

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND NINETEEN

H.P. 758 - L.D. 1028

**An Act To Prevent and Reduce Tobacco Use with Adequate Funding and by
Equalizing the Taxes on Tobacco Products and To Improve Public Health**

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

PART A

Sec. A-1. 36 MRSA §4401, sub-§§2-A, 2-B and 7-A are enacted to read:

2-A. Electronic smoking device. "Electronic smoking device" means a device used to deliver nicotine or any other substance intended for human consumption that may be used by a person to simulate smoking through inhalation of vapor or aerosol from the device, including, without limitation, a device manufactured, distributed, marketed or sold as an electronic cigarette, electronic cigar, electronic pipe, electronic hookah or so-called vape pen.

2-B. Hookah. "Hookah" means a device used for smoking tobacco that consists of a tube connected to a container where the smoke is cooled by passing through water.

7-A. Smoking. "Smoking" includes carrying or having in one's possession a lighted or heated cigarette, cigar or pipe or a lighted or heated tobacco or plant product intended for human consumption through inhalation whether natural or synthetic in any manner or in any form. "Smoking" includes the use of an electronic smoking device.

Sec. A-2. 36 MRSA §4401, sub-§9, as amended by PL 2005, c. 627, §4, is further amended to read:

9. Tobacco products. "Tobacco products" means cigars; cheroots; stogies; electronic smoking devices and liquids used in electronic smoking devices whether or not they contain nicotine; periques, granulated, plug cut, crimp cut, ready rubbed; and other smoking tobacco; snuff; snuff flour; snus; cavendish; plug and twist tobacco; finecut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but does not include tobacco products that are subject to the tax provided by chapter 703

intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means. "Tobacco products" does not include:

A. Products that are subject to the tax provided by chapter 703;

B. Drugs, devices or combination products authorized for sale by the United States Department of Health and Human Services, Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act;

C. Any product that contains adult use marijuana subject to tax under Title 28-B, section 1001; or

D. Any product that contains marijuana or marijuana products subject to control under Title 22, chapter 558-C.

Sec. A-3. 36 MRSA §4403, sub-§1, as repealed and replaced by PL 2009, c. 213, Pt. H, §1 and affected by §3, is amended to read:

1. Smokeless tobacco. A tax is imposed on smokeless tobacco, including chewing tobacco and snuff, at the rate of:

A. On amounts of smokeless tobacco packaged for sale to the consumer in a package that contains one ounce or more of smokeless tobacco, \$2.02 per ounce and prorated; and

B. On smokeless tobacco packaged for sale to the consumer in a package that contains less than one ounce of smokeless tobacco, \$2.02 per package.

Beginning January 2, 2020, the tax rates in this subsection are subject to adjustment pursuant to subsection 5.

Sec. A-4. 36 MRSA §4403, sub-§2, as amended by PL 2005, c. 627, §8, is further amended to read:

2. Other tobacco. A tax is imposed on cigars, pipe tobacco and other tobacco intended for smoking at the rate of 20% of the wholesale sales price beginning October 1, 2005. Beginning January 2, 2020, a tax is imposed on all tobacco products, other than those subject to tax under subsection 1, at the rate of 43% of the wholesale sales price. Beginning January 2, 2020, the tax rate imposed pursuant to this subsection is subject to adjustment pursuant to subsection 5.

Sec. A-5. 36 MRSA §4403, sub-§5 is enacted to read:

5. Equivalence. If the tax on cigarettes under chapter 703 is increased after January 2, 2020, the assessor shall calculate a rate of tax on other tobacco products under subsections 1 and 2 that is equivalent to the same percentage change in the tax rate for one cigarette. The adjusted rates calculated by the assessor take effect at the same time as the increase in the tax on cigarettes.

Sec. A-6. Appropriations and allocations. The following appropriations and allocations are made.

**ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF
Revenue Services, Bureau of 0002**

Initiative: Provides funding for one Tax Examiner position and related costs to review and process additional tobacco products tax returns.

| GENERAL FUND | 2019-20 | 2020-21 |
|-------------------------------|-----------------|-----------------|
| POSITIONS - LEGISLATIVE COUNT | 1.000 | 1.000 |
| Personal Services | \$65,492 | \$85,661 |
| All Other | \$12,089 | \$2,700 |
| GENERAL FUND TOTAL | \$77,581 | \$88,361 |

| ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF DEPARTMENT TOTALS | 2019-20 | 2020-21 |
|---|-----------------|-----------------|
| GENERAL FUND | \$77,581 | \$88,361 |
| DEPARTMENT TOTAL - ALL FUNDS | \$77,581 | \$88,361 |

**HEALTH AND HUMAN SERVICES, DEPARTMENT OF
Maine Center for Disease Control and Prevention 0143**

Initiative: Appropriates funds for evidence-based tobacco use prevention and cessation, in accordance with the United States Department of Health and Human Services, Centers for Disease Control and Prevention best practices.

| GENERAL FUND | 2019-20 | 2020-21 |
|---------------------------|--------------------|--------------------|
| All Other | \$2,050,000 | \$4,100,000 |
| GENERAL FUND TOTAL | \$2,050,000 | \$4,100,000 |

Medical Care - Payments to Providers 0147

Initiative: Appropriates and allocates funds for tobacco use cessation medications and counseling provided to MaineCare members.

| GENERAL FUND | 2019-20 | 2020-21 |
|---------------------------|------------------|------------------|
| All Other | \$500,000 | \$750,000 |
| GENERAL FUND TOTAL | \$500,000 | \$750,000 |

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| FEDERAL EXPENDITURES FUND | 2019-20 | 2020-21 |
| All Other | \$1,776,235 | \$1,332,177 |
| FEDERAL EXPENDITURES FUND TOTAL | <u>\$1,776,235</u> | <u>\$1,332,177</u> |

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|---|---------------------------|---------------------------|
| HEALTH AND HUMAN SERVICES, DEPARTMENT OF DEPARTMENT TOTALS | 2019-20 | 2020-21 |
| GENERAL FUND | \$2,550,000 | \$4,850,000 |
| FEDERAL EXPENDITURES FUND | \$1,776,235 | \$1,332,177 |
| DEPARTMENT TOTAL - ALL FUNDS | <u>\$4,326,235</u> | <u>\$6,182,177</u> |

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|----------------------------------|---------------------------|---------------------------|
| SECTION TOTALS | 2019-20 | 2020-21 |
| GENERAL FUND | \$2,627,581 | \$4,938,361 |
| FEDERAL EXPENDITURES FUND | \$1,776,235 | \$1,332,177 |
| SECTION TOTAL - ALL FUNDS | <u>\$4,403,816</u> | <u>\$6,270,538</u> |

Sec. A-7. Effective date. Those sections of this Part that amend the Maine Revised Statutes, Title 36, section 4401, subsection 9 and that enact Title 36, section 4401, subsections 2-A, 2-B and 7-A take effect January 2, 2020.

PART B

Sec. B-1. 22 MRSA §3174-JJ, as amended by PL 2013, c. 441, §1, is further amended to read:

§3174-JJ. MaineCare reimbursement for ambulance services

The department shall reimburse for ambulance services under MaineCare at a level that is not less than the average allowable reimbursement rate under Medicare for such services or at the highest percent of that level that is possible within resources appropriated for those purposes. Beginning March 1, 2015, the department shall reimburse for ambulance services under MaineCare at a level that is not less than 65% of the average allowable reimbursement rate under Medicare for such services. Beginning January 1, 2020, the department shall reimburse for ambulance services under MaineCare at a level that is not less than the average allowable reimbursement rate under Medicare for such services and shall reimburse for neonatal transport services under MaineCare at the average rate for critical care transport services under Medicare.

