 months of its formation, with the approval of the Superintendent of Insurance, may transfer all of its assets and liabilities into an account established as an independent private entity.

A. A group self-insurer that is subject to joint and several liability pursuant to subsection 4, paragraph F, a group self-insurer authorized under the laws of another state and that executes an agreement that its members will be jointly and severally liable in accordance with the provisions of paragraph L or an individual self-insurer authorized under this section that executes an agreement to be responsible for contingent assessment liability in accordance with the provisions of paragraph F may apply to reinsure through an account.

(1) Upon the petition of 4 or more authorized group self-insurers, the Superintendent of Insurance may approve an account for the deposit of funds in lieu of reinsurance.

(2) The account must indemnify its participating self-insurer members for claims incurred during the account's operation. The purpose of the account is to accumulate funds to provide coverage against losses arising out of one occurrence in excess of established retention levels consistent with the plan of operation established pursuant to paragraph B.

(3) A self-insurer is deemed to be a member of the account for reinsurance coverage for purposes of a claim if the self-insurer is a member of the account when an injury occurs or a covered occupational disease loss is incurred.

(4) A self-insurer that reinsures through an account shall continue to make payments into that account in accordance with the plan of operation established pursuant to paragraph B.

(5) A self-insurer's participation in an account is considered as a component of the self-insurer's renewal application. A self-insurer's membership in an account is considered adequate protection against losses arising out of a single occurrence unless the Superintendent of Insurance determines, after considering the financial condition and catastrophic loss exposure of both the self-insurer and the account, that it is necessary to maintain additional reinsurance protection, maintain a lower self-insured retention level or provide some other form of additional security, singly or in combination. [PL 2013, c. 172, §1 (AMD).]

B. An account must operate in accordance with a plan of operation established by the group self-insurer members and approved by the Superintendent of Insurance.

(1) Those group self-insurers creating an account shall submit to the Superintendent of Insurance a plan of operation and any amendments to it that are necessary to ensure the fair, reasonable and equitable administration of the account. The plan of operation is effective upon approval by the superintendent. Any amendments subsequent to the plan's initial approval must be submitted to the superintendent by the plan's board of directors and are effective upon approval by the superintendent.

(2) The plan of operation must:

(a) Create a board of directors and initial bylaws, including the terms and conditions of board membership and the manner by which board members are initially appointed and are replaced when vacancies occur;

(b) Establish the procedures by which all the powers and duties of the account are performed, including, but not limited to, defining the date and conditions pursuant to which

the account will commence coverage for claims by participating group self-insurer members and establishing provisions for determining limits of exposure for the account;

(c) Establish procedures for handling assets of a fund created pursuant to paragraph C;

(d) Establish underwriting rules and criteria by which rates are to be established;

(e) Establish procedures by which claims may be filed with the account;

(f) Establish an investment policy for a fund created pursuant to paragraph C;

(g) Establish procedures for records to be kept of all financial transactions of the account, its agents and the board of directors;

(h) Establish procedures for withdrawal from the account by a self-insurer member, which must, at a minimum, require 90 days' notice from the withdrawing self-insurer member to the board of directors and the Superintendent of Insurance;

(i) Establish, subject to approval by the Superintendent of Insurance, a minimum level of funding to be achieved by the account;

(j) Contain additional provisions necessary or proper for the execution of the powers and duties of the board of directors and the ability of the account to meet its obligations; and

(k) Establish a standard per occurrence retention level for claims covered by the account. [PL 2013, c. 172, §1 (AMD).]

C. The bylaws of an account established pursuant to this subsection must establish the powers and duties of the board of directors of an account and must include the authority:

(1) To administer a self-insurance specific reinsurance account fund, to be known in this subsection as "a fund," which must receive payments from participating self-insurer members of the account as required by paragraph A. The costs of administration by the board of directors and expenses of the account must be borne by the fund;

(2) In its discretion, to secure reinsurance for the fund's exposure and to otherwise invest the assets of the fund to effectuate the purpose of the account, subject to the approval of the Superintendent of Insurance;

(3) To accept or reject applications of self-insurers to be underwritten by the account, subject to the approval of the Superintendent of Insurance;

(4) To accept or reject applications of a self-insurer member to self-insure any exposure for one occurrence at a level other than the standard retention level provided in the plan of operation established pursuant to paragraph B, subject to:

(a) Compliance with applicable provisions of the plan of operation established pursuant to paragraph B;

(b) Notice to and prior approval by the Superintendent of Insurance; and

(c) For other retention levels, a statement from that member's actuary that the member has adequately funded its additional exposure;

(5) To create a mechanism for assessing participating self-insurer members if funds are insufficient to pay the claims of the account;

(6) To retain actuarial assistance to be used in the establishment of loss reserves, reinsurance and risk management for the account, and in the development of underwriting criteria and premium rates for self-insurer members. Rates are subject to approval by the Superintendent of Insurance;

(7) To associate with a participating self-insurer member in the defense, investigation or settlement of any claim, suit or proceeding that appears to involve indemnity by the account. This authority does not create a duty to investigate, handle, settle or defend any claims, suits or proceedings against a self-insurer member;

(8) To borrow funds;

(9) To amend the bylaws and plan of operation established pursuant to paragraph B, subject to the approval of the Superintendent of Insurance; and

(10) To exercise such other powers as are established in the plan of operation established pursuant to paragraph B. [PL 2013, c. 172, §1 (AMD).]

D. An account is subject to examination and regulation by the Superintendent of Insurance. The board of directors of an account shall submit, within 120 days after the close of each fiscal year, an audited financial report and an actuarial report for the preceding fiscal year in a form approved by the superintendent. When the superintendent considers it necessary, the superintendent may require an account to maintain specific or aggregate reinsurance at such retention levels as the superintendent determines to be appropriate. [PL 2003, c. 315, §2 (NEW).]

E. The Superintendent of Insurance may address any deficiency in reserves, assets or reinsurance of an account in accordance with this paragraph.

(1) The Superintendent of Insurance may conduct, upon reasonable notice, an examination to determine the financial condition of an account. An examiner duly qualified by the superintendent may examine the loss reserves, assets, liabilities, excess insurance and working capital of an account. If the superintendent finds that the reserves, excess insurance or assets may be inadequate, or that an account does not have working capital in an amount establishing the financial strength and liquidity of an account to pay claims promptly and showing evidence of the financial ability of an account to meet its obligations to self-insurer members, the superintendent shall notify an account of the inadequacy. Upon notification, the account within 30 days, or such other time as the superintendent approves, shall file with the superintendent its written plan specifying remedial action to be taken and the time frame for implementation of that plan.

