Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; PL 2017 ch. 459
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 19**, Home and Community Benefits for the Elderly and Adults with Disabilities
Filing number:	**2019-001**
Effective date:	1/7/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:
The Department is adopting this rule in accordance with P.L. 2017, ch. 459, *An Act Making Certain Supplemental Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* ("Act"). This Act provides funding to increase personal care and related services provided under Section 19. The Act further directs the Department to "ensure that caps and limitations on home-based and community-based services are increased to reflect increases in reimbursement rates that result from this Part," and that "A recipient of services may not experience a reduction in hours solely as a result of increased reimbursement" (Act, Sec. B-3).

The Department is adopting rules for Sec. 19, Ch. III, as directed in the Act, and increasing personal care and related rates, simultaneously with the adoption of these Ch. II rules. In accordance with the Act, therefore, this Ch. II rulemaking raises the program cap to $5,425.00 per member per month (Section 19.06(A)).

On October 9, 2018, the Department adopted the increased cap through emergency rulemaking. This rulemaking permanently adopts the emergency cap increase.

In addition, the Department adopts the following changes to this rule:

1. Adds a requirement for Electronic Visit Verification ("EVV"), consistent with the requirements of Section 12006 of the *21st Century CURES Act* (PL 114-255), as codified in 42 U.S.C. § 1396b(l)(1). THIS CHANGE REQUIRES CMS APPROVAL, BUT IS EFFECTIVE PENDING APPROVAL.
2. Adds an exception to the Limit of 40/hours week of service by an individual worker that is reimbursable. The exception is for a Member who is at risk for institutionalization unless the individual worker can be reimbursed for more than 40 hour/week. The provision sets forth criteria for the Department to consider in its evaluation of the request. The provision also adds that the Department's decision must be in writing, and given to the Member. Members can appeal an adverse decision. This exception language is required pursuant to the Settlement Agreement in *Roy v. Dept. of Health and Human Services*, U.S. Dist. Ct., D. Me., Civil No. 1:16-cv-00592-NT**.** THIS CHANGE REQUIRES CMS APPROVAL BUT IS EFFECTIVE PENDING APPROVAL.
3. Deletes a provision in § 19.02-3(H) that provided that a portion of the member capacity for this Section 19 service would be reserved for members eligible and participating in the Department's Follow the Money (Homeward Bound) program. The Department is deleting this provision since there is no waiting list for the Section 19 service, and so it is unnecessary to reserve capacity. In addition, the Department will shortly submit an amendment to the Section 19 waiver which

will significantly increase the number of funded openings for Section 19 services over the next five years. CMS HAS APPROVED THIS CHANGE.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately $3,935,357 in SFY19 which includes $1,397,839 in state dollars and $2,537,518 in federal dollars.

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Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; PL 2017 ch. 459 part B
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 19**, Home and Community Benefits for the Elderly and Adults with Disabilities
Filing number:	**2019-002**
Effective date:	1/7/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The Department is adopting this routine technical rule in accordance with PL 2017 ch. 459, Part B, *An Act Making Certain Supplemental Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government ("Act").* The Act requires the Department to amend its rules for reimbursement rates for home-based and community-based personal care and related services provided under the provisions of 10-144 CMR ch. 101, *MaineCare Benefits Manual*, Chapter III, Section 19, "Home and Community Benefits for the Elderly and for Adults with Disabilities" and referenced in the February 1, 2016 report "*Rate Review for Personal Care and Related Services: Final Rate Models*" prepared for the Department by Burns & Associates, Inc. **These increased rates will be effective retroactive to July 1, 2018.**

The proposed rule increases rates for 30 procedure codes. In addition, the rule adds in the code and rate for Home Health Aide Visit—Home Health Services, which was inadvertently deleted during final adoption of this rule in January 2018.

The Department has adopted these rates through emergency rulemaking. The Legislature determined that immediate adoption is necessary for the preservation of the public peace, health, and safety under 5 MRS §8054. As such, no additional findings by the Department are required in support of this emergency rulemaking. Pursuant to 5 MRS §8054 (3), the emergency rule may be effective for up to ninety (90) days. The Department is now engaging in proposed routine technical rulemaking to permanently adopt these Section 19 rule changes.

These increased rates will be effective retroactive to July 1, 2018. The Department has determined that a retroactive increase to the beginning of the state fiscal year is appropriate, since the appropriation is intended for the entire fiscal year. The retroactive application comports with 22 MRS §42(8) which authorizes the Department to adopt rules with a retroactive application for a period not to exceed eight calendar quarters and there is no adverse financial impact on any MaineCare member or provider. In addition, the Department sought, and obtained approval, by the Centers for Medicare and Medicaid Services ("CMS") to submit a waiver amendment making the rate changes retroactive to July 1, 2018.

In addition to this rulemaking, the Department is simultaneously adopting emergency rules as well as proposing routine technical rules for Section 19, Ch. II, which rulemaking raises the program cap, in accordance with the Act.

Basis statement:

The Department is adopting this rule in accordance with PL 2017 ch. 459 part B, *An Act Making Certain Supplemental Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* ("Act"). The Act requires the Department to amend its rules for reimbursement rates for home-based and community-based personal care and related services provided under the provisions of 10-144 CMR ch. 101,

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Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

MaineCare Benefits Manual, Ch. III Section 19, "Home and Community Benefits for the Elderly and for Adults with Disabilities" and referenced in the February 1, 2016 report "*Rate Review for Personal Care and Related Services: Final Rate Models*" prepared for the Department by Burns & Associates, Inc. **These increased rates will be effective retroactive to July 1, 2018.**

On October 9, 2018, the Department adopted these rate increases via emergency rulemaking, with a retroactive effective date of July 1, 2018. The Department is now permanently adopting these Section 19 rule changes.

The adopted rule increases the following rates:

- S5125 U7-Attendant Care Services (Personal Care Services, Participant Directed Option)
- S5125 U7 UN-Attendant Care Services (Personal Care Services, Participant Directed Option)-2 members served
- S5125 U7 UP-Attendant Care Services (Personal Care Services, Participant Directed Option)-3 members served

- T1019 U7 (0589)-Personal Care Services (Agency PSS)
- T1019 U7 UN-Personal Care Services (Agency PSS)-2 members served
- T1019 U7 UP-Personal Care Services (Agency PSS)-3 members served

- T1005 U7 Respite Care Services, in the home
- T1005 U7 UN- Respite Care Services, in the home-2 members served
- T1005 U7 UP-Respite Care Services, in the home-3 members served

- T1005 U7-Respite Care Services, in the home-Participant Directed Option
- T1005 U7 UN-Respite Care Services, in the home-Participant Directed Option-2 members served
- T1005 U7 UP-Respite Care Services, in the home-Participant Directed Option-3 members served

- T1005 U7 (0669) Respite Care, in the home by CNA/Home Health Aide
- T1005 U7 UN (0669) Respite Care, in the home by CNA/Home Health Aide-2 members served
- T1005 U7 UP (0669) Respite Care, in the home by CNA/Home Health Aide-3 members served

- G0299 U7 (0551) Skilled Nursing Visit (R.N.) (Non-Medicare Certified Home Health Agency)-Home Health Services
- G0299 U7 UN (0551) Skilled Nursing Visit (R.N.) (Non-Medicare Certified Home Health Agency)-Home Health Services-2 members served
- G0299 U7 UP (0551) Skilled Nursing Visit (R.N.) (Non-Medicare Certified Home Health Agency)-Home Health Services-3 member served

- G0300 U7 (0559) Nursing Visit (LPN) (Non-Medicare Certified Home Health Agency)-Home Health Services
- G0300 U7 UN (0559) Nursing Visit (LPN) (Non-Medicare Certified Home Health Agency)-Home Health Services-2 members served
- G0300 U7 UP (0559) Nursing Visit (LPN) (Non-Medicare Certified Home Health Agency)-Home Health Services-3 members served

- T1004 U7 (0581) Certified Nurse's Aide-Home Health Services
- T1004 U7 UN (0581) Certified Nurse's Aide-Home Health Services-2 members served
- T1004 U7 UP (0581) Certified Nurse's Aide-Home Health Services-3 members served

- G0156 U7 TF (0571) Home Health Aide- Home Health Services
- G0156 U7 TF UN (0571) Home Health Aide- Home Health Services-2 members served
- G0156 U7 TF UP (0571) Home Health Aide- Home Health Services-3 members served

- G0299 U7 Skilled Nursing Visit (R.N.) – Home Health Services
- G0299 U7 UN Skilled Nursing Visit (R.N.) – Home Health Services-2 members served
- G0299 U7 UP Skilled Nursing Visit (R.N.) – Home Health Services-3 members served

In addition, this adopted rule adds in the following code and rate, which was inadvertently deleted during final adoption of this rule in January 2018:

- G0156 U7 TF (0571) Home Health Aide Visit – Home Health Services at $22.91 per visit.

These increased rates will be effective retroactive to July 1, 2018. The Department has determined that a retroactive increase to the beginning of the state fiscal year is appropriate, since the appropriation is intended for the entire fiscal year. The retroactive application comports with 22 MRS §42(8) which authorizes the Department to adopt rules with a retroactive application for a period not to exceed eight calendar quarters and there is no adverse financial impact on any MaineCare member or provider. In addition, the Department sought, and obtained approval, by the Centers for Medicare and Medicaid Services ("CMS") to submit a waiver amendment making the rate changes retroactive to July 1, 2018.

In addition to this adopted rulemaking for Section 19, Ch. III, the Department is simultaneously adopting rules for Sec. 19, Ch. II, which rulemaking raises the program cap, in accordance with the Act.

Fiscal impact of rule:

The Department does not anticipate there will be adverse or economic impacts on small businesses, countries, or municipalities.

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Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; PL 2017 ch. 460
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 2**, Adult Family Care Services
Filing number:	**2019-021**
Effective date:	2/4/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:
The Department adopts this rule pursuant to PL 2017 ch. 460, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (the "Act"), Part B-2. The Act requires the Department to amend its rules to increase reimbursement rates for adult family services, adult day services, and homemaker services for the fiscal year ending June 30, 2019, by ten percent (10%); and directs that MaineCare payment rates for state fiscal year ending June 30, 2020 and each year thereafter be increased by an inflation adjustment cost-of-living percentage in accordance with the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care services index from the prior December for professional services, nursing home, and adult day care services. These cost of living increases shall continue annually until the Department has completed a rate study for adult family care services and the rates in the rate study have been implemented.

This rulemaking increases the rates for Adult Family Care Homes and Adult Family Care Homes "Remote Island." The Act requires that the increased rates must be attributed directly to the wages and salaries of the professional staff delivering the personal care and related services to members. This rulemaking also clarifies that the increased reimbursement rates shall not negatively affect members' caps on services. As such, the Department implements changes in Ch. II Section 2, Sections 2.05-2 and 2.05-3 to clarify that the increased reimbursement provided herein shall not be counted towards members' financial caps for services until Section 96 or under the waiver programs.

These changes were initially implemented through November 6, 2018 emergency rulemaking, and the Department finally adopts these rule changes at this time. The reimbursement increases are effective retroactive to August 1, 2018, which was necessary for providers to receive increased reimbursement consistent with the Act. The retroactive application comports with 22 MRS §42(8), which authorizes the Department to adopt rules with a retroactive application (where there is no adverse impact on providers or members) for a period not to exceed eight (8) calendar quarters.

Fiscal impact of rule:
The Department anticipates that this rulemaking will cost approximately $315,108 in SFY 2019, which includes $112,336 in state dollars and $202,772 in federal dollars.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; 5 MRS §8054; PL 2017 ch. 460
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 23**, Developmental and Behavioral Clinic Services
Filing number:	**2019-023**
Effective date:	2/3/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:
The Department of Health and Human Services ("the Department") adopts this rule pursuant to PL 2017 ch. 460 part D, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government*. Part D-1 requires the Department increase the rates of reimbursement for Section 23, "Development and Behavioral Clinic Services", to ensure a net increase in funding from fiscal year 2008-2009 to fiscal year 2018-2019 of two (2) % as long as no rates for a service is lower than the rate reimbursed as of January 1, 2018.

This adopted rulemaking requires that the increase in reimbursement rates must be applied to wages and benefits for employees who provide direct services as required by Part D-2 of PL 2017 ch. 460. In compliance with the law, providers must ensure that increase in reimbursement rates effective August 1, 2018, is applied in full to wages and benefits to employees who provide direct services. Providers must document compliance with this requirement in their financial records and provide such documentation to the Department upon request.

On November 6, 2018, the Department adopted emergency rules adopting the rate increases. This rulemaking permanently adopts the emergency rule changes.

Through the Act, the Legislature determined that "these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety." As such, the Act requires the Department to implement "immediate rate increases," effective July 1, 2018. However, the Act did not become law until July 9, 2018, following a Legislative override of the Governor's veto.

Because the Act involves MaineCare reimbursement, these rule changes are also governed by federal Medicaid law. 42 CFR §447.205(d) requires that public notice of changes in reimbursement for state plan services must "be published **before** the proposed effective date of the change." (emphasis added). The Department published its notice of reimbursement methodology change for the Section 23 rates on July 31, 2018. Upon the advice of the Office of the Attorney General, the increased rates will be effective August 1, 2018, which effective date comports with the federal law requirement. Pending approval of the proposed changes to the Section 23 state plan amendment that were submitted to the Centers for Medicare and Medicaid Services, the increased rates will be implemented with an August 1, 2018 effective date.

Pursuant to the Legislative determination regarding the urgent need for these reimbursement increases, the requirements of 5 MRS §8054(1) are satisfied and emergency rulemaking is appropriate. Similarly, an August 1, 2018 retroactive effective date is necessary to implement these changes as soon as possible. The retroactive application comports with

22 MRS §42(8), which authorizes the Department to adopt rules with a retroactive application (where there is no adverse impact on providers or members) for a period not to exceed (8) calendar quarters.