Sec. B-2. Appropriations and allocations. The following appropriations and allocations are made.

HEALTH AND HUMAN SERVICES, DEPARTMENT OF

Medical Care - Payments to Providers 0147

Initiative: Provides funding to increase the reimbursement rate for ambulance services under the MaineCare program so the rates are not less than the average allowable reimbursement rate under Medicare and increase the reimbursement rate for neonatal transport services under MaineCare so the rates are equal to the average rate for critical care transport services under Medicare.

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|--|--------------------|--------------------|
| GENERAL FUND | 2019-20 | 2020-21 |
| All Other | \$1,662,060 | \$3,329,640 |
| GENERAL FUND TOTAL | \$1,662,060 | \$3,329,640 |
| | | |
| FEDERAL EXPENDITURES FUND | 2019-20 | 2020-21 |
| All Other | \$4,894,815 | \$5,868,260 |
| FEDERAL EXPENDITURES FUND TOTAL | \$4,894,815 | \$5,868,260 |

PART C

Sec. C-1. 36 MRSA §5122, sub-§2, ¶¶QQ is enacted to read:

QQ. For taxable years beginning on or after January 1, 2020, to the extent included in federal adjusted gross income and not subtracted under paragraph FF, student loan payments made by the taxpayer's employer directly to a lender on behalf of a qualified health care employee. As used in this paragraph, "qualified health care employee" means an individual who is employed by a hospital located in this State and who is licensed under Title 32, chapter 31, subchapter 3 or 4; chapter 36, subchapter 4; or chapter 48, subchapter 2.

Sec. C-2. Reimbursement for rural hospitals and nonrural hospitals. The Department of Health and Human Services shall amend its rule Chapter 101: MaineCare Benefits Manual, Chapter III, Section 45 in order to provide MaineCare reimbursement for rural hospitals at 100% of inpatient hospital-based physician costs, outpatient emergency room hospital-based physician costs, outpatient nonemergency room hospital-based physician costs and graduate medical education costs. The department shall also amend its rule Chapter 101: MaineCare Benefits Manual, Chapter III, Section 45 in order to provide MaineCare reimbursement for nonrural hospitals at 93.3% of inpatient hospital-based physician costs, 93.4% of outpatient emergency room hospital-based physician costs and 83.8% of outpatient nonemergency room hospital-based physician costs.

The department shall adopt routine technical rules under the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A to establish a definition of "rural hospital" that reflects the regional access to hospital care and the population density of the public health

district in which the hospital is located, as long as the following hospitals are considered rural hospitals:

1. Northern Light A.R. Gould Hospital in Presque Isle;
2. Cary Medical Center in Caribou;
3. Franklin Memorial Hospital in Farmington;
4. Northern Light Inland Hospital in Waterville;
5. Northern Light Maine Coast Hospital in Ellsworth; and
6. Northern Maine Medical Center in Fort Kent.

Sec. C-3. Reimbursement for acute care critical access hospitals. The Department of Health and Human Services shall amend its rule Chapter 101: MaineCare Benefits Manual, Chapter III, Section 45 regarding acute care critical access hospital physician services to require MaineCare reimbursement of 100% for all hospital-based physician costs.

Sec. C-4. Reimbursement for rural health clinics. The Department of Health and Human Services shall amend its rule Chapter 101: MaineCare Benefits Manual, Chapter II, Section 103 regarding the department's reimbursement methodology to provide an alternative payment methodology option that, effective January 1, 2020, is the same as the existing methodology except that rural health clinics may be reimbursed on the basis of 100% of the average of the reasonable costs of providing MaineCare-covered services during calendar years 2016 and 2017 as long as reimbursement is no less than reimbursement received under the prospective payment system described in Section 1902(bb) of the United States Social Security Act. Each rural health clinic must be given the option to be reimbursed under the methodology required by this section or under the existing prospective payment system methodology.