(2) If the Superintendent of Insurance determines, after reviewing the information filed pursuant to paragraph D, that a hazardous financial condition exists, the superintendent shall notify an account of the condition. Upon notification, an account shall implement within 30 days, or such other time as the superintendent approves, its plan to correct any deficiencies and within 90 days shall file with the superintendent proof of remedial action taken. If the superintendent is satisfied that the plan submitted to improve the inadequate condition of an account is sufficient, the superintendent shall notify the account. The account shall report quarterly to the superintendent until any deficiencies and their causes have been corrected.

(3) The Superior Court may appoint the Superintendent of Insurance to act as receiver, in the same manner as for a delinquent insurer pursuant to Title 24-A, section 4360, if the superintendent proves by clear and convincing evidence that a hazardous financial condition exists and that an account is unable or unwilling to take meaningful corrective action. [PL 2009, c. 232, §2 (AMD).]

F. A self-insurer's liability for participating in an account is governed by this paragraph.

(1) Each participating self-insurer in an account has a contingent assessment liability in accordance with the plan of operation established pursuant to paragraph B for payment of claims and expenses incurred while a member of the account and must execute an agreement acknowledging that it is responsible for the prompt payment of all assessments necessary to

ensure that the account is fully funded and that, if any participant in the account fails to pay an assessment when due for any reason, the remaining participants are liable for the shortfall.

(2) Each contract or other document certifying participation in the account, issued by the account, must contain a statement of the contingent liability of participating self-insurers. [PL 2009, c. 232, §2 (AMD).]

G. An account is exempt from payment of all fees and all taxes levied by this State or any of its subdivisions, except taxes levied on real or personal property. [PL 2003, c. 315, §2 (NEW).]

H. This subsection does not create any liability on the part of, and a cause of action of any nature does not arise against, any self-insurer member, an account or its agents or employees, the board of directors of an account or its individual members or the Superintendent of Insurance or the superintendent's representatives for any acts or omissions taken by them in the performance of their powers and duties under this subsection. The immunity established by this subsection does not extend to willful neglect or malfeasance that would otherwise be actionable. [PL 2009, c. 232, §2 (AMD).]

I. Assets of an account's fund may be used exclusively for payment of expenses of the account and payment of claims against the account and for no other purpose, except that an account established as an independent private entity pursuant to this subsection may issue such dividends to its members as are approved by the superintendent. [PL 2003, c. 671, Pt. A, §12 (AMD).]

J. The Superintendent of Insurance shall adopt rules to administer and effectuate the intent of this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2003, c. 315, §2 (NEW).]

K. In the event of dissolution of an account established as an instrumentality of the State pursuant to this subsection, all assets remaining after the satisfaction of all outstanding claims must be distributed to the Treasurer of State to be included in the Maine Self-Insurance Guarantee Association. [PL 2003, c. 671, Pt. A, §12 (AMD).]

L. With the approval of the Superintendent of Insurance, a self-insurance reinsurance account may create one or more protected cells under its plan of operation for the purpose of reinsuring obligations of group self-insurers that are organized under the laws of another state. Any protected cell and all participating group self-insurers and their member employers are subject to the jurisdiction and oversight of the Superintendent of Insurance with respect to all matters relating to their participation on the account.

(1) Any out-of-state self-insurer that participates in the account may do so only through participation in a protected cell. An employer or group authorized by the Superintendent of Insurance to self-insure its Maine liabilities pursuant to this section is considered an out-of-state self-insurer to the extent that it is reinsuring out-of-state liabilities beyond the scope of its Maine self-insurance plan.

(2) The establishment of protected cells under this paragraph is a pilot project, limited to at most 2 protected cells, and approval of a protected cell or of a group self-insurer to participate in a protected cell is at the discretion of the Superintendent of Insurance. The Superintendent of Insurance may adopt rules pursuant to paragraph J to establish the terms and conditions of the pilot project, including criteria for the minimum and maximum size of a protected cell.

(3) A separate account must be established for each protected cell. All contributions from participants in a protected cell must be deposited into the protected cell account. Funds in a protected cell account may be used only for the payment of claims and expenses associated with that protected cell, which may include a reasonable administrative fee paid periodically into the general account. Notwithstanding any other provision of this subsection, participants in a protected cell are not liable for claims or expenses of any other protected cell or of the general

account, and the general account is not liable for the claims of any protected cell or any expenses associated with such claims or otherwise specifically attributable to the protected cell.

(4) The minimum funding level for any protected cell may not be lower than the minimum funding level, calculated in accordance with the plan of operation and subject to paragraph E, that would apply to the general account with the same loss exposure and duration of operation. If the protected cell account falls short of the minimum funding level at any time, the reinsurance account must assess all protected cell participants. If a participating group self-insurer fails to pay any assessment in full when due, the reinsurance account must assess the group's member employers. All assessments are enforceable by the Superintendent of Insurance through an adjudicatory proceeding under the Maine Administrative Procedure Act or through an action in the Superior Court.

(5) Each protected cell must have its own board of directors, at least 2/3 of whom must be chosen by the protected cell's participants. The plan of operation shall provide for a reasonable allocation of authority between the reinsurance account's board of directors and the protected cell's board of directors.

(6) No later than April 1st of each year, each reinsurance account with one or more protected cells must pay a regulatory assessment to the Bureau of Insurance from each protected cell account in the amount of 11/100 of 1% of the total standard reinsurance premium for the preceding calendar year for all participants in the protected cell for the level of coverage provided by the reinsurance account.

(7) All groups participating in a protected cell must provide the reinsurance account and the Superintendent of Insurance with financial and actuarial information sufficient to evaluate loss exposure and financial condition. All information provided to the superintendent by protected cell participants and their member employers is confidential pursuant to subsection 15. All protected cell participants and their member employers must authorize their domiciliary regulator to provide any information requested by the superintendent, which is confidential to the extent provided in Title 24-A, section 216, subsection 5.

(8) In evaluating the risk exposure of an out-of-state group self-insurer and in determining whether groups from different states may participate in the same protected cell, the reinsurance account and the Superintendent of Insurance shall consider any relevant differences in the states' regulatory frameworks for group self-insurance and in their workers' compensation benefit laws.