To remedy the difference between the July 1, 2018 effective date set forth in the Act, versus the August 1, 2018 date that is permissible pursuant to federal Medicaid law, the Department has recalculated the annual appropriation of funds for this service into a temporary eleven month rate. As such, providers will, over the course of eleven months, receive equivalent aggregate payments as would have been received under a twelve month rate. Beginning on July 1, 2019, rates will be annualized (based upon a twelve month appropriation). This is not an effective rate decrease, but rather a redistribution of the annual appropriation over twelve months, rather than eleven months.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately $13,951 in SFY 2019, which includes $4,950 in state dollars and $9,001 in federal dollars.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; PL 2017 ch. 460 part B-2
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 26**, Day Health Services
Filing number:	**2019-024**
Effective date:	2/12/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:
The Department adopts this rule pursuant to PL 2017 ch. 460 part B-2, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government (Act).* Part B-2 requires the Department to amend its rules to increase reimbursement rates for adult family services, adult day services, and homemaker services for the fiscal year ending June 30, 2019, by ten percent (10%). Part B-2 also requires that effective July 1, 2019, payment rates attributable to wages and salaries for personal care and related services will be increased annually by an inflation adjustment cost-of-living percentage in accordance with the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index, medical care services (professional services, nursing home, and adult day care services) from the prior December. These cost of living increases shall continue annually until the Department has completed a rate study for adult family care services, adult day services, or homemaker services and the rates in the rate study have been implemented.

On November 20, 2018, the Department adopted emergency rules implementing the ch. 460 rate increases with a retroactive August 1, 2018 effective date. This rulemaking permanently adopts the emergency rule changes.

In addition, this rulemaking adopts the ch. 460, Part B-2 requirement that effective July 1, 2019, payment rates attributable to wages and salaries for personal care and related services will be increased annually by an inflation adjustment cost-of-living percentage in accordance with the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index, medical care services (professional services, nursing home and adult day care services) from the prior December. These cost of living increases shall continue annually until the Department has completed a rate study for adult family care services, adult day services, or homemaker services, and the rates in the rate study have been implemented.

Through the Act, the Legislature determined that "these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health, and safety. As such, the Act requires the Department to implement "immediate rate increases" effective July 1, 2018. However, the Act did not become law until July 9, 2018, following a Legislative override of the Governor's veto.

Because the Act involved MaineCare reimbursement, these rule changes are also governed by federal Medicaid law, 42 CFR §447.205(d) requires that public notice of changes in reimbursement for State Plan services must "be published **before** the proposed effective date of the change." (emphasis added). The Department published its notice of reimbursement methodology change for the Section 26 rate on July 31, 2018. Upon the advice of the Office of

the Attorney General, the increased rates will be effective August 1, 2018, which effective date comports with the federal law requirement. Pending CMS approval of the rate increase, the increased rate will be implemented with an August 1, 2018 effective date.

The retroactive effective date is allowable under 22 MRS §42(8), which authorizes the Department to adopt rules with a retroactive application where there is no adverse impact on providers or members for a period not to exceed eight calendar quarters.

To remedy the difference between the July 1, 2018 effective date set forth in the Act, versus the August 1, 2018 date is permissible pursuant to federal Medicaid law, the Department has recalculated the annual appropriation of funds for this service into a temporary eleven-month rate. As such, providers will, over the course of eleven months, receive equivalent aggregate payments as would have been received under a twelve-month rate. Beginning on July 1, 2019, rates will be annualized (based upon a twelve-month appropriation). This is not an effective rate decrease, but rather a redistribution of the annual appropriation over twelve months, rather than eleven months.

The Department is seeking, and anticipates receiving, approval from the Centers for Medicare and Medicaid Services (CMS) for these rate changes. Pending CMS approval, the rate increase will be effective retroactive to August 1, 2018.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately $15,618 in SFY 2019, which includes $5,568 in state dollars and $10,050 in federal dollars.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; PL 2017 ch. 459 parts A & B
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 29**, Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder
Filing number:	**2019-025**
Effective date:	2/4/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:
The Department is adopting this routine technical rule in accordance with PL 2017 ch. 459, *An Act Making Certain Supplemental Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* ("Act"). This Act provides funding to increase rates for specific procedure codes in Ch. III Section 29. Part B of the Act provided that the Department ensure that caps and limitations on services "are increased to reflect increases in reimbursements that result from this Part."

On September 12, 2018, the Department adopted an emergency major substantive rule for Section 29, Ch. III, as directed in the Act, to increase reimbursement rates for eighteen (18) procedure codes, with a retroactive effective date of July 1, 2018. In accordance with Part B of the Act, the Department adopted an emergency rule for Chapter II to increase caps in Section 29 to reflect those rate increases. The emergency rulemaking is effective for 90 days. This adopted rulemaking follows the rule proposal on November 6, 2018 to adopt these cap increases permanently.

The increased caps will be effective retroactive to July 1, 2018. The retroactive application comports with 22 MRS §42(8), which authorizes the Department to adopt rules with a retroactive application for a period not to exceed eight calendar quarters, and there is no adverse financial impact on any MaineCare member or provider. In addition, the Department sought, and obtained approval, from the Centers for Medicare and Medicaid Services ("CMS") to submit a waiver amendment making the rate changes retroactive to July 1, 2018.

The adopted rule includes the following cap changes:

Limits

- 29.07-2: Raised annual limit for members who receive Home Support, Community Support, or Shared Living from $52,425.00 to $58,168.50.
- 29.07-6: Raised limit for Respite Services from $1,100.00 per year to $1,224.60.
- 29.07-6: Raised the per diem limit for quarter (1/4) hour Respite billing from $90.00 to $110.21 for each date of service.

In addition, the Department adopts the following changes to this rule:

Provider Qualifications and Requirements

- 29.10: Added reference to Adult Protective reporting requirements.
- 29.10-1(C): Updated reference to rules governing Reportable Events (14-197 CMR ch. 12) and added Adult Protective Services System (10-149 CMR ch. 1).
- 29.10-1(C): Deleted the requirement for grievance training to occur before working with members.

- 29.10-4, Electronic Visit Verification: Added a requirement for Electronic Visit Verification ("EVV"), consistent with the requirements of Section 12006 of the *21st Century CURES Act* (PL 114-255), as codified in 42 USC §1396b(l)(1). THIS CHANGE REQUIRES CMS APPROVAL, BUT IS EFFECTIVE PENDING APPROVAL.
- 29.10-5: Wording corrections for clarity.
- 29.10-6: Sentence deleted to make Section 29 requirements consistent with those in Section 21.
- 29.10-8: Reportable Events & Behavioral Treatment:
  - Updated reference to rules governing Reportable Events (14-197 CMR Ch. 12) and added Adult Protective Services System (10-149 CMR Ch. 1).

Appendix IV

- Reports of Abuse, Neglect, or Exploitation: Updated reference to rules governing Reportable Events (14-197 CMR ch. 12) and Adult Protective Services System (10-149 CMR ch. 1).

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately $9,221,642 in SFY 2019, which includes $3,275,527 in state dollars and $5,946,115 in federal dollars.

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Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; PL 2017 ch. 459 part B
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 12**, Consumer-Directed Attendant Services, and Allowances for Consumer-Directed Attendant Services
Filing number:	**2019-030**
Effective date:	2/11/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:
The Department of Health and Human Services adopts these rules to Ch. II & III Section 12 to add a definition of "Fiscal Intermediary;" replace the phrase "Authorized Agent" with "Authorized Entity;" implement Electronic Visit Verification (EVV); clarify that personal care services provided under other rules may not be duplicated under Section 12; and to increase reimbursement rates in compliance with PL 2017 ch. 459 part B, *An Act Making Certain Supplemental Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* ("the Act").

The rate changes are consistent with PL 2017 ch. 459 part B, which required the Department to amend its rules for reimbursement rates for personal care services provided under the provisions of 10-144 CMR ch. 101, *MaineCare Benefits Manual*, Ch. III Section 12, "Allowances for Consumer-Directed Attendant Services" to reflect the final rates modeled in the February 1, 2016 "Rate Review for Personal Care and Related Services: Final Rate Models" prepared for the Department by Burns & Associates, Inc.

The Act required the Department to implement "immediate rate increases," effective July 1, 2018. However, the Act did not become law until July 9, 2018, following a Legislative override of the Governor's veto.

Because the Act involves MaineCare reimbursement, these rule changes are also governed by federal Medicaid law. 42 CFR §447.205(d) requires that public notice of changes in reimbursement for State Plan services must "be published before the proposed effective date of the change." The Department published its notice of reimbursement methodology change for the Section 12 rates on July 31, 2018. Upon the advice of the Office of the Attorney General, the increased rates will be effective August 1, 2018; this effective date comports with the federal law requirement. Pending approval of the proposed changes to the Section 12 State Plan Amendment that were submitted to the Centers for Medicare and Medicaid Services, the increased rates will be implemented with an August 1, 2018 effective date.

To remedy the difference between the July 1, 2018 effective date set forth in the Act, and the August 1, 2018 date that is permissible pursuant to federal Medicaid law, the Department has recalculated the annual appropriation of funds for this service into a temporary eleven month rate. As such, providers will, over the course of eleven months, receive equivalent aggregate payments as would have been received under a twelve month rate. Beginning on July 1, 2019, rates will be annualized (based upon a twelve month appropriation). This is not a rate decrease, but rather a redistribution of the annual appropriation over twelve months, rather than eleven months.

There are four separate rate change requests pending before CMS; one submitted in September 2015 (effective 10/1/15 to 7/28/16), one submitted in July 2016 (effective 7/29/16 to 2/21/17), one submitted in August 2017 (effective 7/1/17 to 6/30/18 and 7/1/18 to 7/31/18), and one submitted in July 2018 (effective from 8/1/18 on); thus, there are four retroactive effective dates applicable for these rates included in Ch. III.

On November 13, 2018, the Department adopted an emergency Ch. III rule to effectuate the increased Section 12 reimbursement rates with a retroactive effective date of August 1, 2018. This rulemaking makes permanent the emergency rule changes.

In addition, Ch. II changes are adopted, which were proposed on November 21, 2018, and are outlined below:

1) New Definition added for Fiscal Intermediary (FI), which is an organization that provides administrative and payroll services on behalf of members self-directing their personal care services. The FI must have an established contract with the Department. The services of the Fiscal Intermediary are not billable under this section. In addition, the Definition of Fiscal Intermediary has been moved to 12.02-11 and subsequent definitions have been renumbered.

2) "Authorized Agent" is replaced with "Authorized Entity" throughout the policy.

3) Electronic Visit Verification (EVV) requirements are added effective January 1, 2020 pursuant to Section 12006 of the *21st Century CURES Act* (PL 114-255), as codified in 42 USC §1396b(l)(1).

4) Clarification that personal care services provided under other Sections of the MaineCare Benefit Manual may not be duplicated under Section 12.

5) Grammatical and typographical corrections have been made throughout the policy.

Fiscal impact of rule:

The Department estimates that the General Fund impact for these changes is $608,879 in SFY 2019, which includes $216,274 in state dollars and $392,605 in federal dollars.

This rulemaking will not impose any costs on municipal or county governments, or on small businesses employing twenty or fewer employees.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; PL 2017 ch. 460 parts D, E, I
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 65**, Behavioral Health Services
Filing number:	**2019-031**
Effective date:	2/11/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:
The Department of Health and Human Services ("the Department") finally adopts these rule changes in 10-144 CMR ch. 101, *MaineCare Benefits Manual*, Ch. II and III Section 65, "Behavioral Health Services" to: (a) ensure broader access to crisis services for adults with intellectual disabilities; and (b) increase the rates of reimbursement for services pursuant to PL 2017 ch. 460, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (the "Act"), Parts D, E and I.

Specific changes are as follows:

- Part D of *the Act directs the Department to increase the rate of reimbursement for all Section 65 services to ensure a net increase in funding from fiscal year 2008-09 to fiscal year 2018-2019 of two percent as long as no rate for a service is lower than the rate reimbursed as of January 1, 2018. The Legislature required this increase in reimbursement to be applied to the wages and benefits of employees providing direct services to MaineCare members, and not to administrators or managers. Section 65 providers must document compliance with this requirement in their financial records and provide such documentation to the Department upon request.*
- *Part E of the Act directs the Department to increase the reimbursement rate for Section 65* Medication Management services by fifteen percent. This increase is in addition to the two percent increase required by Part D of the Act.
- Part I of the Act directs the Department to increase the reimbursement rates for Multi-Systemic Therapy (MST), Multi-Systemic Therapy for Problem Sexualized Behaviors (MST-PSB), and Functional Family Therapy (FFT) by twenty percent. This twenty percent increase, which is in addition to the two percent increase, is effective until June 30, 2019. The Department shall publish a separate notice of change in reimbursement methodology, and seek approval from the Centers for Medicare and Medicaid Services (CMS) for the Multi-Systemic Therapy and Functional Family Therapy rate changes that go into effect in 2019.

Through the Act, the Legislature determined that "these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety." As such, the Act requires the Department to implement "immediate rate increases," effective July 1, 2018. However, the Act did not become law until July 9, 2018, following a Legislative override of the Governor's veto.

Because the Act involves MaineCare reimbursement, these rule changes are also governed by federal Medicaid law. 42 CFR §447.205(d) requires that public notice of changes

in reimbursement for State Plan services must "be published **before** the proposed effective date of the change." The Department published its notice of reimbursement methodology change for the Section 65 rates on July 31, 2018. Upon the advice of the Office of the Attorney General, the increased rates will be effective August 1, 2018; this date comports with the federal law requirement. Pending approval of the proposed changes to the Section 65 State Plan Amendment that were submitted to the Centers for Medicare and Medicaid Services, the increased rates will be implemented with an August 1, 2018 effective date.

Pursuant to the Legislative determination regarding the urgent need for these reimbursement increases, the Department initially implemented these changes through emergency rulemaking. Similarly, an August 1, 2018 retroactive effective date is necessary to implement these changes as soon as possible. The retroactive application comports with 22 MRS §42(8), which authorizes the Department to adopt rules with a retroactive application (where there is no adverse impact on providers or members) for a period not to exceed eight calendar quarters.

To remedy the difference between the July 1, 2018 effective date set forth in the Act and the August 1, 2018 date that is permissible pursuant to federal Medicaid law, the Department has recalculated the annual appropriation of funds for this service into a temporary eleven month rate. As such, providers will, over the course of eleven months, receive equivalent aggregate payments as would have been received under a twelve month rate. Beginning on July 1, 2019, rates will be annualized (based upon a twelve month appropriation).

Additionally, the Department added certain diagnoses to Crisis Services in Ch. II. The crisis services system for adult developmental services is stressed, as the agency that previously contracted for state funded beds has declined to renew their contract with the Department. The state offers a small amount of crisis beds, but the demand outweighs the supply. Current policy language does not support serving individuals with developmental disabilities. The Department thus broadened the language in Ch. II Sections 65.06-1, 65.06-2, to extend eligibility to members with developmental disabilities. These rule changes allow any willing and qualified provider of crisis services under Section 65 to offer crisis beds to adult members with developmental disabilities. Additionally, the Department added allowable staff (Direct Support Professionals) to treat this population, as those currently available under Section 65 (MHRT) do not have the education or expertise to effectively treat this population.