Sec. C-5. State plan amendments; rulemaking. The Department of Health and Human Services shall submit any necessary state plan amendments to implement the requirements of this Part to the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services no later than January 1, 2020. Upon approval, the department shall amend its rules within 180 days of approval. Rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

Sec. C-6. Appropriations and allocations. The following appropriations and allocations are made.

HEALTH AND HUMAN SERVICES, DEPARTMENT OF

Medical Care - Payments to Providers 0147

Initiative: Provides appropriations and allocations to allow for MaineCare reimbursement of 100% for all hospital-based physician costs.

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| GENERAL FUND | 2019-20 | 2020-21 |
| All Other | \$371,768 | \$753,736 |
| GENERAL FUND TOTAL | <u>\$371,768</u> | <u>\$753,736</u> |

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| FEDERAL EXPENDITURES FUND | 2019-20 | 2020-21 |
| All Other | \$793,942 | \$1,577,684 |
| FEDERAL EXPENDITURES FUND TOTAL | <u>\$793,942</u> | <u>\$1,577,684</u> |

Medical Care - Payments to Providers 0147

Initiative: Provides appropriations and allocations to allow for MaineCare reimbursement for rural hospitals at 100% of inpatient hospital-based physician costs, outpatient emergency room hospital-based physician costs, outpatient nonemergency room hospital-based physician costs and graduate medical education costs and to allow for MaineCare reimbursement for nonrural hospitals at 93.3% of inpatient hospital-based physician costs, 93.4% of outpatient emergency room hospital-based physician costs and 83.8% of outpatient nonemergency room hospital-based physician costs.

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|---------------------------|------------------|------------------|
| GENERAL FUND | 2019-20 | 2020-21 |
| All Other | \$263,428 | \$534,084 |
| GENERAL FUND TOTAL | <u>\$263,428</u> | <u>\$534,084</u> |

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| FEDERAL EXPENDITURES FUND | 2019-20 | 2020-21 |
| All Other | \$562,573 | \$1,117,918 |
| FEDERAL EXPENDITURES FUND TOTAL | <u>\$562,573</u> | <u>\$1,117,918</u> |

Medical Care - Payments to Providers 0147

Initiative: Provides appropriations and allocations to allow for an alternative payment methodology option that is the same as the existing methodology except that rural health clinics may be reimbursed on the basis of 100% of the average of the reasonable costs of providing MaineCare-covered services during calendar years 2016 and 2017 as long as reimbursement is no less than reimbursement received under the prospective payment system.

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|---|---------------------------|---------------------------|
| GENERAL FUND | 2019-20 | 2020-21 |
| All Other | \$739,449 | \$1,499,185 |
| GENERAL FUND TOTAL | <u>\$739,449</u> | <u>\$1,499,185</u> |
| | | |
| FEDERAL EXPENDITURES FUND | 2019-20 | 2020-21 |
| All Other | \$1,579,154 | \$3,138,020 |
| FEDERAL EXPENDITURES FUND TOTAL | <u>\$1,579,154</u> | <u>\$3,138,020</u> |
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| HEALTH AND HUMAN SERVICES, DEPARTMENT OF DEPARTMENT TOTALS | 2019-20 | 2020-21 |
| GENERAL FUND | \$1,374,645 | \$2,787,005 |
| FEDERAL EXPENDITURES FUND | \$2,935,669 | \$5,833,622 |
| DEPARTMENT TOTAL - ALL FUNDS | <u>\$4,310,314</u> | <u>\$8,620,627</u> |

PART D

Sec. D-1. Transfer. Notwithstanding any provision of law to the contrary, the State Controller shall transfer from the Hospital Tax, Other Special Revenue Funds account in the Department of Health and Human Services \$946,925 on or before June 30, 2020 and \$946,925 on or before June 30, 2021 to the unappropriated surplus of the General Fund.