(9) A group self-insurer may not become a participant in a protected cell unless the group and all of its member employers have provided written acknowledgments to the Superintendent of Insurance that they are jointly and severally liable for the obligations of the protected cell and are subject to the jurisdiction of the superintendent and courts of the State for the enforcement of those obligations.

(10) Any disputes between self-insured members, the self-insurance reinsurance account and any protected cell, including but not limited to any dispute arising out of or relating to any enforcement order or mechanism imposed by the Superintendent of Insurance, must be resolved in this State and pursuant to the laws of this State. [PL 2025, c. 53, §9 (AMD).]

[PL 2025, c. 53, §9 (AMD).]

4-B. Group self-insurance reinsurance fronting arrangements.

[PL 2025, c. 1, §1 (RP).]

4-C. Continuation of authority to administer and handle claims; group self-insurer; fronting arrangement.

[PL 2025, c. 1, §2 (RP).]

5. Group self-insurance; participation. Participation in a group self-insurance plan is governed by the following provisions.

A. Any group of employers may adopt a plan for self-insurance, as a group, for the payment of compensation under this Act to their employees. A group may not be approved to operate a self-insurance plan in the form of a corporation, partnership or limited liability company. Under a group self-insurance plan the group shall assume the liability of all the employers within the group and pay all compensation for which the employers are liable under this chapter. When the plan is adopted, the group shall furnish satisfactory proof to the Superintendent of Insurance of its financial ability to pay the compensation for the employers in the group and its revenues, their source and assurance of continuance. The superintendent may also require that any agreements, contracts and other pertinent documents relating to the organization of the employers in the group be filed with the superintendent at the time the application for group self-insurance is made. The application must be on a form prescribed by the superintendent. The superintendent has the authority to deny the application of the group to pay the compensation for failure to satisfy any applicable requirement of this section. The superintendent shall approve or disapprove an application within 90 days. The group qualifying under this paragraph is referred to as a self-insurer. [PL 2017, c. 401, §2 (AMD).]

A-1. A group self-insurer shall maintain an actuarially determined fully funded trust in compliance with subsection 3, paragraph C, except that, with the approval of the Superintendent of Insurance, an affiliated group self-insurer may secure the liabilities of each member employer in accordance with this paragraph.

(1) An affiliated group self-insurer shall designate a principal member, subject to the approval of the superintendent. The principal member must be the direct or indirect parent company of every other group member.

(2) If the principal member does not have employees in the State, the principal member must meet the same qualifications as a qualified parent corporation of an individual self-insurer under subsection 3, paragraph G, except that direct majority ownership is not required and the group's indemnity agreement is deemed to meet the requirement for an irrevocable contract of assignment.

(3) Unless otherwise ordered by the superintendent, the principal member may provide security for the affiliated group self-insurer's obligations in the same form and amount as the security required for an individual self-insurer, based on the financial condition of the principal member and the aggregate self-insurance exposure of the group. [PL 2025, c. 53, §10 (AMD).]

B. An employer participating in group self-insurance is not relieved from the liability for compensation prescribed by this chapter, except by the payment of the compensation by the group self-insurer or by the employer. As between the employee and the group self-insurer, notice to or knowledge of the occurrence of the injury on the part of the employer is deemed notice or knowledge, as the case may be, on the part of the group self-insurer; jurisdiction of the employer is, for the purpose of this chapter, jurisdiction of the group self-insurer and the group self-insurer is in all things bound by and subject to the orders, findings, decisions or awards rendered against the participating employer for the payment of compensation under this chapter. The insolvency or bankruptcy of a participating employer does not relieve the group self-insurer from the payment of compensation for injuries or death sustained by an employee during the time the employer was a participant in group self-insurance. The group self-insurer shall promptly notify the Superintendent of Insurance and the board, on a prescribed form, of the addition of any participating employer or employers. The approval of the superintendent is not necessary in order to add participating employers to the group self-insurer. Notice of termination of a participating employer is not effective until at least 10 days after notice of that termination, on a prescribed form, has been filed in

the offices of the superintendent and the board or sent to both offices by registered mail. The group self-insurer shall give notice of the termination of any participating member to all other participating members at least quarterly each year. Written notice must be given to any new participating member at the time of admission that the specific membership of the group and its members as prescribed in this section is not affected by the group's failure to provide its members with prior or immediate notice of changes in the membership of the group if notice is given at least quarterly, as long as the termination or admission of members was effected in compliance with all group agreements and bylaws and this section and the rules adopted pursuant to it. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

C. Each group self-insurer, in its application for self-insurance, shall set forth the names and addresses of its officers, directors, trustees and general manager. Notice of any change in the officers, directors, trustees or general manager must be given to the Superintendent of Insurance and the board within 10 days of the change. An officer, director, trustee or employee of the group self-insurer may not represent or participate directly or indirectly on behalf of an injured worker or the worker's dependents in any workers' compensation proceeding. All employees of employers participating in group self-insurance are deemed to be included under the group self-insurance plan. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

D. If for any reason the status of a group self-insurer under this paragraph is terminated, the security required by this section must continue to be held in accordance with this section and remains subject to the control of the board until all claims against the group self-insurer have been discharged. When all such claims have been discharged or after such period as the Superintendent of Insurance determines proper, the superintendent may accept in lieu thereof, and for the additional purpose of securing such further and future contingent liability as may arise from prior injuries to workers and be incurred by reason of any change in the condition of such workers warranting the board making subsequent awards for payment of additional compensation, a policy of insurance furnished by the group self-insurer, its successor or assigns or other entity carrying on or liquidating such self-insurance group. The policy must be in a form approved by the superintendent and issued by any insurance company licensed to issue this class of insurance in the State. It may only be issued for a single complete premium payment in advance by the group self-insurer. It must be given in an amount determined by the superintendent and when issued is noncancellable for any cause during the continuance of the liability secured and so covered. [PL 2017, c. 401, §4 (AMD).]