As a result of internal review by the Division of Rate Setting, a minor clerical error in the new rates for Crisis Services, H2011 and H2011 HA, was found and corrected through the final rule. The rates increase from $58.46 to $59.01 per unit effective 8/1/18, and from $58.36 to $58.91 per unit effective 7/1/19. This update results in a benefit to providers as an increase from the emergency reimbursement rates.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately $9,284,638 in SFY 2019, which includes $3,297,903 in state dollars and $ 5,986,735 in federal dollars, and $8,687,014 in SFY 2020, which includes $3,082,152 in state dollars and $5,604,862 in federal dollars.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42(8), 3173; 5 MRS §8054; 42 USC §1396b(1)(1); PL 2017 ch. 459 part B
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 96**, Private Duty Nursing and Personal Care Services
Filing number:	**2019-032**
Effective date:	2/11/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:
The Department of Health and Human Services ("the Department") adopts these Section 96, "Private Duty Nursing and Personal Care Services" rules to add or update definitions of "Custodial Care," "Private Duty Nursing," and "Respite Care;" implement Electronic Visit Verification ("EVV"); increase the maximum available Care Coordination units from 18 to 24 per eligibility period; clarify that Section 96 services are not available to duplicate other personal care services; require that Plans of Care for members under the age of 21 show the medical necessity of school-based nursing services not provided by a school nurse; and to adopt, finally, certain rate increases in conformance with Public Law 2017, *An Act Making Certain Supplemental Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* ("the Act"), Part B.

The rate changes are consistent with PL 2017 ch. 459 part B, which required the Department to amend its rules for reimbursement rates for the home-based and community-based personal care services under the provisions of 10-144 CMR ch. 101, *MaineCare Benefits Manual*, Ch. II & III, "Private Duty Nursing and Personal Care Services" to reflect the final rates modeled in the February 1, 2016 report "Rate Review for Personal Care and Related Services: Final Rate Models" prepared for the Department by Burns & Associates, Inc. Further, Part B-3 directs the Department to ensure that caps and limitations on home-based and community-based personal care and related services are increased to reflect the increase in reimbursement rates that result from this change, such that Section 96 recipients may not experience a reduction in hours solely as a result of increased reimbursement rates authorized by the Act.

This Ch. III adopted rule effectuates the following rate increases:
G0299 TD (0551)-RN Services
G0299 TD UN (0551)-RN Services–multiple patients (2)
G0299 TD UP (0551)-RN Services-multiple patients (3)
G0300 TE (0559)-LPN Services
G0300 TE UN (0559)-LPN Services–multiple patients (2)
G0300 TE UP (0559)-LPN Services–multiple patients (3)
T1000 TD-Independent RN
T1000 TD UN-Independent RN-multiple patients (2)
T1000 TD UP-Independent RN–multiple patients (3)
T1004 (0571)-Home Health Aide/Certified Nursing Assistant Services
T1004 UN (0571)-Home Health Aide/Certified Nursing Assistant Services-multiple patients (2)

T1004 UP (0571)-Home Health Aide/Certified Nursing Assistant Services–multiple patients (3)
T1019 (0589)-Personal Support Services
T1019-Personal Support Services (PCA Agencies only)
T1019 UN-Personal Support Services (PCA Agencies only) multiple patients (2)
T1019 UP-Personal Support Services (PCA Agencies only) multiple patients (3)
S5125 TF (0589)-PCA Supervisit
S5125 TF UN (0589)-PCA Supervisit-multiple patients (2)
S5125 TF UP (0589)-PCA Supervisit–multiple patients (3)
S5125 TF-PCA Supervisit (PCA Agencies only)
S5125 TF UN-PCA Supervist (PCA Agencies only) multiple patients (2)
S5125 TF UP-PCA Supervisit (PCA Agencies only) multiple patients (3)
This Ch. II adopted rule effectuates the following level of care limits in conformance with the rate increases:
Level I
Level II
Level III
Level IV
Level
Level VIII
Level IX

The Act required the Department to implement "immediate rate increases," effective July 1, 2018. However, the Act did not become law until July 9, 2018, following a Legislative override of the Governor's veto.

Because the Act involves MaineCare reimbursement, the rate increases are also governed by federal Medicaid law. 42 CFR §447.205(d) requires that public notice of changes in reimbursement for State Plan services must "be published **before** the proposed effective date of the change." The Department published its notice of reimbursement methodology change for the Section 96 rates on July 31, 2018. Upon the advice of the Office of the Attorney General, the increased rates will be effective August 1, 2018; this effective date comports with the federal law requirement. Pending approval of the proposed changes to the Section 96 State Plan Amendment that were submitted to the Centers for Medicare and Medicaid Services, the increased rates will be implemented with an August 1, 2018 effective date.

There are three separate rate changes and increased level of care limits pending before CMS: one submitted in July 2016 (effective July 29, 2016), one submitted in September 2017 (effective September 6, 2017), and one submitted in July 2018 (effective August 1, 2018); thus, there are three retroactive effective dates applicable for these rates included in Ch. III and level of care limits in Ch. II.

To remedy the difference between the July 1, 2018 effective date set forth in the Act, and the August 1, 2018 date that is permissible pursuant to federal Medicaid law, the Department has recalculated the annual appropriation of funds for this service into a temporary eleven month rate. As such, providers will, over the course of eleven months, receive equivalent aggregate payments as would have been received under a twelve month rate. Beginning on July 1, 2019, rates will be annualized (based upon a twelve month appropriation). This is not a rate decrease, but rather a redistribution of the annual appropriation over twelve months, rather than eleven months.

On November 13, 2018, the Department adopted an emergency rule to effectuate the increased Section 96 reimbursement rates with a retroactive effective date of August 1, 2018. This rulemaking makes permanent the emergency rule changes.

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Additional Ch. II changes are adopted, as were proposed on November 21, 2018, and are outlined below:

1) Electronic Visit Verification (EVV) requirements as mandated by Section 12006 of the *21st Century CURES Act* (PL 114-255) as codified in 42 USC §1396b(l)(1).
2) Care Coordination units are increased from eighteen (18) to twenty-four (24) hours annually.
3) Duration of Care and Non-Covered Services are updated to clarify duplicative personal care services in Section 96 and personal care services in other identified sections of the *MaineCare Benefits Manual*.
4) For any members under the age of 21 receiving 1:1 Nursing Services in conformance with the member's authorized Plan of Care in a school-based setting, the medical necessity of the services being provided and the inability of the nurse, already on site or one at another district, to provide the medically necessary services must be documented on the member's Plan of Care.
5) New definitions added are Custodial Care and Respite Care.
6) The Private Duty Nursing definition has been updated to state "when normal life activities take the member outside of his or her residence" from "required life activities."
7) Grammatical and typographical corrections have been made throughout the policy.

Fiscal impact of rule:

The Department estimates that the General Fund impact for these changes is $3,239,154 in SFY 2019, which includes $1,150,548 in state dollars and $2,088,606 in federal dollars.

This rulemaking will not impose any costs on municipal or county governments, or on small businesses employing twenty or fewer employees.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42(8), 3173; PL 2017 ch. 460 part D
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 13**, Allowances for Targeted Case Management
Filing number:	**2019-037**
Effective date:	2/14/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:
The Department of Health and Human Services ("the Department") adopts this rule to finalize the increase the rates of reimbursement for targeted case management services pursuant to Public Law 2017 ch. 460, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (the "Act"), Part D.

The Act requires the Department to amend its rules for reimbursement rates for targeted case management services provided under the provisions of 10-144 CMR Ch. 101, *MaineCare Benefits Manual*, Ch. III Section 13, "Allowances for Targeted Case Management".

Specific changes are as follows:

- Part D of PL 2017, ch. 460 directs the Department to increase the rate of reimbursement for all services by two percent. Sec. D-1 and D-2 specifically require the increase in reimbursement to be applied to the wages and benefits of employees who provide direct services and not to administrators or managers.

The Act requires the Department to implement "immediate rate increases," effective July 1, 2018. However, the Act did not become law until July 9, 2018, following a Legislative override of the Governor's veto.

Because the Act involves MaineCare reimbursement, these rule changes are also governed by federal Medicaid law. 42 CFR §447.205(d) requires that public notice of changes in reimbursement for State Plan services must "be published **before** the proposed effective date of the change." The Department published its notice of reimbursement methodology change for the Section 13 rates on July 31, 2018. Upon the advice of the Office of the Attorney General, the increased rates will be effective August 1, 2018; this date comports with the federal law requirement. Pending approval of the proposed changes to the Section 13 State Plan Amendment that were submitted to the Centers for Medicare and Medicaid Services, the increased rates will be implemented with an August 1, 2018 effective date.

To remedy the difference between the July 1, 2018 effective date set forth in the Act and the August 1, 2018 date that is permissible pursuant to federal Medicaid law, the Department has recalculated the annual appropriation of funds for this service into a temporary eleven month rate. As such, providers will, over the course of eleven months, receive equivalent aggregate payments as would have been received under a twelve month rate. Beginning on July 1, 2019, rates will be annualized (based upon a twelve month appropriation). This is not an effective rate decrease, but rather a redistribution of the annual appropriation over twelve months, rather than eleven months.

The retroactive application of the rate increases to August 1, 2018, comports with 22 MRS §42(8), which authorizes the Department to adopt rules with a retroactive application

(where there is no adverse impact on providers or members) for a period not to exceed eight calendar quarters.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately $901,645 in SFY 2019, which includes $319,904 in state dollars and $581,741 in federal dollars, and $901,645 in SFY 2020, which includes $321,527 in state dollars and $580,118 in federal dollars.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42(8), 3173; PL 2017 ch. 460 part D
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 17**, Allowances for Community Support Services
Filing number:	**2019-038**
Effective date:	2/14/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:
The Department of Health and Human Services ("the Department") adopts this rule to finalize the increases in the rates of reimbursement for Community Support Services pursuant to Public Law 2017 ch. 460, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (the "Act"), Part D.

The Act requires the Department to amend its rules for reimbursement rates for Community Support Services provided under the provisions of 10-144 CMR Ch. 101, *MaineCare Benefits Manual*, Ch. III Section 17, "Allowances for Community Support Services".

Specific changes are as follows:

- Part D of PL 2017 ch. 460 directs the Department to increase the rate of reimbursement for all services by two percent. Sec. D-1 and D-2 specifically require the increase in reimbursement to be applied to the wages and benefits of employees who provide direct services and not to administrators or managers.

The Act requires the Department to implement "immediate rate increases," effective July 1, 2018. However, the Act did not become law until July 9, 2018, following a Legislative override of the Governor's veto.

Because the Act involves MaineCare reimbursement, these rule changes are also governed by federal Medicaid law. 42 CFR §447.205(d) requires that public notice of changes in reimbursement for State Plan services must "be published **before** the proposed effective date of the change." The Department published its notice of reimbursement methodology change for the Section 17 rates on July 31, 2018. Upon the advice of the Office of the Attorney General, the increased rates will be effective August 1, 2018; this date comports with the federal law requirement. Pending approval of the proposed changes to the Section 17 State Plan Amendment that were submitted to the Centers for Medicare and Medicaid Services, the increased rates will be implemented with an August 1, 2018 effective date.

To remedy the difference between the July 1, 2018 effective date set forth in the Act and the August 1, 2018 date that is permissible pursuant to federal Medicaid law, the Department has recalculated the annual appropriation of funds for this service into a temporary eleven month rate. As such, providers will, over the course of eleven months, receive equivalent aggregate payments as would have been received under a twelve month rate. Beginning on July 1, 2019, rates will be annualized (based upon a twelve month appropriation). This is not an effective rate decrease, but rather a redistribution of the annual appropriation over twelve months, rather than eleven months.

The retroactive application of the rate increases to August 1, 2018, comports with 22 MRS §42(8), which authorizes the Department to adopt rules with a retroactive application

(where there is no adverse impact on providers or members) for a period not to exceed eight calendar quarters.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately $1,923,526 in SFY 2019, which includes $682,467 in state dollars and $1,241,059 in federal dollars, and $1,923,526 in SFY 2020, which includes $685,929 in state dollars and $1,237,597 in federal dollars.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42(8), 3173, 1708(3); PL 2017 ch. 460 §§ B-1, B-3; PL 2013 ch. 594 §3
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 67**, Principles of Reimbursement for Nursing Facilities
Filing number:	**2019-042**
Effective date:	3/5/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:
The Department of Health and Human Services (Department) adopts these rule changes to Ch. III Section 67, "Principles of Reimbursement for Nursing Facility Services", to effectuate a number of changes to the reimbursement methodology pursuant to Public Law 2017 ch. 460, LD 925, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* ("the Act"), Section B-1 and B-3.

These changes required by P.L. 2017, ch. 460 include:

1. **Principles 18.9** *and* **22.2**: A change in the Occupancy Adjustment to allow for reduced occupancy percentage (ch. 460 sec. B-3(2));
2. **Principle 18.12**: An increase in the High MaineCare Utilization payment (ch. 460 sec. B-3(3));
3. **Principle 43**: The adoption of a special wage allowance for fiscal year 2018-19. The final rule clarifies that this special allowance will be allowed and paid at final audit to the full extent that it does not cause reimbursement to exceed the facility's allowable cost in that fiscal year. (ch, 460 sec. B-3(1));
4. **Principle 1.4** (Definition of Base Year): The Legislature further required that, for state fiscal year beginning July 1, 2018, the base year for each facility is its fiscal year that ended in calendar year 2016; for state fiscal years beginning on or after July 1, 2019, subsequent rebasing must be based on the most recent cost report filings available. Further, for the state fiscal year beginning July 1, 2018, the rates for each rebasing year must include an inflation adjustment for a cost-of-living percentage change in nursing facility reimbursement each year in accordance with the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index – medical care services index from the prior December for professional services, nursing home, and adult day care services. (ch. 460 sec. B-1, to be codified in 22 MRS §1708(3)(F));
5. **Principle 18.13**: Finally, in compliance with sec. B-3(4), the Department added an aggregate hold harmless provision to reflect that the revised method of rebasing a nursing facility's base year may not result in a rate of reimbursement for direct and routine costs that is lower than the rate in effect June 30, 2018.