E. The Superintendent of Insurance may provide for the administration of this section relating to self-insurance in the manner prescribed in Title 24-A, section 212. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

F. If an employer is a partnership or a sole proprietorship and is a member of a self-insurance group associated pursuant to this section, the employer may elect to include as an employee any member of the partnership or owner of the sole proprietorship for purposes of obtaining workers' compensation coverage under this Act. In the event of such an election, the electing employer shall serve upon the group self-insurance association written notice naming the partner or sole proprietor to be covered, and an election is deemed not to have been made within this Act until such notice has been given. By making such an election, the partnership member or sole proprietor is deemed to have stipulated that for premium payment purposes the annual salary or wage of the electing partnership member or sole proprietor is the average weekly wage in the State as computed by the Department of Labor multiplied by 52 and rounded to the nearest $100. The assumed average annual wage must be adjusted as of July 1st using the average weekly wage from the prior calendar year. [PL 1995, c. 560, Pt. G, §27 (AMD).]

G. Fee schedules applicable to group self-insurers are those set forth in Title 24-A, section 601. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

H. Each group self-insurer shall record its loss expense and experience in accordance with Title 24-A, section 2323. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

I. Annual examinations of each group self-insurer, as required by the Superintendent of Insurance, must be performed by public accountants acceptable to the superintendent and reports must be rendered to the superintendent within a reasonable period, as determined by the superintendent, subsequent to the group self-insurers elected fiscal year. The examinations must be conducted pursuant to generally accepted accounting principles, as they are consistent with precepts prescribed by the superintendent, that place sound values on assets and liabilities of group self-insurers. Other examinations of the affairs, transactions, accounts, records and assets of each group self-insurer and of any person as to any matter relevant to the financial affairs of the group self-insurer must be conducted as often as the superintendent determines advisable. The expense of examination of a group self-insurer must be borne by the group that is examined. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

J. In any fiscal year, a group self-insurer may not be required to obtain aggregate reinsurance with a policy limit that exceeds a multiple of 1.5 of its annual standard workers' compensation premium for that fiscal year. The Superintendent of Insurance may set lower policy limits for aggregate reinsurance when, in the superintendent's judgment, lower limits may be prudent. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

K. Upon approval by the Superintendent of Insurance, a group self-insurer may dedicate a portion of its unimpaired surplus to increase its self-insured retention level under the aggregate reinsurance policy by an amount equal to the amount of surplus so dedicated. The superintendent before granting approval shall consider among other factors:

(1) The level of alternate revenues available to the group self-insurer to cover the further assumed costs; and

(2) The adequacy of the fund's surplus to meet obligations of the group self-insurer.

At the expiration of a period of 10 calendar days after the superintendent has received a plan for the dedication of a portion of the unimpaired surplus of a group self-insurer to increase its self-insured retention level and any additional information the superintendent has determined necessary, the plan is deemed approved unless prior to the expiration of that time period it has been affirmatively approved or disapproved by the superintendent. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

L. Upon the filing of a plan that meets the approval of the Superintendent of Insurance, a group self-insurer may be authorized to issue subordinated loan certificates, the proceeds of which must be made part of the group self-insurer's surplus account and be available as other surplus funds for dedication to increase the self-insured retention level. To the extent that the proceeds of these loan certificates are utilized by a group self-insurer to increase its self-insured retention in any fiscal year, the aggregate proceeds of the loan certificates so utilized may not exceed 25% of the annual standard premium for that fiscal year. The obligation to redeem these loan certificates after the proceeds of the loan certificates have been dedicated to increase the aggregate excess self-insured retention level of the group self-insurer is subordinate to covered claims and may not be redeemed after the dedication without the approval of the superintendent. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

[PL 2025, c. 53, §10 (AMD).]

6. Annual renewal; actuarial evaluation. Renewal and actuarial evaluation are governed by this subsection.

A. Any approval granted by the Superintendent of Insurance to an individual self-insurer or group self-insurer must be for a term of not more than one year. A complete application for renewal of approval to self-insure must be submitted to the superintendent not less than 21 days prior to the self-insurer's renewal date, except that evidence of reinsurance coverage may be submitted up to 3 working days prior to renewal. Notwithstanding this paragraph, when a self-insurer has made a timely and complete application for renewal, the existing authorization does not expire until the renewal has been determined by the superintendent. A renewal application must contain: all reports, statements and other data required to be filed annually under rules adopted by the superintendent; copies of any proposed reinsurance contracts, binders or cover notes; evidence of security posted; notice of any changes in servicing arrangements; and notice of any change in control of the self-insurer and its effect, if any, on guarantees provided pursuant to subsection 3. The superintendent may refuse to grant or renew self-insurance approval based upon any of the following grounds:

(1) Failure to submit any information that is required by law or rule or is reasonably requested by the superintendent;

(2) Failure of a self-insurer to establish that it has met all applicable requirements of law or rule;

(3) Fraud or misrepresentation in the application; or

(4) Any ground upon which approval may be suspended or revoked as provided in subsection 13.

The effective date of any notice of nonrenewal under this subsection is on or after the date of the notice. A notice of nonrenewal under this subsection may not include nonrenewal for any approved period of self-insurance prior to the notice. [PL 1995, c. 398, §3 (AMD).]

B. Each individual self-insured employer, except an employer utilizing an actuarially fully funded trust pursuant to subsection 3, is required to obtain an actuarial evaluation of undischarged claims and claims settlement liabilities at least once every 3 years, unless the requirement is waived by the superintendent. The superintendent may waive the triennial actuarial evaluation if the number of outstanding claims is not of sufficient volume to permit a credible actuarial analysis. This review and evaluation must be performed by a casualty actuary who is a member of the American Academy of Actuaries. Upon approval to self-insure, the Superintendent of Insurance shall indicate the deadline for that self-insurer to complete an actuarial review. In addition to this triennial review, the superintendent may require the reserves and liabilities of a self-insurer to be reviewed and evaluated as often as the superintendent determines necessary.

Any self-insurer that develops an imputed annual standard premium not exceeding $50,000 and demonstrates that it has provided security for its workers' compensation exposures in an amount that is at least 135% of its case-based claims reserves, as evaluated annually, is excused from providing an actuarial evaluation in any year in which these conditions are satisfied. For the purposes of this subsection, "case-based claims reserves" means undischarged claims that have arisen during the period of self-insurance and of which the employer has had formal notice. This exception may not be construed to limit the superintendent's authority to require an actuarial evaluation when the superintendent determines one is necessary. [PL 1995, c. 594, §3 (AMD).]

C. Each individual self-insurer except a public employer shall demonstrate in its initial or renewal application that it has working capital adequate to its operating needs. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

D. When a self-insurer's reinsurance contract expires on a date other than the renewal date for its self-insurance approval, the self-insurer shall file evidence of any required reinsurance coverage no

later than 3 working days before the date of expiration of its coverage. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

E. Each renewal application filed by an individual or group self-insurer that has secured its obligations in whole or part by maintaining a trust fund must include a certification that no political contributions have been made from the trust fund in violation of subsection 18. [PL 2003, c. 424, §1 (NEW).]

[PL 2003, c. 424, §1 (AMD).]

7. Self-insurance. "Self-insurance," as used in this section, means the system of securing compensation as provided in subsections 3 to 16.

[PL 1993, c. 510, §2 (AMD).]

8. Security deposit and reinsurance requirements for individual self-insurers. The following security deposit and reinsurance requirements apply to individual self-insurers.

A. Each individual self-insurer shall post a bond, security deposit or letter of credit in an amount that, except as otherwise provided in this paragraph, is no less than the loss and loss adjustment expense portion of the annual standard premium, as defined in section 404, subsection 4, paragraph E, for the prospective fiscal coverage period plus outstanding incurred liabilities minus recoveries from all reinsurance and subrogation reduced to net collections. Outstanding incurred liabilities for an individual self-insurer must be developed to ultimate from a current actuarial evaluation of undischarged claims and claims settlement liabilities performed by a casualty actuary who is a member of the American Academy of Actuaries or its successor organization, except that if a current actuarial evaluation is not available the outstanding incurred liabilities may be developed from current case reserves by applying the ratio of ultimate loss and claim settlement reserves to current loss and claim settlement reserves from the most recent actuarial evaluation.

(1) A self-insurer's minimum required security level may not be less than $50,000.

(2) The minimum required security level for a self-insurer with consistently reported outstanding case reserves less than $500,000 is 25% of the annual standard premium for the prospective fiscal coverage period, plus outstanding incurred liabilities, minus recoveries from all reinsurance and subrogation reduced to net collections. Outstanding incurred liabilities may be estimated by applying a development ratio of 2.5 to current case reserves.

(3) An individual self-insurer may reduce its minimum required security level by an amount not to exceed the self-insurer's demonstrated working capital, as determined by the Superintendent of Insurance on the basis of a current audited statement of financial condition, as long as:

(a) The self-insurer has a tangible net worth equal to or in excess of $10,000,000;

(b) The self-insurer has had positive net earnings demonstrated by certified statements of financial condition audited by a certified public accountant for at least 3 of the 5 latest fiscal years, including one of the 2 most recent years, and its mean annual earnings for the 5 latest fiscal years are at least equal to the normal annual premium for the prospective fiscal coverage period, or it was eligible to make an alternative election, under Statement of Financial Accounting Standard No. 106, Employers' Accounting for Postretirement Benefits Other Than Pensions, that would have otherwise satisfied these earnings requirements;

(c) The reduction does not exceed $10,000,000 and does not reduce the minimum required security level below $100,000; and

(d) The self-insurer is not organized as a sole proprietorship, partnership or limited liability company, except that the superintendent may authorize a limited liability company to

deduct demonstrated working capital from its minimum required security level by rules adopted under this section. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

(3-A) An individual self-insurer that is a transmission and distribution utility as defined in Title 35-A, section 102, subsection 20-B with an investment grade credit rating may reduce its required security level by up to $10,000,000, as long as:

(a) The self-insured transmission and distribution utility has a tangible net worth equal to or in excess of $200,000,000;

(b) The self-insured transmission and distribution utility has had positive net earnings demonstrated by certified statements of financial condition audited by a certified public accountant for at least 3 of the 5 latest fiscal years, including one of the 2 most recent years, and its mean annual earnings for the 5 latest fiscal years are at least equal to the normal annual premium for the prospective fiscal coverage period, or it was eligible to make an alternative election, under Statement of Financial Accounting Standard No. 106, Employers' Accounting for Postretirement Benefits Other Than Pensions, that would have otherwise satisfied these earnings requirements;

(c) The self-insured transmission and distribution utility has credit facility equal to or in excess of twice its outstanding workers' compensation liabilities; and

(d) The reduction does not exceed $10,000,000 and does not reduce the minimum required security level below $100,000.

(4) With the superintendent's approval, affiliated individual self-insurers may post security on a consolidated basis.

Within 30 days after receiving notice from the superintendent, the self-insurer shall post the required bond, security deposit or letter of credit. This deadline may be extended by the superintendent for good cause, but may not exceed one year from the deadline for compliance as stated in the notice given to the self-insurer.

A bond, security deposit or letter of credit in excess of the amount prescribed by this subsection may be required if the superintendent determines that the self-insurer has experienced a deterioration in financial condition that adversely affects the self-insurer's ability to pay expected losses.

A judgment creditor other than a claimant for benefits under this Act does not have a right to levy upon the self-insurer's assets held in deposit pursuant to this paragraph. [PL 2003, c. 38, §1 (AMD).]

B. All individual self-insurers shall maintain specific reinsurance unless the Superintendent of Insurance, in the superintendent's discretion, waives such a requirement. Specific reinsurance must generally have a limit of at least $2,000,000. Higher limits may be required for those businesses with a high risk of multiple injury from a single occurrence. The retention underlying specific reinsurance policies must be the lowest retention generally available for businesses of similar size and exposure, but may, at the superintendent's discretion, be established at higher levels consistent with the employer's claims experience and financial condition.

All individual self-insurers shall maintain aggregate reinsurance unless the superintendent, in the superintendent's discretion, waives this requirement. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

C. The Superintendent of Insurance may adopt rules establishing specific requirements applicable to security deposits and reinsurance, including, but not limited to, provisions governing standards for waiver of reinsurance, use of trusts in lieu of security deposits and release or application of deposit funds. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

[PL 2003, c. 38, §1 (AMD).]

9. Acceptable deposit funds or investments for trust funds. The following requirements apply to assets deposited or held in trust as security for an individual or group self-insurer under this section.