Because the Act involves MaineCare reimbursement, these rule changes are also governed by federal Medicaid law. 42 CFR §447.205(d) requires that public notice of changes in reimbursement for state plan services must "be published **before** the proposed effective

date of the change." The Department published its notice of reimbursement methodology change for the Section 67 rates on August 1, 2018. Upon the advice of the Office of the Attorney General, the changes in reimbursement methodology will be effective August 2, 2018, this effective date comports with the federal law requirement. Pending approval of the proposed changes to the Section 67 State Plan Amendment that were submitted to the Centers for Medicare and Medicaid Services, the reimbursement methodology changes will be implemented with an August 2, 2018 effective date.

On December 4, 2018, the Department adopted an emergency rule to effectuate the changes to the reimbursement methodology for Nursing Facilities with a retroactive effective date of August 2, 2018. This rulemaking makes permanent the emergency rule changes. Additional changes in this rulemaking include:

- **Principle 1.1**: The Department deleted non-essential and ambiguous language, so that the principle now reads: "The purpose of these principles is to provide for payment of nursing facility services provided under the MaineCare program in accordance with Title XIX of the Social Security Act."
- **Principle 13.4.1.3**: Uniform desk review completion is extended from one hundred eighty days to three hundred and sixty-five days, in order to allow the Department sufficient time to do a comprehensive and accurate desk review;
- **Principle 18.5**: Clarification is added to describe the conditions required for interest expenses to be allowable. Similarly, the Department elaborated upon when refinancing expenses may be allowable;
- **Principle 23.4** (Funding Adjustment): The Department is deleting this principle. The purpose of this provision was to hold nursing facilities harmless from the calculation of the prospective rate in Principle 23.3 at less than 100% of the calculated Direct and Routine Cost Components. Principle 23.4 is no longer necessary because the calculation of the prospective rate in Principle 23.3. is not at 100% of the calculated Direct and Routing Cost components;
- **Principle 39** (Community-Based Specialty Nursing Facility Units): The Department clarified that services provided are medical-psychiatric services. The Department removed the requirement of a contract between the nursing facility and the Department and replaced it with the requirement that in order to get reimbursement under this provision there needs to be a written approval by the Department for this service;
- Throughout the policy "if CMS approves" language has been removed, where applicable, based on approved State Plan Amendment status.

Fiscal impact of rule:

The Department estimates that the General Fund impact for these changes is approximately $18,467,741 in SFY 2019, which includes $6,559,742 in state dollars and $11,907,999 in federal dollars and $18,467,741 in SFY 2020 which includes $6,552,355 in state dollars and $11,915,386 in federal dollars. This rulemaking will not impose any costs on municipal or county governments, or on small businesses employing twenty or fewer employees.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; PL 2017 ch. 460 part G
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 93**, Opioid Health Home Services
Filing number:	**2019-052**
Effective date:	3/16/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:
The Department of Health and Human Services ("Department") adopts changes to Ch. II and III Section 93, "Opioid Health Home Services" of the *MaineCare Benefits Manual* pursuant to PL 2017 ch. 460 part G, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (emergency, effective July 9, 2018) (the "Act") and in response to the ongoing opioid crisis. This routine technical rule adoption follows emergency rulemaking which became effective November 27, 2018 and is only effective for up to ninety days. 5 MRS §8074. This rule adoption permanently adopts the emergency rule changes, with the exception of a few additional changes following public comment on the rule proposal.

Part G of the Act amends the *Maine Substance Abuse and Treatment Act*, 5 MRS §§ 20001-20078-A, by implementing new definitions and creating a "hub-and-spoke" model of treatment. The Act provides funding to hubs and spokes to cover costs of intensive, intermediate and long-term treatment, including, but not limited to the cost of medication, screening, behavioral health treatment, urine drug screens, office visits and recovery support services for individuals with Opioid Use Disorder (OUD), including those who are uninsured. Among other directives, the Act requires the Department by October 1, 2018 to "ensure a continuum of evidence-based treatment and recovery support services for OUD is accessible to all people in the State through contracts with hubs and spokes." The Department is also tasked with assessing federal funding opportunities, developing grant funding for education, providing treatment to uninsured individuals seeking treatment, developing assessment measures for the performance evaluation of the hub-and-spoke model, developing a plan to create a statewide resource and referral center for substance use disorder treatment and recovery resources, and reporting back to the Legislature on its progress by February 1, 2019. The Act became law on an emergency basis on July 9, 2018., following findings by the Legislature that it was "immediately necessary for the preservation of public peace, health and safety."

As a result of the Act, the Department is reviewing all of its programs that provide substance use disorder treatment options for both MaineCare members and uninsured individuals. This includes Opioid Health Homes (OHH). OHH services were established by the Legislature in 2017 to provide an integrated care delivery model focused on whole-person treatment of opioid use disorder for the uninsured, MaineCare members, and the uninsured but MaineCare-eligible populations. *See* PL 2017 ch. 2, Part P (emergency, effective March 15, 2017). The Department currently provides OHH services to MaineCare members through Section 93 of the *MaineCare Benefits Manual* and to the uninsured through OHH contracts that mirror these rules.

The Department believes this current service delivery OHH model largely abides by the hub-and-spoke model envisioned under the Act. Many current OHH providers function as hubs or spokes by providing treatment to individuals, some of whom carry multiple diagnoses, and by referring individuals to different levels of care depending on clinical need. However, to more closely align with the Legislature's directive, the Department has implemented the following changes, initially on an emergency basis and now through this rule adoption: added a definition of Integrated Medication Assisted Treatment (IMAT) to describe OHH service expectations; added urine drug screening as an integral part of IMAT services; established levels of care (intensive, intermediate/stabilization, and maintenance) that correspond to the member's needs; and created a tiered reimbursement rate structure corresponding to these levels of care.

In conjunction with these legislatively-directed changes, the Department is also adopting changes to improve the Section 93 rules by making it easier for current and new providers to deliver IMAT services through the OHH model. In turn, this will increase accessibility to services for all individuals with opioid use disorder as envisioned under the Act. The State is currently in the midst of an opioid epidemic which claimed approximately one life per day in 2017. Funding and service-delivery requirements supporting IMAT are critical to providing MaineCare members and uninsured individuals high-quality treatment options. These additional changes, first implemented on an emergency basis and now through this rule adoption, include: altering the current staffing requirements and adding a new patient navigator to the OHH team to ensure flexibility for provider organizations and expertise to meet members' needs; creating an allowance for members who meet eligibility for *MaineCare Benefits Manual*, Section 92, "Behavioral Health Home Services", Section 91, "Health Home Services", certain Section 13, "Targeted Case Management Services", or Section 17, "Community Support Services" to receive these services in coordination with OHH services; easing requirements regarding the Electronic Health Record to allow provider flexibility in meeting OHH program requirements; providing clarification to covered services; and making minor and technical changes to the operation of OHH. These changes are the result of Departmental review and stakeholder feedback. Both providers and members alike will benefit from these changes.

With these changes, the reimbursement of OHH services at a Per Member Per Month (PMPM) rate will now be based on the level of care of services provided to the member and whether the OHH provides coordinated case management to the member. Urine drug screening will be part of the OHH bundled reimbursement. Medication costs will be excluded from the PMPM bundle and billed separately. This change in reimbursement structure allows for provider organizations to receive reimbursement commensurate with the needs of their patient population(s) and with the organization's service delivery model. Providers will benefit as these rate changes are all reimbursement increases from the current structure.

Following public comment and further review, the Department has made additional changes to the rule including removing the preference on substance use licensing for the OHH, easing the parameters for the Nurse Care Manager, expanding who can serve as the Patient Navigator, altering counseling requirements, removing interpretive language on the Prescription Monitoring Program rules, adding the requirement that member's must consent to and sign their treatment plans, and clarifying minimum requirements for OHH reimbursement.

In addition to this rulemaking, in order to continue to ensure that all individuals with OUD have access to OHH services, the Department will make the majority of the appropriation included in Part G of the Act available to providers through contracts to deliver these services to uninsured individuals. The Department will align both current and new contracts, when possible, with the Section 93 rules to maintain service expectations regardless of funding

source and to avoid any administrative burden that would arise from operating two different models of service delivery.

The rule changes are contingent upon approval from the Centers for Medicare and Medicaid Services (CMS). CMS approved the State Plan Amendment on October 13, 2017 for the original OHH model with the effective date of October 1, 2017. The methodology notice for the current changes was published on September 27, 2018, and the Department submitted the State Plan Amendment to CMS for approval on December 31, 2018.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately $2,519,842 in SFY 2019, which includes $143,787 in state dollars and $2,376,055 in federal dollars, and $6,880,534 in SFY 2020, which includes $1,749,958 in state dollars and $5,130,576 in federal dollars. The Department also anticipates reduced expenditures under fee-for-service billing under MBM, Section 65, Section 90, and Section 55.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 15**, Chiropractic Services
Filing number:	**2019-061**
Effective date:	4/12/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The Department of Health and Human Services ("the Department") proposes this rule to add coverage of evaluation and management codes for chiropractors pursuant to PL 2017 ch. 421, *An Act To Provide MaineCare Coverage for Chiropractic Treatment*.

PL 2017 ch. 421 requires chiropractic evaluation and management codes be added to 10-144 CMR ch. 101, *MaineCare Benefits Manual* (MBM), Ch. II and III Section 15, "Chiropractic Services."

In Ch. II, the Department proposes adding coverage for evaluations. Additionally, the Department is proposing changing the requirement of "subluxation" to "conditions" to align with Medicaid requirements. Finally, the Department is limiting the evaluation codes to 99201-99215 for the purpose of examining and diagnosing a spinal condition.

In Ch. III, the Department has inserted a link to the physician fee schedule for reimbursement purposes. Finally, the Department is proposing minor technical edits.

Basis statement:

The Department of Health and Human Services ("the Department") is adopting this rule to add coverage of evaluation and management examinations performed by chiropractors, pursuant to PL 2017 ch. 421, *An Act To Provide MaineCare Coverage for Chiropractic Treatment*.

PL 2017 ch 421 requires the Department under the MaineCare program to reimburse chiropractic evaluation and management examinations performed by a chiropractic doctor licensed under Title 32, *Maine Revised Statutes*, ch. 9, that are within the scope of practice of chiropractic doctors. The Legislature authorized the Department to adopt routine technical rules to implement PL 2017 ch. 421. MaineCare reimbursement for chiropractic services is regulated by 10-144 CMR ch. 101, *MaineCare Benefits Manual* (MBM), Ch. II and III Section 15, "Chiropractic Services".

In Ch. II, the Department added coverage for evaluations or re-evaluations of spinal conditions to determine the rehabilitative effectiveness of chiropractic manipulation by chiropractors as a covered service under Subsection 15.04(A). Eligibility for chiropractic services may be determined by members' primary care providers or a chiropractor, as set forth in Subsection 15.03(B). Additionally, the Department changed the term "subluxation" to "spinal conditions" throughout the rule to align with Medicaid requirements. In Subsection 15.05, the Department clarified that X-rays ordered or performed by or for a chiropractor that are not of the spine are non-covered services. Finally, the Department directed chiropractors to use evaluation and management codes 99201-99215 for the purposes of examining and diagnosing a spinal condition, in Subsection 15.07-1(A).

In Ch. III, the Department identified evaluation and management codes 99201-99215 to be used for evaluations and management purposes. Additionally, the rule states that the rates for these codes are shown on the Physician Fee Schedule under MaineCare Usual and

Customary Rates and a link was inserted to the Physician Fee Schedule for reimbursement purposes. Finally, the Department is adopting minor technical edits.

The Department is seeking approval from the Centers for Medicare and Medicaid Services of a State Plan Amendment providing MaineCare coverage of chiropractic evaluation and management examinations.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately $84,351 in SFY 2019, which includes $29,928 in state dollars and $54,423 in federal dollars, and $253,054 in SFY 2020, which includes $89,784 in state dollars and $163,270 in federal dollars.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 109**, Speech and Hearing Services
Filing number:	**2019-076**
Effective date:	5/19/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The Department of Health and Human Services ("the Department") proposes this rule to increase specific rates pursuant to Resolves 2017 ch. 60, *Resolve, Regarding Reimbursement for Speech and Language Pathology Services*.

Resolves 2017 ch. 60 requires codes to be amended to increase agency rates, independent rates, speech-pathology assistant agency rates, and speech-language pathology assistant independent rates in 10-144 CMR ch. 101, *MaineCare Benefits Manual* (MBM), Ch. III Section 109, "Speech and Hearing Services".

In Ch. II, the Department proposes referring Hearing Aid Services to Ch. 101, *MaineCare Benefits Manual* (MBM), Ch. II Section 60, 'Medical Supplies and Durable Medical Equipment'. Additionally, the Department is proposing adding language allowing adults hearing aid evaluations along with hearing and/or hearing aid periodic rechecks.

In Ch. III, the Department proposes:

- Adding Agency rates at 69% of Medicare for codes 92507 (GN), 92521 (GN), 92522 (GN), 92523 (GN), 92607 (GN), 92608 (GN), 92609 (GN), and 92610.
- Adding Independent rates at 90% of Agency rates for codes 92507 (GN), 92507 (TF,GN), 92508 (HQ,GN), 92508 (TF,HQ,GN), 92521 (GN), 92522 (GN), 92523 (GN), 92524 (GN), 92526 (GN), 92607 (GN), 92608 (GN), 92609 (GN), and 92610.
- Adding Agency and Independent codes 92537, 92538, 92540, 92541, 92542, 92544, 92545, 92546, 92547, 92548, 92570, 92611, 92612, and V5011.

Finally, removing the requirement of under age 21 only from codes 92592, 92593, and V5264.

Basis statement:

The Department of Health and Human Services ("the Department") adopts these two rules.

Chapter II: The Department adopts changes to the rule which add two new covered services for adult Members (Members over the age of 21). The added covered adult services are: (1) Hearing Aid Evaluation and Related Procedures, by Audiologist; and (2) Hearing and/or Hearing Aid Periodic Recheck. In the previous rule, these two services were available for children Members only. The Department is adding them as adult service because hearing aids and replacement hearing aids are a covered service under Section 60, "Medical Supplies and Durable Medical Equipment". The Department wanted to ensure that adult members received medical evaluations for the hearing aids.

In addition to the changes above, the Department updated the definition for "Hearing Aid Services."