A. In addition to cash, the deposit funds or permissible investments for trust funds acceptable to the Superintendent of Insurance as a security deposit are:

(1) Bonds, notes and bills that are issued by and are the direct obligation of the United States Treasury;

(2) Bonds issued or guaranteed by United States government agencies;

(3) Commercial paper rated as "P-1" by Moody's Investors Service, Inc. or "A-1" or better by Standard and Poor's Corporation or the rating equivalent of either by any other nationally recognized statistical rating agency;

(4) Money market funds rated "AAm" or "AAm-G" or better by Standard and Poor's Corporation or the rating equivalent of any other nationally recognized statistical rating agency;

(5) Certificates of deposit issued by a duly chartered commercial bank or thrift institution in the State protected by the Federal Deposit Insurance Corporation if the bank or institution possesses assets of at least $100,000,000 and maintains a Tier 1 capital ratio equal to or greater than 6%;

(6) Bonds that are issued by corporations or municipalities and that are rated "A2" or better by Moody's Investors Service, Inc. or "A" or better by Standard and Poor's Corporation or the rating equivalent of either by any other nationally recognized statistical rating agency; and

(7) Other investments specifically approved by the superintendent. [PL 2015, c. 59, §1 (NEW).]

B. Investments must be diversified in a prudent manner to ensure that funds are maintained at a sufficient level to discharge workers' compensation obligations incurred by the employer pursuant to this Title as those obligations become due and payable. At least 30% of the portfolio, as measured at market value, must consist of cash, direct obligations of the United States Treasury, commercial paper, money market funds or certificates of deposit. No more than 40% of the portfolio, as measured at market value, may be invested in bonds issued or generated by United States government agencies, with no more than 10% of the portfolio invested in a single issuer. No more than 50% of the portfolio, as measured at market value, may be invested in corporate or municipal bonds, with no more than 5% of the portfolio invested in a single issuer. No more than 25% of the corporate bond portion of the portfolio, as measured at market value, may be invested in a single industry, as defined by the North American Industry Classification System of the United States Department of Commerce, United States Census Bureau. [PL 2015, c. 59, §1 (NEW).]

C. If the portfolio no longer meets the requirements of this subsection as a result of a rating downgrade or a change in financial condition or market value, the value may not be considered in determining whether a deposit or trust has surplus available for distribution, and the superintendent has discretion to discount or disallow the value of the investment for purposes of determining whether additional security is required. In the case of a portfolio that no longer meets the diversification requirements of paragraph B, the self-insurer may designate the specific assets to be disallowed, as long as the remaining assets meet the requirements of paragraph B. [PL 2015, c. 59, §1 (NEW).]

[PL 2015, c. 59, §1 (RPR).]

10. Form of reinsurance contracts. All reinsurance contracts issued or renewed after the effective date of this subsection must be issued by companies that meet the requirements of subsection 11 and must name the Maine Self-Insurance Guarantee Association as an additional insured. These

reinsurance contracts must recognize the Maine Self-Insurance Guarantee Association's rights of recovery, within the terms of coverage provided by the contract, for payments made by the association to or on behalf of claimants regarding covered claims and for claims in the course of settlement, the value of which when reduced to payments will create an obligation on the part of the reinsurance carrier to reimburse the association to the extent of funds disbursed by the association to discharge covered claims. The requirements of this subsection apply to any reinsurance contract issued to any individual or group self-insurer as part of a self-insurance program approved for use within this State and are in addition to any other requirement applicable to reinsurance contracts imposed by law or rule.

Reinsurance contracts must further specify that the reinsurance carrier and the Maine Self-Insurance Guarantee Association may enter into agreements on the terms of settlement and distribution of benefits accruing to claimants within the limits of the authority of the parties to make settlements with respect to any coverage year.

To the extent that the Maine Self-Insurance Guarantee Association succeeds to a recovery of benefits from any reinsurance carrier on behalf of claimants, those benefits must be timely disbursed by the association to or on behalf of claimants as they become due and payable pursuant to this Act. Funds recovered under reinsurance contracts on behalf of claimants must be applied consistent with the terms of coverage under the contract to loss, loss adjustment expense and attorneys' fees that are payable under this Act.
[PL 2017, c. 401, §5 (AMD).]

11. Qualifications for reinsurance carriers. A workers' compensation contract or policy issued after January 1, 1993 may not be recognized by the Superintendent of Insurance in considering the ability of an individual or group self-insurer to fulfill its financial obligations under this Act, unless the contract or policy is issued by an admitted insurance company or a reinsurance company that meets on a continuous basis the requirements of Title 24-A, chapter 9, subchapter 3 and the reinsurance company has been approved by the superintendent to issue in this State contracts of primary workers' compensation reinsurance, or by Lloyd's of London, a formally organized association of incorporated underwriters and individual unincorporated underwriters, any one or more of which underwrite and assume as insurer a portion of the risk insured by them as set forth in the contract of insurance. Each contract of primary workers' compensation reinsurance that is proposed for use in this State must be filed for approval in the manner set out in Title 24-A, section 2412. To the extent practicable, a contract so approved may be modified with less than 30 days advance filing notice if the superintendent determines the modifications suggested are not contrary to provisions of Title 24-A, section 2412, this Title or Bureau of Insurance Rule Chapter 250 and are necessary to effect required reinsurance coverage to authorize the self-insurer to operate a plan of workers' compensation self-insurance.
[PL 2025, c. 53, §11 (AMD).]

12. Qualifications for claims personnel. Persons who investigate, settle or negotiate the settlement of claims on behalf of self-insurers or employees of self-insurers are required to be licensed as insurance adjusters pursuant to Title 24-A, chapter 16.
[PL 1997, c. 457, §54 (AMD).]

13. Revocation or termination of self-insurance privilege. The following may constitute grounds for denial of the right of any individual or group to continue the option of self-insurance:

A. Failure to comply with rules adopted by the Superintendent of Insurance or any provisions of this Act within 14 days of notice of such failure or such other time as may be established by order of the superintendent; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. Failure to comply with any lawful order of the Superintendent of Insurance; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

C. Repeated failure to comply with rules of the Superintendent of Insurance or any provisions of this Act; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

D. Committing an unfair or deceptive act or practice as defined in Title 24-A, sections 2151 to 2167; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

E. Deterioration of financial condition adversely affecting the self-insurer's ability to pay expected losses; or [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

F. Failure to pay any lawful assessment of the Maine Self-Insurance Guarantee Association. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

Notwithstanding Title 5, section 10051, the superintendent is expressly granted the authority to revoke or suspend the right of an individual or group to continue the option to self-insure after a hearing held on not less than 7 days' notice in accordance with Title 5, chapter 375, subchapter IV and Title 24-A, chapter 3.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

14. Reportable events; termination of self-insurance authority; application for continuing self-insurance authority and nonrenewal or revocation order. A self-insurer must report the occurrence of events as required by this subsection. An employer may elect to voluntarily terminate its authority to self-insure at any time or may make application for continuing authority to self-insure subject to the requirements of this subsection and any rules adopted by the Superintendent of Insurance. The superintendent may make a determination that an employer's authority to self-insure has terminated in accordance with this subsection and any rules adopted by the superintendent or may grant approval of an application for continuing self-insurance authority. For the purposes of this subsection, "employer" includes a successor employer assuming all workers' compensation liabilities of an approved self-insured employer as a result of the occurrence of one of the events in paragraph A.

A. In order for the superintendent to make a determination as to whether the occurrence of an event results in a termination of an individual employer's self-insured plan or results in a need for modification of the terms and conditions of the plan, an approved self-insurer must report any of the following events to the superintendent at least 45 days in advance of the event's occurrence, if known, or no later than 10 days after the event's occurrence, if not known in advance:

(1) The sale of 20% or more of the common stock or net assets of the self-insurer;

(2) A division of the business;

(3) A spin-off of the business;

(4) A leveraged buyout of the business;

(5) A reorganization of the business;

(6) A change in business form;

(7) An acquisition by or merger of the business with another entity;

(8) A change in a partnership agreement;

(9) A change in the membership or managers of a limited liability company;

(10) Dissolution of a partnership or a limited liability company;

(11) Cessation of business in the State; or

(12) Any other event affecting the ownership of the business or the structure of the business as identified in rules adopted by the superintendent.

Notwithstanding any other provision of this paragraph, an employer that elects to apply to continue to self-insure under paragraph C must notify the superintendent 45 days in advance of the event's occurrence and must file an application for continuing authority to self-insure with the superintendent 30 days in advance of the event's occurrence. At the discretion of the superintendent

and if good cause is shown, an employer may submit an application to continue to self-insure less than 30 days in advance of the event's occurrence. [PL 1995, c. 594, §6 (NEW).]

B. If a self-insured employer elects to terminate its self-insurance program, or a portion of its program, it must submit written notice and a written termination plan to the superintendent at least 30 days in advance of the proposed termination date. In the event that a self-insurer elects to terminate its approval in this State without filing a plan acceptable to the superintendent, the superintendent shall issue an order prescribing the terms and conditions of the termination. The termination plan must specify, but is not limited to, procedures for claims handling, reservation of assets or other security acceptable to the superintendent to be maintained in the State to discharge claims liabilities and other obligations under this Act and a description of how ultimate reserves were determined. The termination plan must contain a written agreement that the self-insurer continues to be subject to informational filings respecting changes in ownership, financial condition, and actuarial evaluation of claims, claims expense reserves and loss transfers when determined necessary by the superintendent to ensure that claims are adequately secured. The plan must also comply with the terms and conditions prescribed by rule by the superintendent. To protect the interests of claimants, the superintendent may require a further deposit to be held in trust by the Treasurer of State or may require full funding of workers' compensation liabilities. [PL 1995, c. 594, §6 (NEW).]

C. If the self-insured employer and any successor employer elect to continue to self-insure after the occurrence of an event in paragraph A, the employer and any successor employer must file notice of intent to continue to self-insure with an application for continuing authority to self-insure. In order to qualify to file for continuing self-insurance authority, any successor employer must assume 100% of the liabilities of the predecessor self-insured employer and must show that the business in the State remains substantially the same.

(1) The notice of intent and application to continue to self-insure must be received by the superintendent 30 days prior to the event's occurrence. The application must be made on a form approved by the superintendent and include the application fee required in Title 24-A, section 601. Within 7 days of receipt by the superintendent of the application to continue to self-insure, the employer and any successor employer must provide all information requested by the superintendent to allow the superintendent to make a determination under this section.

(2) While the application is pending, the superintendent may request any other information from the applicant determined by the superintendent to be necessary for review of the application. The applicant must promptly provide any additional information upon request in the most expeditious manner.

(3) While the application is pending and during the 30-day period following a denial of an application for continuing self-insurance authority, the employer and any successor employer must maintain the security and reinsurance as required by the employer's certificate of authority, must continue to comply with all other provisions of the employer's certificate of authority and must provide any additional security determined by the superintendent to be necessary under the circumstances. During the application period, the self-insurance authority of the employer continues, consistent with the terms and conditions of the employer's certificate of authority.

(4) Failure to provide the information when requested or failure to comply with the terms and conditions of the employer's certificate of authority or with any additional conditions prescribed by the superintendent will result in automatic termination of the employer's authority to self-insure and the issuance of an order by the superintendent that prescribes the terms and conditions of a termination plan. [PL 1995, c. 594, §6 (NEW).]

D. The superintendent shall notify the employer in writing within 30 days of receipt of all requested information whether the employer's application for continuing self-insurance authority is approved or denied. The superintendent's notice must specify the reasons for the denial or must specify the terms and conditions for continuing self-insurance authority as prescribed by this section and any rules adopted by the superintendent.

(1) In making a determination, the superintendent must consider, among other things, whether the successor employer has assumed 100% of the workers' compensation liabilities of the employer, whether the successor employer qualifies for self-insurance authority pursuant to subsection 3 and whether the successor employer maintains substantially the same business operations as the predecessor self-insured employer. The superintendent may also consider, among other things, whether the successor employer employs a substantially greater number of employees than did the predecessor employer. For purposes of this subparagraph, the successor employer has assumed 100% of the workers' compensation liabilities of the employer if the successor employer is unconditionally liable for payment of all benefits that are the obligations of the self-insured employer, regardless of date of injury and notwithstanding agreements for reimbursement from reinsurers or other entities agreeing to reimburse the successor employer for payments associated with self-insurance obligations.

(2) If the superintendent denies the application, the effective date of the termination is 30 days from the date of the superintendent's notice. The self-insurer may request a hearing on this decision within 30 days from the date of the notice. Upon a request for hearing, there is no automatic stay of the superintendent's decision, but the effective date of termination may be stayed by order of the superintendent. Prior to the effective date of the termination, the employer must file a termination plan consistent with paragraph B. After denial of an application, a successor employer may apply for authority to self-insure its workers' compensation obligations pursuant to this section. [PL 1995, c. 594, §6 (NEW).]