Chapter III: The Department adopts changes to this rule that increase specific rates pursuant to Resolves 2017, ch. 60, *Resolve, Regarding Reimbursement for Speech and Language Pathology Services (*"Resolves"*).* The Resolve requires codes to be amended to

increase agency rates, independent rates, speech-pathology assistant agency rates, and speech-language pathology assistant independent rates in Ch. 101, MBM, Ch. III Section 109, Speech and Hearing Services. The Resolve provided funding to increase reimbursement for the increase to these rates. The Department adopts:

- Adding Agency rates at 69% of Medicare for codes 92507 (GN), 92521 (GN), 92522 (GN), 92523 (GN), 92607 (GN), 92608 (GN), 92609 (GN), and 92610.
- Adding Independent rates at 90% of Agency rates for codes 92507 (GN), 92507 (TF,GN), 92508 (HQ,GN), 92508 (TF,HQ,GN), 92521 (GN), 92522 (GN), 92523 (GN), 92524 (GN), 92526 (GN), 92607 (GN), 92608 (GN), 92609 (GN), and 92610.

The Resolve directed that these increased rates be effective retroactively to January 1, 2019. However, CMS has indicated to the Department that the rates can be increased no earlier than January 12, 2019, because of the notice of change in reimbursement methodology requirement in 42 CFR §447.205. The retroactive application of these increased rates comports with 22 M.R.S. § 42(8) which authorizes the Department to adopt rules with a retroactive application for a period not to exceed 8 calendar quarters if there is no adverse financial impact on any MaineCare member or provider. The Department has submitted a State Plan Amendment to CMS to allow for the rate increases to be effective retroactive to January 12, 2019.

The Resolve directed the Department to increase certain rates to a precise percentage of the federal Medicare rate for the same service. The final adopted rates are slightly lower than the proposed rates because for the proposed rule rates the Department inadvertently used the 2018 federal Medicare national reimbursement rates rather than the 2018 federal Medicare local (Maine 99) reimbursement rates (which is the same area/code the Department uses for other MaineCare rates). Upon advice from the Office of the Attorney General, the Department does not believe the change in rates require additional notice and public comment. In each instance, the final rate is higher than the rates in the former Ch. III regulation.

The Department makes additional changes to the rule:

- Removing the requirement of under age 21 only from codes 92592, 92593, and V5264.
- Adding the following codes to allow them to be billed under Section 109, where currently they can be billed only under the MCBM, Section 90 (Physician Services). The Department is seeking CMS approval for these changes, with a May 19, 2019 effective date.

The chart below matches the new codes to the provision of Section 109 policy which authorizes these services:

Billing Code	Description	Section of Policy
92537	Caloric vestibular test with recording, bilateral; bithermal (ie, one warm and one cool irrigation in each ear for a total of four irrigations)	109.07-1; E, K, O, and N
92538	Caloric vestibular test with recording, monothermal (ie, one irrigation in each ear for a total of two irrigations)	109.07-1; E, K, O, and N
92540	Basic vestibular evaluation, includes spontaneous nystagmus test with eccentric gaze fixation nystagmus, with recording, positional nystagmus test, minimum of 4 positions, with recording, optokinetic nystagmus test, bidirectional foveal and peripheral stimulation, with recording, and oscillating tracking test, with recording	109.07-1; E, K, O, and N
92541	Spontaneous nystagmus test, including gaze and fixation nystagmus, with recording	109.07-1; E, K, O, and N
92542	Positional nystagmus test, minimum of 4 positions, with recording	109.07-1; E, K, O, and N
92544	Optokinetic nystagmus test, bidirectional, foveal or peripheral stimulation, with recording	109.07-1; E, K, O, and N
92545	Oscillating tracking test, with recording	109.07-1; E, K, O, and N
92546	Sinusoidal vertical axis rotational testing	109.07-1; E, K, O, and N
92547	Use of vertical electrodes	109.07-1; E, K, O, and N
92548	Computerized dynamic posturography	109.07-1; E, K, O, and N
92570	Acoustic immittance testing, includes tympanometry (impedance testing), acoustic reflex threshold testing, and acoustic reflex decay testing.	109.07-1; E, K, O, and N
92611	Motion fluoroscopic evaluation of swallowing function by cine or video recording	109.07-1; A, E, K, O, and N
92612	Flexible endoscopic evaluation of swallowing by cine or video recording	109.07-1; A, E, K, O, and N
V5011	Fitting/orientation/checking of hearing aid	109.07-1; S

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately $159,156 in SFY 2019, which includes $56,469 in state dollars and $102,687 in federal dollars, and $636,622 in SFY 2020, which includes $227,465 in state dollars and $409,157 in federal dollars.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; 5 MRS §8054; PL 111-148, Title I Sec. 1557
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 90**, Physician Services
Filing number:	**2019-099**
Effective date:	6/18/2019
Type of rule:	Routine Technical
Emergency rule:	Yes

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:
This emergency rulemaking eliminates transsexual procedures from the list of non-covered services in Section 90.07. Elimination of this prohibition on transsexual medical procedures complies with Section 1557 of the *Affordable Care Act* (ACA) (PL 111-148, Title I, Sec. 1557), as codified in 42 USC Sec. 18116 and its enabling regulation, 45 CFR Part 92, which prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs and activities.

Pursuant to 5 MRS Section 8054, the Department has determined that immediate adoption of this rule is necessary to avoid an immediate threat to public health, safety, or general welfare by immediately removing the access barrier for transgender individuals that the current language creates. The Department is promptly following this emergency rulemaking with proposed rulemaking.

Fiscal impact of rule:
This rulemaking is estimated to be cost neutral.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; PL 2017 ch. 459 §3195
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 21**, Allowances for Home and Community Benefits for Adults with Intellectual Disabilities or Autism Spectrum Disorder
Filing number:	**2019-103**
Effective date:	6/20/2019
Type of rule:	Major Substantive
Emergency rule:	No

Principal reason or purpose for rule:

This major substantive rule was proposed to implement the provisions of PL 2017 ch. 459, which provides funding to increase reimbursement rates for 33 procedure codes in Ch. III Section 21. The legislation directed the Department to increase the rates for the specific procedure codes in equal proportion to the funding provided for that purpose. In addition to the rate increases required by PL 2017 ch. 459, the Department has also increased the rate for a 34th procedure code, as the Department has determined that this rate increase needs to be done in this emergency rulemaking to avoid an immediate threat to public health, safety of general welfare. These increased rates were effective retroactive to July 1, 2018.

In creating the rates for the 34 codes, the Department examined utilization of these services, and then calculated rates to ensure parity between Section 21 and Section 29, to lessen administrative complications for providers.

The Department has adopted these rate increases via emergency rulemaking. Pursuant to 5 MRS §8073, the emergency major substantive rule may be effective for up to twelve months, or until the Legislature has completed its review. The Department has now adopted these Section 21 rule changes.

Basis statement:

The Department of Health and Human Services ("the Department") finally adopts these major substantive rule changes to Ch. III, Section 21, "Allowances for Home and Community Benefits for Adults with Intellectual Disabilities or Autism Spectrum Disorder", to effectuate increased reimbursement rates for thirty-three (33) procedure codes pursuant to PL 2017 ch. 459, *An Act Making Certain Supplemental Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government*.

PL 2017 ch. 459 directed the Department to increase the rates for specific procedure codes in equal proportion to the funding allocated for this purpose. In addition to the rate increases required by PL 2017 ch. 459, the Department also increased the rate for a thirty-fourth (34th) procedure code, T2017 QC (Home Support, Habilitation, residential, waiver – Remote Support – Monitor only). Increasing the rate for this procedure code created consistency with the other codes, in line with the Section 21 service and reimbursement structure. These increased rates are effective retroactive to July 1, 2018.

The Department previously implemented these rule changes to effectuate reimbursement rate increases through emergency major substantive rulemaking, effective September 11, 2018, to comply with PL 2017 ch. 459, *An Act Making Certain Supplemental Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government.* On December 16, 2018 the Department provisionally adopted the rule. Subsequently, the Department submitted the provisionally adopted rule to the Maine State Legislature for its review, in accordance with 5 MRS §8072.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

The Maine State Legislature authorized final adoption of this rule. Resolves 2019 ch. 20, was signed by Governor Mills on April 30, 2019.

The final adopted rule makes the permanent changes to this rule as required by the Legislature. This final major substantive rule shall become effective thirty days after filing with the Secretary of State's Office. 5 MRS §8072(8).

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately $68,182,336 in SFY19, which includes $24,218,366 in state dollars and $43,963,970 in federal dollars.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 3173; 5 MRS §8054; PL 2017 ch. 460
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 28**, Rehabilitation and Community Support Services for Children with Cognitive Impairments and Functional Limitations
Filing number:	**2019-105**
Effective date:	6/25/2019
Type of rule:	Routine Technical
Emergency rule:	Yes

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:
On November 8, 2018, the Department adopted the emergency major substantive rule for Ch. III, Sec. 28 ("Allowances for Rehabilitative and Community Support Services for Children with Cognitive Impairments and Functional Limitations"). The emergency major substantive rulemaking was done to comply with Public Law 2017 ch. 460 ("the Act") which directed the Department to amend reimbursement rates to Section 28 providers to reflect final rates modeled in the April 2017 Burns report: *Rate Study for Behavioral Health and Targeted Case Management Services: Final Proposed Rates for Formal Rulemaking*, and also to increase the rate of reimbursement for all services by two percent. The legislation was enacted as an emergency, and directed the Department to make the rate increases effective July 1, 2018. Pursuant to the emergency major substantive rule, in order to comport with federal Medicaid law, the rate increases were made with an August 1, 2018 effective date.

The November 8, 2018 emergency major substantive rule also added a new procedure code for Board Certified Behavior Analyst (BCBA) services (Procedure Code G9007), pursuant to the Act, which required the Department to "establish new reimbursement rates" in accordance with the 2017 Burns rate study.

The Department proposed rules for Ch. III Section 28, in accordance with 5 MRS §8072(1), to be provisionally adopted by the Department, pending legislative approval. The Department received comments during that rulemaking requesting clarification on the services that would be eligible for the August 1, 2018 BCBA services rate.

Therefore, the Department has determined that emergency rulemaking is required in order to clarify the services that are eligible for the new BCBA service rate. Pursuant to 5 MRS §8054, the Department finds that immediate adoption of the Ch. II Section 28 rate is necessary to avoid an immediate threat to public health, safety or general welfare, since the Legislature determined through the Act that "these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety." PL 2017 ch. 460.

This emergency rulemaking provides for a new provision in the rule identifying BCBA services in the Covered Services section of the rule. In addition, the emergency rule identifies the requirements for BCBA providers, consistent with requirements set forth by the Behavioral Analyst Certification Board. These standards are in effect on the effective date of this emergency rule.

BCBA services rendered between August 1, 2018, the effective date of the November 8, 2018, Ch. III Section 28 emergency major substantive rule, and the effective date of this

emergency rule, will be reimbursed in accordance with the emergency major substantive rule BCBA rate, and the Ch. II rule in effect at that time.

Fiscal impact of rule:

Fiscal impact accounted for via PL 2017 ch. 460 rulemaking.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; PL 2017 ch. 459 §3195
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 29**, Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder
Filing number:	**2019-108**
Effective date:	7/28/2019
Type of rule:	Major Substantive
Emergency rule:	No

Principal reason or purpose for rule:

The rule implements rate increases enacted by the Legislature in PL 2017 ch. 459 §3195 retroactive to July 1, 2018.

Basis statement:

The Department of Health and Human Services ("the Department") finally adopts amendments of *MaineCare Benefits Manual* ("MBM") Ch. III Section 29, "Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder", a major substantive rule, to effectuate increased reimbursement rates for 18 procedure codes and services pursuant to PL 2017 ch. 459, *An Act Making Certain Supplemental Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government,* and to implement an increase for procedure code T2017 QC in conformance with Resolves 2019 ch. 17.

The Department previously implemented rate changes to effectuate reimbursement rate increases to comply with PL 2017 ch. 459, *An Act Making Certain Supplemental Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government,* retroactive to July 1, 2018, by emergency major substantive rulemaking effective September 12, 2018.

In creating the reimbursement rates for the procedure codes shown below in conformance with PL 2017 ch. 459, the Department examined utilization of these services, and then calculated rates to ensure parity between Section 29 and MBM Ch. III Section 21, "Allowance for Home and Community Benefits for Adults with Intellectual Disabilities", to lessen administrative complications for providers.

The Department submitted provisionally-adopted MBM Ch. III Section 29, to the Legislature pursuant to 5 MRS §8072. During the Legislative review of the provisionally adopted major substantive rule, the Legislature passed as an emergency measure Resolves 2019 ch. 17, *Resolve, Regarding Legislation Review of Portions of Chapter 101: MaineCare Benefits Manual, Chapter III, Section 29: Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder, a Major Substantive Rule of the Department of Health and Human Services*, authorizing final adoption of the provisionally adopted major substantive rule only if the following emergency change is made: The rule must be amended in Appendix I to increase the rate for procedure code T2017 QC from $1.63 per ¼ hour to $2.00 per ¼ hour. The Department has amended the rule accordingly for final adoption. The Governor approved Resolves 2019, ch. 17 on April 30, 2019, and the measure became effective immediately pursuant to its emergency clause.

The Department finally adopts the following major substantive rule changes to Ch. III Section 29, "Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder":

- In Appendix I, the following rates have been increased:
  S5140 Shared Living (Foster Care, adult)-Shared Living Model-One member served
  S5140 UN Shared Living (Foster Care, adult)-Shared Living Model-Two members served
  T2017 Home Support-Quarter Hour
  T2017 GT Home Support-Remote Support-Interactive Support
  T2017 QC Home Support-Remote Support-Monitor Only
  T2021 Community Support (Day Habilitation)
  T2021 SC Community Support (Day Habilitation) with Medical Add-On
  T2019 Employment Specialist Services (Habilitation, Supported Employment waiver)
  T2019 SC Employment Specialist Services (Habilitation, Supported Employment waiver) with Medical Add-On
  H2023 Work Support (Supported Employment)-Individual
  H2023 SC Work Support (Supported Employment)-Individual with Medical Add-On
  H2023 UN Work Support (Supported Employment)-Group 2 members served
  H2023 UP Work Support (Supported Employment)-Group 3 members served
  H2023 UQ Work Support (Supported Employment)-Group 4 members served
  H2023 UR Work Support (Supported Employment)-Group 5 members served
  H2023 US Work Support (Supported Employment)-Group 6 members served
  T2015 Career Planning (Habilitation, prevocational)
  S5150 Respite Services-1/4 hour
  S5151 Respite Services-Per Diem
- In Section 1400, the maximum amount that can be billed in a single day for Respite has been increased (to reflect the rate increases made in Appendix I).
- In Section 1810, the group rates for Work Support have been increased (to reflect the rate increases made in Appendix I).