E. If at any time the superintendent determines that a self-insurer has failed to notify the superintendent of the occurrence of any of the events identified in paragraph A, the self-insurer may be subject to penalties pursuant to Title 24-A, section 12-A, if it is determined that the occurrence of the event had a substantial impact on the financial condition of the self-insured employer. As soon as the superintendent notifies the self-insurer that the superintendent has determined that the self-insurer failed to notify the superintendent of the occurrence of any of these events, the self-insurer must comply with this subsection. [PL 1995, c. 594, §6 (NEW).]

F. If a self-insurer's approval is revoked or not renewed pursuant to subsection 6 or 13, the superintendent must issue an order that prescribes terms and conditions related to the termination of the plan. The terms of the order must conform to, but need not be limited to, the requirements of paragraph B. [PL 1995, c. 594, §6 (NEW).]

F-1. After terminating or suspending an authorization for self-insurance in accordance with this subsection, the Superintendent of Insurance shall promptly notify the board and forward to it a copy of the order terminating or suspending the authorization. [PL 2025, c. 53, §12 (NEW).]

G. Any order issued pursuant to this subsection, including an order directing a self-insurer to produce relevant information, may be enforced as provided by Title 24-A, section 214. [PL 1995, c. 594, §6 (NEW).]

H. A self-insurer approved by the superintendent to continue self-insurance authority under paragraph D is not subject to assessments as a new member of the Maine Self-Insurance Guarantee Association. The self-insurer is subject to applicable annual assessments or postinsolvency assessments levied by the Maine Self-Insurance Guarantee Association. [PL 1995, c. 594, §6 (NEW).]

H-1. A member of a group self-insurer and a successor employer of a member of a group self-insurer may apply for continuing membership in the group self-insurer, subject to the approval of the Superintendent of Insurance and the group self-insurer, in accordance with procedures established by the group self-insurer. The procedures established by the group self-insurer must include requirements the superintendent determines are substantially similar to the relevant provisions of paragraphs C and D. As long as the successor employer remains a member in good standing and has fully assumed the former member's obligations, the former member may not be treated as a departing member for purposes of enhanced security requirements under subsection 3, paragraph C, subparagraph (2). [PL 2017, c. 401, §6 (NEW).]

I. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [PL 1995, c. 594, §6 (NEW).]

[PL 2025, c. 53, §12 (AMD).]

15. Confidentiality of information. All written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, all information contained in the minutes of trustee meetings and all information relating to individual compensation cases, that a self-insurer is required to file with or make available to the superintendent under this section, section 404 or rules adopted pursuant to it are confidential ~~and are not public records~~.

The confidential nature of this information does not limit or affect its use by the superintendent in administering this Act, including, but not limited to, communications with the service agent, the Workers' Compensation Board or the Maine Self-Insurance Guarantee Association.

[PL 1993, c. 349, §73 (AMD).]

16. Registration of self-insurers. Registration of self-insurers is governed as follows.

A. All employers claiming the status of self-insurer as defined by this Title shall apply for registration with the Bureau of Insurance on forms prescribed by the Superintendent of Insurance. The application must contain a statement identifying the employer as a self-insurer, which includes the legal organization and name of each self-insuring employer. The superintendent may require the submission of any further information the superintendent deems necessary in order to determine whether a self-insurer has been approved pursuant to this section. If an employer is unable to establish that it has been approved to act as a self-insurer, the superintendent shall deny the application for registration. Upon denial of registration, an employer may make application for approval to act as a self-insurer in accordance with all requirements of this Act and the rules adopted pursuant to this Act. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. On January 1st of each year, the Superintendent of Insurance shall promulgate an official list of self-insurers that are approved and registered as of that date and the list of self-insurers must be forwarded to the Maine Self-Insurance Guarantee Association. The superintendent shall add to the list at any time during the year the name or names of any self-insurer or self-insurers the superintendent has approved and registered subsequent to the promulgation of the list and shall similarly delete the name or names of any self-insurer or self-insurers whose authority to self-insure has been terminated. Additions to or deletions from the official list of self-insurers must be forwarded to the Maine Self-Insurance Guarantee Association when made. Failure to become registered pursuant to this subsection terminates an employer's authority to self-insure under this Act. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

17. Report required. In order to comply with Title 26, section 61, subsection 1-A, on or before March 1st of each year, every individual workers' compensation self-insurer and workers' compensation group self-insurer shall file a report with the superintendent showing the amount of total actual paid

workers' compensation losses and the total actual paid workers' compensation medical payments for the previous calendar year.
[PL 1997, c. 126, §9 (NEW).]

18. Prohibition against using funds for political contributions. Once deposited into a trust fund created to comply with the requirements of this section, funds and assets may not be withdrawn for the purpose of making a contribution to a political candidate or political action committee required to file a report under Title 21-A, chapter 13, subchapter 2 or 4.
[PL 2003, c. 424, §2 (NEW).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). RR 1993, c. 1, §141 (COR). PL 1993, c. 349, §73 (AMD). PL 1993, c. 491, §1 (AMD). PL 1993, c. 510, §§1,2 (AMD). PL 1995, c. 36, §1 (AMD). PL 1995, c. 150, §1 (AMD). PL 1995, c. 277, §1 (AMD). PL 1995, c. 398, §§2-4 (AMD). PL 1995, c. 560, §G27 (AMD). PL 1995, c. 594, §§2-6 (AMD). PL 1995, c. 619, §7 (AMD). PL 1997, c. 126, §§7-9 (AMD). PL 1997, c. 457, §54 (AMD). PL 1999, c. 113, §30 (AMD). PL 1999, c. 790, §A53 (AMD). PL 2001, c. 44, §14 (AFF). PL 2001, c. 48, §§1,11 (AMD). PL 2001, c. 48, §§2,14 (AFF). PL 2001, c. 224, §1 (AMD). PL 2003, c. 38, §1 (AMD). PL 2003, c. 315, §§1,2 (AMD). PL 2003, c. 424, §§1,2 (AMD). PL 2003, c. 671, §§A11,12 (AMD). PL 2005, c. 98, §§1,2 (AMD). PL 2007, c. 75, §1 (AMD). PL 2009, c. 232, §2 (AMD). PL 2011, c. 98, §1 (AMD). PL 2011, c. 180, §§1, 2 (AMD). PL 2013, c. 172, §§1, 2 (AMD). PL 2015, c. 59, §1 (AMD). PL 2017, c. 401, §§1-6 (AMD). PL 2023, c. 393, §§1, 2 (AMD). PL 2025, c. 1, §§1, 2 (AMD). PL 2025, c. 53, §§1-12 (AMD).

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