The emergency major substantive rule changes effective, September 12, 2018, shall remain in effect until the time that these finally adopted rules take effect, thirty days after filing with the Secretary of State's Office. 5 MRS §8072(8).

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately $9,221,642 in SFY19, which includes $3,275,527 in state dollars and $5,946,115 in federal dollars.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173, 7863; 5 MRS §§ 8054, 8072; Resolve 2017 ch. 61; 42 CFR §440.70
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 40**, Home Health Services
Filing number:	**2019-122**
Effective date:	8/11/2019
Type of rule:	Major Substantive
Emergency rule:	No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:
The Department of Health and Human Services finally adopts these major substantive rule changes to Ch. II and III Section 40, "Home Health Services" to add the use of Telemonitoring Services, to be provided by home health agencies. Telemonitoring is the use of information technology to remotely monitor a member's health status through the use of clinical data while the member remains in the residential setting. Through telemonitoring, a home health agency sets up equipment that allows for a member's vital statistics to be monitored daily. The addition of Telemonitoring Services is beneficial to members, allowing them to receive medically necessary home health covered services that can be delivered remotely at comparable quality in their own homes.

In addition, these finally adopted major substantive rules are updated to state any home health service may be offered as the sole home health service and shall not be contingent upon the provision of another home health service.

Other Chapter II changes include:

- New definitions have been added for the following terms: Health Care Provider and Telemonitoring Services. Authorized Agent is changed to Authorized Entity.
- Eligibility for Care changes: Medical Eligibility Requirements for Telemonitoring Services.
- Additions to Covered Services: Telemonitoring Services.
- Pursuant to Section 12006, *21st Century CURES Act*, Electronic Visit Verification (EVV) requirements for home health services providers, effective January 1, 2023, are added.
- Limitations have been updated to reflect that members of Section 19, "Home and Community-Based Services for the Elderly and Adults with Disabilities", may receive authorization for nursing services through Section 40, "Home Health Services", should Section 19 nursing services be deemed insufficient to meet the member's needs.
- Throughout the policy, "mental retardation" has been updated to "individuals with intellectual disabilities" and "severe and disabling mental illness" has been updated to "Severe and Persistent Mental Illness."
- MaineCare Services, Division of Customer Service has been updated to MaineCare Provider Services with an updated toll-free number.
- Non-Routine Medical Supplies includes an updated link to billing instructions and list of supplies.

- A typographical error in the header of Chapter II, which previously read Chapter III, has been corrected through this rulemaking.

In addition, Ch. III updates some of the procedure codes to support Ch. II Section 40, "Covered Services", including the addition of Telemonitoring Services. Pursuant to 22 MRS §42(8), the Department shall apply certain of these procedure codes retroactively, effective eight (8) calendar quarters from when the Department finally adopts these rule changes. Additionally, pursuant to Resolve 2017, ch. 61, *To Support Home Health Services*, the Department increases the following reimbursement rates, effective January 1, 2019: G0299, G0300, G0151, G0151 TF, G0152, G0152 TF, G0153, G0153 TF, G0155, and G0156.

The Centers for Medicare and Medicaid Services (CMS) already separately approved the State Plan Amendment (SPA) for Telehealth and Telemonitoring Services. The Department is seeking, and anticipates receiving, CMS approval for the changes to Section 40, Ch. II and III, as noted specifically in the rules. Upon CMS approval, those changes shall be effective.

On February 15, 2019, the Department provisionally adopted these rules. Subsequently, the Department submitted the provisionally adopted rules to the Maine State Legislature for its review, in accordance with 5 MRS §8072.

The Maine State Legislature authorized the final adoption of these rules without making any changes to what was provisionally adopted. Resolves 2019 ch. 51, was signed by Governor Mills on June 6, 2019. Given the emergency as set forth in Resolves 2019 ch. 51, the law takes effect when approved.

These final adopted rules make the permanent changes to these rules as required by the Legislature. These final major substantive rules shall become effective thirty days after filing with the Secretary of State's Office. 5 MRS §8072(8).

Fiscal impact of rule:

The Department anticipates these rulemakings will cost the Department approximately $405,009 in SFY 2019, which includes $143,697 in state dollars and $261,312 in federal dollars.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; PL 2017 ch. 304, 460
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 97**, Private Non-Medical Institution Services
Filing number:	**2019-123**
Effective date:	8/11/2019
Type of rule:	Major Substantive
Emergency rule:	No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:
The Department of Health and Human Services ("the Department") finally adopts these major substantive rule changes to Ch. III Section 97, "Private Non-Medical Institution (PNMI) Services", to effectuate a process by which an eligible PNMI Services provider may request an Extraordinary Circumstance Allowance (ECA); allow for certain regulatory compliance costs incurred by Appendix C and F PNMI providers to be considered reasonable and necessary; and increase the limit for new construction, acquisitions, and renovations involving capital expenditures to $500,000 from $350,000 pursuant to PL 2017 ch. 304, *An Act to Amend Principles of Reimbursement for Residential Care Facilities* ("The First Act").

The Department is seeking, and anticipates receiving, approval from the federal Centers for Medicare and Medicaid Services (CMS) for these changes. Pending approval, these changes will be effective retroactive to November 1, 2017.

In addition, the Department finally adopts rule changes to Ch. III Section 97, "Private Non-Medical Institution (PNMI) Services", to increase the MaineCare payment rates attributable to wages and salaries in routine services cost by an inflation factor in accordance with the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index – medical care services index from the prior December for professional services, nursing home, and adult day care services. This rule also allows Appendix C PNMI providers to request a supplemental wage allowance for increases in wages and wage-related benefits in the routine cost component pursuant to PL 2017 ch. 460, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* ("The Second Act").

The Department is seeking, and anticipates receiving, approval from CMS for these changes. Pending approval, these changes will be effective retroactive to August 1, 2018. Further, as a result of comments on the proposed rule, the Department has provided that the cost of interpreter services for hearing impaired staff participating in training, supervision, and staff meetings may be an allowable cost subject to Department approval through submission of the annual budget in Ch. III Section 97, Appendix E.

The Department is authorized to finally adopt these changes retroactively under 22 MRS §42(8) because these changes increase reimbursement for providers and will have no adverse impact on either MaineCare providers or members. Additionally, the Change in Reimbursement Methodology Notice required by 42 CFR §447.205 relating to the Extraordinary Circumstance Allowance and Regulatory Compliance Costs was published on October 19, 2017 (for Appendices C and F). In regards to the Supplemental Wage Allowance and increased MaineCare payment rates for Appendix C PNMIs for the state fiscal year ending

June 30, 2020, and each year after, the Department published its Notice of Change in Reimbursement Methodology on July 31, 2018.

In addition to the changes required by the First and Second Act, other changes include, but are not limited to:

- Procedure codes: S9484 and corresponding modifiers HA, HE, and HI for Temporary High Intensity Services, per report per hours, are added to Appendices D, E, and F to more effectively align with the current prior authorization process.
- Temporary High Intensity Staffing Services are reimbursed based on individual member's direct care price. This direct care price is not subject to audit. The Temporary High Intensity Staffing Services remittances received will be removed from the total Direct Services Staff costs in determining the allowable cost for the PNMI rehabilitation and personal care direct service staff cost.
- The Department will calculate each Appendix C PNMI's rate setting case mix index using the number of MaineCare residents in each case mix classification group in the facility as of March 1st for the July rate and September 1st for the January rate. The changes are provisionally adopted in order to issue provider rate letters in a timely manner.
- The Department will send a roster of Appendix C residents and source of payment as of March 1st and September 1st to facilities for verification prior to rate setting.
- Principle 2400.3: The cost of interpreter services for hearing impaired staff participating in supervision, training, and staff meetings may be an allowed cost for Appendix E providers. This allowance is subject to Department approval obtained through the annual budget submission process.

The Department previously implemented these same changes through emergency major substantive rulemaking, effective November 20, 2018 to comply with PL 2017 ch. 460, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government*. Pursuant to 5 MRS §8073, emergency major substantive rules are effective up to 12 months or until the Legislature has completed review, and the Department thereafter finally adopts the rule changes. On March 20, 2019, the Department provisionally adopted these rules. Subsequently, the Department submitted the provisionally adopted rules to the Maine State Legislature for its review, in accordance with 5 MRS §8072.

The Maine State Legislature authorized the final adoption of these rules without making any changes to what was provisionally adopted. Resolves 2019 ch. 39, was signed by Governor Mills on May 30, 2019. Given the emergency as set forth in Resolves 2019 ch. 39, the law takes effect when approved.

These final adopted rules make the permanent changes to these rules as required by the Legislature. These final major substantive rules shall become effective thirty days after filing with the Secretary of State's Office. 5 MRS §8072(8).

Fiscal impact of rule:

The Department does not anticipate that these rulemakings will result in any additional costs to municipalities, counties, or small businesses.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42(8), 3173, 5 MRS §§ 8054 and 8073; PL 2017 ch. 460 parts C and D
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 28**, Allowances for Rehabilitative and Community Support Services for Children with Cognitive Impairments and Functional Limitations
Filing number:	**2019-143**
Effective date:	8/29/2019
Type of rule:	Major Substantive
Emergency rule:	No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:
The Department of Health and Human Services ("the Department") finally adopts this major substantive rule to increase the rates of reimbursement for rehabilitative and community support services pursuant to Public Law 2017 ch. 460, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (the "Act").

The Act requires the Department amend its rules for reimbursement rates for rehabilitative and community support services provided under the provisions of 10-144 CMR Ch. 101, *MaineCare Benefits Manual*, Ch. III of Section 28, "Allowances for Rehabilitative and Community Support Services for Children with Cognitive Impairments and Functional Limitations". Specific changes are as follows:

- Part C of the Act directs the Department to amend the rates of reimbursement to providers of Section 28 services to reflect the final rates modeled in the April 24, 2017 report: *Rate Study for Behavioral Health and Targeted Case Management Services: Final Proposed Rates for Formal Rulemaking* prepared for the Department by Burns & Associates, Inc. Those rate changes were made.
- Part D of the Act directs the Department to increase the rate of reimbursement for all services by two percent. Sec. D-1 and D-2 specifically require the increase in reimbursement be applied to the wages and benefits of employees providing direct services. The two percent rate increase was made to the rates as changed by the Burns study.
- This rulemaking added a new procedure code, for BCBA Services (Proc. Code G9007), pursuant to the Act, which required the Department to "establish new reimbursement rates" in accordance with the 2017 Burns Rate Study.

PL 2017 ch. 460 part C, Sec. C-1 directed that rulemaking authorized by the Sec. C-1 law would be a "major substantive" rule. Sec. C-1 provided for certain rate increases, and rulemaking, for Section 28 services.

Through the Act, the Legislature determined that "these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety." As such, the Act requires the Department to implement "immediate rate increases," effective July 1, 2018. However, the Act did not become law until July 9, 2018, following a Legislative override of the Governor's veto.

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Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Because the Act involves MaineCare reimbursement, these rule changes are also governed by federal Medicaid law. 42 CFR §447.205(d) requires that public notice of changes in reimbursement for State Plan services must "be published **before** the proposed effective date of the change." The Department published its notice of reimbursement methodology change for the Section 28 rates on July 31, 2018. Upon the advice of the Office of the Attorney General, the increased rates were effective August 1, 2018; this effective date comports with the federal law requirement. Pending approval of the proposed changes to the Section 28 State Plan Amendment that were submitted to the Centers for Medicare and Medicaid Services, the increased rates were implemented with an August 1, 2018 effective date.

The retroactive application comports with 22 MRS §42(8), which authorizes the Department to adopt rules with a retroactive application (where there is no adverse impact on providers or members) for a period not to exceed eight calendar quarters.

To remedy the difference between the July 1, 2018 effective date set forth in the Act, and the August 1, 2018 date that is permissible pursuant to federal Medicaid law, the Department has recalculated the annual appropriation of funds for this service into a temporary eleven month rate. As such, providers will, over the course of eleven months, receive equivalent aggregate payments as would have been received under a twelve month rate. Beginning on July 1, 2019, rates will be annualized (based upon a twelve month appropriation). This is not an effective rate decrease, but rather a redistribution of the annual appropriation over twelve months, rather than eleven months.

In addition to the above, this final adopted rule amends the base rate of policy prior to August 1, 2018 to be compliant with the increase required via *An Act to Increase Payments to MaineCare Providers that are Subject to Maine's Service Provider Tax,* PL 2015 ch. 477 (eff. April 15, 2016). The Department paid claims at increased rates but did not initiate rulemaking at that time.

The Department previously implemented these same changes through emergency major substantive rulemaking, effective as of November 8, 2018 to comply with PL 2017 ch. 460, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government*. On April 26, 2019 the Department provisionally adopted these rules. Subsequently, the Department submitted the provisionally adopted rules to the Maine State Legislature for its review, in accordance with 5 MRS §8072. The Maine State Legislature authorized the final adoption of these rules. Resolves 2019 ch. 40, was signed by Governor Mills on May 30, 2019.

These final adopted rules make the permanent changes to these rules as required by the Legislature. These final major substantive rules shall become effective thirty days after filing with the Secretary of State's Office. 5 MRS §8072(8).

Fiscal impact of rule:

The Department anticipates that the Ch. III rulemaking will cost approximately $11,429,718 in SFY 2019, which includes $4,059,836 in state dollars and $7,369,882 in federal dollars, and $11,429,718 in SFY 2020, which includes $4,055,264 in state dollars and $7,374,454 in federal dollars.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; 81 FR 5169; Pub. L. 111-148; Title I Sec. 1557
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 90**, Physician Services
Filing number:	**2019-163**
Effective date:	9/16/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This rule is being proposed in order to update and clarify existing policy language, prior authorization requirements, reimbursement criteria, service descriptions, and coverage limits. The proposed rule also adds three new covered services.

Basis statement:

On June 18, 2019, the Department adopted an emergency Ch. II §90 rule, which eliminated "transsexual procedures" from the list of non-covered services in §90.07. Elimination of this prohibition on transgender medical procedures complies with Section 1557 of the *Affordable Care Act* (Pub. L. 111-148, Title I, Sec. 1557), as codified in 42 USC §18116 and its enabling regulation, 45 CFR Part 92, which prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs and activities. This adopted rule makes that change permanent.

In addition, the Department is adopting the following changes in this rulemaking:

1. The addition of Appendix A as the last item on the Table of Contents, which was part of the rule previously but was not identified in the Table of Contents;
2. From the Supplies and Materials category, removal of language "that may be reimbursed as separate items" to add clarity as to what is reimbursable for medical supplies and materials under this section (90.01-5). Language about supply reimbursement already exists under Medical Supplies & Durable Medical Equipment (90.04-9);
3. Addition of language setting the reimbursement for physician's medical direction of anesthesia services at 50% of the allowance when a physician performs anesthesia services alone (90.04-1(B)) to more closely align with the Centers for Medicare and Medicaid Services' (CMS) reimbursement methodology;
4. Amended the provision in the policy specifying how interns, residents, and locum tenens are enrolled to require that residents, locum tenens, and temporaries to enroll either under a physicians' group or as a hospital-based professional in order to be reimbursed through MaineCare (90.04-10). The Department added the requirement that residents must have a medical license for best practices (per Title 32, ch. 48, § 3271(2)) to enroll and receive reimbursement through MaineCare;
5. Removal of mileage reimbursement language to create consistency across the MaineCare Benefits Manual and minimize abuse of mileage reimbursement. (90.04-11);
6. Addition of two new services: Diabetes Self-Management Training Services (DSMT) (90.04-13) and Medical Nutrition Therapy Services (MNT) (90.04-14). DSMT and MNT have been linked to improved clinical outcomes;

7. Addition of licensed dietician as an "other" professional that can work in association with Physician Services (90.04-15), and who can also provide the newly added DSMT or MNT services;
8. Addition of licensed clinical psychologists and licensed marriage and family therapists as "other" professionals practicing within the scope of their licensure that can work in association with Physician Services (90.04-15);
9. Addition of clarifying language for current and accurate prescribing criteria in the Prescriptions category of Covered Services (90.04-19);
10. Addition of transgender services (90.04-33) under Covered Services to identify coverage for medically necessary procedures. The Department had proposed to put this provision under Restricted Services, requiring prior authorization. In response to comments, the Department moved this provision to the covered services section so that prior authorization is not required for these non-surgical services;
11. Addition of (90.05-1 A (4)) Gender Dysphoria Related Surgeries to identify coverage for surgeries for the treatment of gender dysphoria. Commenters agreed that prior authorization should be required for surgeries;
12. Amendment to provider title under Restricted Services (90.05-2 A) Abortion Services, from physician to health care professional to comply with PL 2019, c. 262, *An Act to Authorize Certain Health Care Professionals to Perform Abortions*. This change is effective September 19, 2019;
13. The Reimbursement Rate for Drugs Administered by Other Than Oral Methods (90.09-3) has been amended to align MaineCare policy with the CMS Covered Outpatient Drug final rule by determining drug fee schedules as Average Sales Price (ASP), plus 6%, as set by Medicare Part B for Maine area "99"; and
14. Removal of the Member Satisfaction category under the Primary Care Provider Incentive Payment (90.09-4) list of incentives. A separate category for this is not required because member satisfaction is a targeted indicator built into the scoring of the various categories.

Fiscal impact of rule:

The Department anticipates that this rulemaking will save approximately $956,910.00 in SFY 2019, which includes $339,894.00 in state dollars and $617,016.00 in federal dollars. The rulemaking will save approximately $1,043,902.00 in SFY 2020, which includes $370,376.00 in state dollars and $673,526.00 in federal dollars.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; PL 2017 ch. 460
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 28**, Rehabilitative and Community Support Services for Children with Cognitive Impairments and Functional Limitations
Filing number:	**2019-167**
Effective date:	9/23/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:
On June 25, 2019, the Department adopted an emergency Ch. II Section 28 rule. The Department adopts these rule changes in order to make those changes permanent.

Background: On November 8, 2018, the Department adopted an emergency major substantive rule for Ch. III Sec. 28 ("Allowances for Rehabilitative and Community Support Services for Children with Cognitive Impairments and Functional Limitations"). The emergency major substantive rulemaking was done to comply with Public Law 2017 ch. 460 ("the Act") which directed the Department to amend reimbursement rates for Section 28 providers to reflect final rates modeled in the April 2017 Burns report: *Rate Study for Behavioral Health and Targeted Case Management Services: Final Proposed Rates for Formal Rulemaking*, and also to increase the rate of reimbursement for all services by two percent. The legislation was enacted as an emergency, and directed the Department to make the rate increases effective July 1, 2018. Pursuant to the emergency major substantive rule, in order to comport with federal Medicaid law, the rate increases were made with an August 1, 2018 effective date.

The November 8, 2018 emergency major substantive rule also added a new procedure code for Board Certified Behavior Analyst (BCBA) services (Procedure Code G9007), pursuant to the Act, which required the Department to "establish new reimbursement rates" in accordance with the 2017 Burns rate study.

The Department proposed rules for Ch. III Section 28, in accordance with 5 MRS §8072(1), to be provisionally adopted by the Department, pending legislative approval. The Department received comments during that rulemaking requesting clarification on the services that would be eligible for the August 1, 2018 BCBA services rate.

Therefore, the Department determined that rulemaking for Ch. II Section 28, is required in order to clarify the services that are eligible for the new BCBA service rate. As stated above, the Department adopted an emergency Ch. II Section 28 rule on June 25, 2019 which clarified the BCBA services. This adopted rulemaking will finalize Ch. II rule changes and provides for a new provision in the rule identifying BCBA services in the Covered Services section of the rule. In addition, the adopted rule identifies the requirements for BCBA providers, consistent with requirements set forth by the Behavioral Analyst Certification Board. These standards were originally in effect on the effective date of the emergency rule, June 25, 2019.

BCBA services rendered between August 1, 2018, the effective date of the November 8, 2018, Ch. III Section 28, emergency major substantive rule, and the effective date of the emergency rule, June 25, 2019, will be reimbursed in accordance with the emergency major substantive rule BCBA rate, and the Ch. II rule in effect at that time.

In addition to the changes described above, this adopted rulemaking adds telemedicine language under Provider Requirements. As a result of public comments and review by the Office of the Attorney General, the Department amended the final rule to remove the EVV language. While Section 28 providers are subject to the EVV requirement, the Department removed the language requiring EVV as the Centers for Medicare and Medicaid Services (CMS) has yet to approve the Department's Good Faith exemption request, and the Department has not yet determined when the EVV requirement will apply. Additionally, the Department amended 28.04-3 BCBA Services to add language supporting exceeding policy limits when medically necessary and supported by documentation and prior authorized by the Department or its Authorized Entity. Additional changes were made to the final rule and are outlined in the Summary of Comments and Responses document published with this rulemaking.

Fiscal impact of rule:

Fiscal impact accounted for via PL 2017 ch. 460 rulemaking.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; PL 2019 ch. 454
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 45**, Hospital Services
Filing number:	**2019-183**
Effective date:	10/28/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This rule is adopted to comply with PL 2017 ch. 454, *An Act to Require Reimbursement to Hospitals for Patients Awaiting Placement in Nursing Facilities*. Effective January 1, 2019, the Act requires the Department to reimburse acute care non-critical access hospitals for each day after the 10th day that a MaineCare eligible individual is in the care of the hospital while awaiting placement in a nursing facility. The Department will reimburse at the statewide average rate per MaineCare member day for nursing facility services. The statewide average rate will be computed based on the simple average nursing facility rate per MaineCare member day for the applicable state fiscal year or years prorated for the hospital's fiscal year. Reimbursement for days awaiting placement pursuant to this section is limited to a maximum of $500,000 of combined state General Fund funds and federal funds for each year. The Act further requires this section be repealed on December 31, 2023.

Additionally, this rulemaking clarifies modifier usage by Outpatient Provider-Based Departments (PBDs) when submitting MaineCare claims by informing providers that the CMS created HCPCS "PO" modifier for hospital outpatient claims is not required on MaineCare claims to identify excepted items and services furnished in an excepted off-campus provider-based department of a hospital.

Basis statement:

The Department adopts these rules with the following changes:

Chapter II: In Section 45.07-3(2), the Department updated a reference so that referrals are made to the Office for Family Independence, instead of the Office of Integrated Access and Support, which is outdated.

Chapter III: Section 45.02-8 is added and adopted to comply with PL 2017 ch. 454, *An Act to Require Reimbursement to Hospitals for Patients Awaiting Placement in Nursing Facilities.* The Act requires the Department to reimburse hospitals other than critical access hospitals, beginning January 1, 2019, for each day after the 10th day that a MaineCare eligible member is in the care of the hospital while awaiting placement in a nursing facility. The Department will reimburse at the statewide average rate per MaineCare member day for nursing facility services. The statewide average rate will be computed based on the simple average nursing facility rate per MaineCare member day for the applicable state fiscal year or years prorated for the hospital's fiscal year. Reimbursement for days awaiting placement pursuant to this section is limited to a maximum of $500,000 of combined state General Fund funds and federal funds for each year. The Department will reimburse quarterly by order of claim date. In the event the cap is expected to be exceeded in any quarter, reimbursement in that quarter will be paid out proportionately, and a notification of total funds expended for that year will be sent out to providers. The Act further requires this law be repealed on December 31, 2023. Note that the proposed rule provided that this reimbursement be provided to acute care non-critical access

hospitals only. The final rule comports with PL 2017 ch. 454, and ensures that this reimbursement be provided to "hospitals other than critical access hospitals."
The Department is seeking and anticipates receiving CMS approval for this change effective January 1, 2019 through December 31, 2023. Pending approval, the change will be effective retroactive to January 1, 2019.

Additionally, Section 45.03-1(D)(3) identifies the previously referenced modifier used when identifying non-excepted items and services provided by PBDs as the "PN" modifier. The identification was made to distinguish the "PN" modifier from the new "PO" modifier.

Changes to the ICD-10 codes that had been proposed in Ch. III, Appendix B, have been removed from the adopted rule. The Department is delaying this change to allow providers the one-year billing grace period outlined in Ch. I Section 1, of the *MaineCare Benefits Manual* to help prevent any billing issues in association with these changes. The changes that were proposed will be addressed in a future rulemaking.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately $49,622 in FY 2019, which includes $17,690 in state dollars and $31,932 in federal dollars. The rulemaking will cost approximately $99,244 in SFY 2020, which includes $35,390 in state dollars and $63,854 in federal dollars.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; PL 2017 ch. 460 part B-2
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 2**, Adult Family Care Services
Filing number:	**2019-252**
Effective date:	12/24/2019
Type of rule:	Routine Technical
Emergency rule:	No.

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:
The Department adopts this rule pursuant to PL 2017 ch. 460, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government (the "Act"),* part B-2. The Act requires the Department to amend its rules to increase reimbursement rates for adult family services, adult day services, and homemaker services for the fiscal year ending June 30, 2019, by ten percent (10%); and directs that MaineCare payment rates for state fiscal year ending June 30, 2020 and each year thereafter be increased by an inflation adjustment cost-of-living percentage in accordance with the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care services index from the prior December for professional services, nursing home, and adult day care services. These cost-of-living increases shall continue annually until the Department has completed a rate study for adult family care services and the rates in the rate study have been implemented.

This adopted rule effectuates a 3.8 percent cost-of-living rate increase for adult family care services for the fiscal year ending June 30, 2020. Ch. III Section 2, "Adult Family Care Services" increases the unadjusted price from $53.27 to $55.29 and the resource-adjusted prices accordingly. In addition, Ch. III Section 2, "Adult Family Care Services" increases the unadjusted price to adult family care homes that satisfy the definition of remote island facilities from $61.26 to $63.59 and the resource-adjusted prices accordingly.

The Department is seeking, and anticipates receiving, approval from the federal Centers for Medicare and Medicaid Services (CMS) for this change. Pending approval, the 3.8 percent cost-of-living increase will be effective retroactive to July 1, 2019. A Change in Reimbursement Methodology Notice was posted July 31, 2018 on the Office of MaineCare Services' website.

Fiscal impact of rule:
This rulemaking is estimated to cost the Department $180,062.89 in SFY 2020, which includes $64,336.47 in state dollars and $115,726.89 in federal dollars.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	PL 2019 ch. 274; 22 MRS §§ 42, 3173; 5 MRS §8054
Chapter number/title:	**Ch. 104**, Maine State Services Manual, **Section 7**: Abortion Services for MaineCare Members
Filing number:	**2019-169**
Effective date:	9/19/2019
Type of rule:	Routine Technical
Emergency rule:	Yes

Principal reason or purpose for rule:

To provide state-funded coverage for abortion services to MaineCare members when those services are not covered by Medicaid.

Basis statement:

This emergency rulemaking implements PL 2019 ch. 274, *An Act to Prevent Discrimination in Public and Private Insurance Coverage for Pregnant Women in Maine* (the "Act"), which requires state-funded coverage for abortion services to MaineCare members when those services are not covered by Medicaid.

Federal law limits Medicaid reimbursement to those abortions necessary to protect the life of the mother, or when the pregnancy results from rape or incest (the "Hyde Exceptions."). See, e.g., 42 CFR §§ 441.200-441.208; 10-144 CMR ch. 101 (the "MaineCare Benefits Manual"), Ch. II Sec. 90.05-2 (MaineCare rule implementing Hyde Exceptions). The Act requires that, for MaineCare eligible women, abortion services that are outside the Hyde Exceptions (i.e., not covered Medicaid services) must be funded separately by using state funds within existing resources. The Legislature appropriated from the General Fund approximately $227,546 and $375,843, respectively, for the next two fiscal years to provide these new state only funded abortion services. See the Act, Sec. 10 (Appropriations and allocations). The Department requires providers to identify state-funded abortion services when submitting claims for reimbursement of state funded abortion services. This allows the Department to distinguish the state funded abortion claims from those that are covered under the Hyde Exceptions, in order to maintain compliance with federal Medicaid restrictions and requirements for reimbursement.

Pursuant to the Act, the Legislature provided the Department with rulemaking authority to implement these services on an emergency basis, per 5 MRS §8054, without the necessity of demonstrating that immediate adoption is necessary to avoid a threat to public health, safety, or general welfare. Emergency rules are effective immediately and valid for ninety days. The Department shall hereafter initiate "regular" routine technical proposed rulemaking to implement this rule permanently.

Fiscal impact of rule:

The Legislature appropriated state General Funds to the Department of Health and Human Services in the amounts of $227,546 in fiscal year 2019-20 and $375,843 in fiscal year 2020-21. Federal expenditure fund allocations are not required, as these are non-covered services in the Medicaid program and thus are not eligible for federal reimbursement.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	PL 2019 ch. 274; 22 MRS §§ 42, 3173
Chapter number/title:	**Ch. 104**, Maine State Services Manual, **Section 7**: Abortion Services for MaineCare Members
Filing number:	**2019-228**
Effective date:	12/17/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

To provide state-funded coverage for abortion services to MaineCare members when those services are not covered by Medicaid.

Basis statement:

The Department adopts this final rule which implements PL 2019 ch. 274, *An Act to Prevent Discrimination in Public and Private Insurance Coverage for Pregnant Women in Maine* (the "Act"), which requires state-funded coverage for abortion services to MaineCare members when those services are not covered by Medicaid.

Federal law limits Medicaid reimbursement to those abortions necessary to protect the life of the mother, or when the pregnancy results from rape or incest (the "Hyde Exceptions."). See, e.g., 42 CFR §§ 441.200-441.208; 10-144 CMR ch. 101 (the "MaineCare Benefits Manual"), Ch. II Sec. 90.05-2 (MaineCare rule implementing Hyde Exceptions). The Act requires that, for MaineCare eligible women, abortion services that are outside the Hyde Exceptions (i.e., not covered Medicaid services) must be funded separately by using state funds within existing resources. The Legislature appropriated from the General Fund approximately $227,546 and $375,843, respectively, for the next two fiscal years to provide these new state only funded abortion services. *See* the Act, Sec. 10 (Appropriations and allocations). The Department requires providers to identify state-funded abortion services when submitting claims for reimbursement of state funded abortion services. This allows the Department to distinguish the state funded abortion claims from those that are covered under the Hyde Exceptions, in order to maintain compliance with federal Medicaid restrictions and requirements for reimbursement.

Pursuant to the Act, the Legislature provided the Department with rulemaking authority to implement these services on an emergency basis, per 5 MRS §8054. The Department filed the emergency rule on September 19, 2019. This routine technical rulemaking permanently adopts the rule.

The Department modified the final rule in Section 7.05, Covered Services, subsections A and D by changing the term “physician” to “Health Care Professional” to comply with PL 2019 ch. 262, as codified in 22 MRS §1596, which broadened the Maine abortion law to include physician assistants and advanced practice registered nurses as qualified professionals authorized to perform abortions.

Fiscal impact of rule:

The Legislature appropriated state General Funds to the Department of Health and Human Services in the amounts of $227,546 in fiscal year 2019-20 and $375,843 in fiscal year 2020-21. Federal expenditure fund allocations are not required, as these are non-covered services in the Medicaid program and thus are not eligible for federal reimbursement.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services (OMS) – Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §42, §3173, 7861(4); PL 2017 ch. 304; PL 2017 ch. 460
Chapter number/title:	**Ch. 115**, Principles of Reimbursement for Residential Care Facilities – Room and Board Costs
Filing number:	**2019-040**
Effective date:	2/18/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:
(See Concise Summary)

Concise Summary:
The Department of Health and Human Services adopts changes in 10-144 CMR ch. 115, *Principles of Reimbursement for Residential Care Facilities – Room and Board Costs* ("Chapter 115"), in conformance with Public Law 2017 ch. 304, *An Act to Amend Principles of Reimbursement for Residential Care Facilities* ("The First Act") (now enacted as 22 MRS §7863), to, effectuate the following changes:

- A residential care facility that experiences an unforeseen and uncontrollable event during a year which results in unforeseen or uncontrollable increases in expenses may request an adjustment to a prospective rate in the form of an extraordinary circumstance allowance.
- Section 20.5 - New Construction, Acquisitions, and Renovations involving capital expenditures is updated to $500,000 from $350,000.
- Costs incurred by residential care facilities to comply with changes in federal or state laws, regulations and rules, or local ordinances and not otherwise specified in rules adopted by the Department are considered reasonable and necessary. Reimbursement for additional regulatory costs shall be paid via a supplemental payment that is added to the per diem rate until the Department adjusts the routine limit, as applicable, to fairly and properly reimburse facilities for these costs.

These changes were initially implemented via emergency rulemaking (on November 20, 2018) and shall have a retroactive effective date of November 1, 2017.

In addition, this adopted rule complies with PL 2017 ch. 460, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* ("The Second Act"), and effectuates the following changes:

- For the state fiscal year ending June 30, 2020 and each year thereafter, the MaineCare payment rates attributable to wages and salaries in routine services costs for Section 97, Private Non-Medical Institution Appendix C providers must be increased by an inflation factor in accordance with the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index – medical care services index from the prior December for professional services, nursing home, and adult day care services.
- Effective August 1, 2018, for the state fiscal year ending June 30, 2019, a special supplemental allowance shall be made to Appendix C PNMIs to provide for increases in wages and wage-related benefits in the routine cost component. An amount equal to ten percent (10%) of wages and associated benefits and taxes in the routine cost component as reported on each facility's as-filed cost report for its fiscal year ending in calendar year 2016 must be added to the cost per resident day in calculating each

facility's prospective rate, notwithstanding any otherwise applicable caps or limits on reimbursement. This supplemental allowance must also be allowed and paid at final audit to the full extent that it does not cause reimbursement to exceed the facility's allowable cost per day in the routine cost component in that fiscal year.

These changes were initially implemented via emergency rulemaking (on November 20, 2018) and shall have a retroactive effective date of August 1, 2018.

The First and Second Acts required the Department to amend Ch. 115 to include ECA, regulatory compliance costs, inflation factor, and the special wage allowance changes for Residential Care Facilities and MaineCare Section 97, "Private Non-Medical Institution (PNMI) Services" - Appendix C providers. Separately, and in addition to the changes required in Chapter 115, the Department made changes in 10-144 CMR ch. 101, *MaineCare Benefits Manual*, ch. III §97 ("Section 97"), and the Section 97 changes are major substantive. Pursuant to 5 MRS §8072, "regular" major substantive rule changes are not legally effective until they are approved by the Legislature and finally adopted by an agency, which can take over a year. As such, because the Department sought to implement the Section 97 changes simultaneously with these State Rule changes (in order to treat similar providers equitably), on November 20, 2018, it made changes to both rules through emergency rulemaking.

This rulemaking makes permanent the emergency rule changes.

In addition to the changes required by the First and Second Acts, pursuant to its general broad rulemaking authority set forth in, inter alia, 22 MRS §§ 42 and 3173, the Department also revised the rule requirements regarding when providers may be approved for refinancing (Principle 20.4.3(d)). As a result of comments and legal review by the Office of Attorney General, the Department finds that these changes should have been made solely through "regular" (not emergency) routine technical rulemaking. The changes in Principle 20.4.3(d) shall be applied prospectively only, effective upon final adoption of this rule. The Department shall work with providers to equitably adjust reimbursement if necessary in the event that the Department utilized the language starting on November 20, 2018 through February 18, 2019 (date of final rule).

Other changes to Ch.115 include, but are not limited to:

- Calculating depreciation recapture for residential care facilities that have been sold, the calculation of the credits for buildings and fixed equipment will be from the date the owner began operating the facility with the original license.
- For sales of residential care facilities, moveable equipment will accumulate credits as follows: for the first four years, the asset is placed into service, all but ten percent (10%) per year will be recaptured, and from the fifth (5th) and sixth (6th) years, all but thirty percent (30%) per year will be recaptured, not to exceed one hundred percent (100%). The calculation of the credits for moveable equipment will be from the date the asset is placed into service by the provider.
- Defines moveable equipment credit accumulation and calculation for residential care facilities that have been sold.
- The following definitions have been added or clarified: Licensed Capacity, Proper Interest, Swap Investments, and Remote Island Facility.
- Computer hardware may be considered a capital cost; the Department will not consider software purchase or upgrades as an allowable capital expenditure. Computer software and associated ongoing support costs fall under Routine Costs, 30.1.3.
- Office names have been updated and/or inserted to provide clarity.

Changes were made to the final rule as a result of comments and legal review, as set forth in detail in the Summary of Comments and List of Changes to the Final Rule, including:

- The Occupancy Level definition has reverted back to its pre-proposed language.
- Remote island facility supplemental payment has been added to Principle 14, Reimbursement Method in conformance s.
- Principle 20.1 language has been reinstated and amended to clarify routine and fixed costs.
- 20.4.3(c)(ii) has been removed as the proposed language was contradictory to Principle 20.2.2.
- Principle 34.7 has been amended to include Extraordinary Circumstance Allowance and Regulatory Compliance Costs administrative hearing and informal review process.
- Principle 34.7.3 has been amended to expand informal review request timeframe to sixty (60) days from thirty (30) days.

Fiscal impact of rule:

The Department is unable to estimate whether there is a fiscal impact from this rulemaking.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Division of Licensing and Certification**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §1812-G(18)
Chapter number/title:	**Ch. 128**, Certified Nursing Assistant and Direct Care Worker Registry Rule
Filing number:	**2019-079**
Effective date:	6/15/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:
This rule is intended to comply with the 2015 amendments to 22 MRS §1812-G, "Maine Registry of Certified Nursing Assistants and Direct Care Workers".

Basis statement:
The Department is repealing and replacing the current rule in force, 10-144 CMR ch. 128, *Rules Governing the Maine Registry of Certified Nursing Assistants*, and adopting new rule, 10-144 CMR ch. 128, *Certified Nursing Assistants and Direct Care Workers Registry Rule*, in order to comply with the requirements of 22 MRS §1812-G, "Maine Registry of Certified Nursing Assistants and Direct Care Workers", as amended by PL 2015 c. 196, §9, and PL 2015, c 494.

This rule governs the use and operation of the Certified Nursing Assistant and Direct Care Worker Registry. The Registry provides a resource for employers to verify that an individual is eligible for employment as a Certified Nursing Assistant, and also identifies individuals who are ineligible for employment as a Direct Care Worker due to criminal convictions or substantiated complaints of abuse, neglect or misappropriation of property.

The adopted rule updates current rule to reflect the statutory changes to 22 MRS §1812-G, "Maine Registry of Certified Nursing Assistants and Direct Care Workers", enacted in 2015. The statutory changes expanded the scope of the Registry to include Direct Care Workers, also known as Unlicensed Assistive Persons. In addition, the proposed rule clarifies waiver and appeal processes, clarifies offenses that disqualify an individual from employment as a Certified Nursing Assistant or Direct Care Worker for a specified time period, and updates the content of the Registry to comply with statute.

The adopted rule will repeal and replace the current rule. This is necessary because of extensive revisions to and reorganization of the rule, due to the amendment of §§22 MRS 1812-G. The most substantive changes are listed below:

- The structure of the rule was changed from six sections to four. Sections 2, Eligibility for Placement and Continued Listing on the CNA Registry, 3 Training and Competency Programs for CNAs, and 4 CNA Registry Operation, were merged as new Section 2, Registry Operation and Content.

Changes to the current content of 10-144 CMR, Ch. 128, Rules Governing the Maine Registry of Certified Nursing Assistants were adopted:

- **Section 1, Definitions**: A number of definitions were removed, as they were no longer used in rule, sufficiently clear in rule.
- **Former Section 2, Eligibility for Placement and Continued Listing on the CNA Registry**: Section 2.1, Provider verification of a CNA's listing, was removed, as it is stated as a requirement in 22 MRS 1812-G(5). Section 2.2.3.1. "Notice of Renewal", was removed, as it is an internal process, not a requirement for licensees. Sections

2.4.1, 2.4.1.3, and 2.4.1.3.1 were removed, as the Division determined they were unnecessary requirements. Section 2.6, Excluded from employment restrictions, was removed as it was inconsistent with 22 MRS §1812-G.

- **Former Section 3, Training and Competency Programs for CNAs**: Sections 3.2.1.2, Notice of employment restrictions, and 3.2.1.3, Criminal background check, were removed, as they are they are requirements for a CNA training program, and thus are not in Registry purview.
- **Former Section 4, CNA Registry Operation**: Section 4.2.5 was removed, as it described a licensing function.
- **Former Section 5, Denial or Removal from the CNA Registry**: An internal reference within 5.2 Nondisclosure of conviction is misrepresentation (to Section 2.3.1.3.1) was removed, as it created a very narrow definition for non-disclosure (limited only to failure to provide requested court records).
- **Former Section 6, Petitions and Appeals**: The wording in Section 6.2, Petition for Removal of a Finding of Neglect, was changed for accuracy (the finding remains on record, but the annotation may be removed from the Registry).

In addition, new content was added in the adopted rule, 10-144 CMR ch. 128, *Certified Nursing Assistants and Direct Care Workers Registry Rule*:

- **Section 1, "Definitions"**: The definitions of abuse, neglect, and misappropriation of property were amended to reflect statutory language. A definition for "annotated" was added. A definition for "Department" was added. A definition for "direct care worker" was added, replacing the definition of Unlicensed Assistive Person. The definition of "non-traditional Certified Nursing Assistant" was clarified. The definition of "CNA Registry" was replaced with a definition of "Registry". A definition of "substantiated finding" was added. The definition of "training and competency evaluation program" was simplified, to avoid repetition of the content of the rule.
- **Section 2, "Registry Operation and Content"**: The following sections were added, in accordance with the revision of 22 MRS §1812-G: H. D.C.W. Registry administration, and I. D.C.W. Registry content (including all subsections).
- **Section 3, "Work Disqualification and Annotations"**: The following sections were added, in accordance with the revision of 22 MRS §1812-G: A. Disqualifying criminal offenses, B. Other disqualifying offenses, and C. Substantiated Findings.
- **Section 4, "Petitions and Appeals"**: The following sections were added, in accordance with the revision of 22 MRS §1812-G: A. C.N.A. petitions, B. D.C.W. petitions, and C. Any petition for removal of an employment ban due to criminal conviction.
- To comply with 22 MRS Sec. 1812-G(6-A), the rule has a provision requiring that CNA training programs secure or pay for a background check on each individual who applies for enrollment. In addition, the training program must notify individuals, prior to enrollment, that a background check will be conducted and that certain disqualifying offenses, including criminal convictions, may prohibit an individual from working as a CNA.

Earlier versions of the draft rule attempted to include greater measures to register Direct Care Workers (DCWs) for "training, education and compliance purposes" (see 22 MRS 1812-J (4)), and to address due process for the complaint investigations referenced in 22 MRS §1812-J (2). Ultimately, after extensive research on the number and type of DCWs in the state, the range of training programs (and lack of oversight by the Department), and the various rules addressing the investigation and substantiation of allegations of abuse, neglect, and misappropriation of property in the various settings employing DCWs, the Division opted to

follow the recommendation of the AAG assigned to conduct the pre-review. That recommendation was that the language of 22 MRS §1812-J(4)("The Department….may register an unlicensed assistive person or direct care worker for training, education and compliance purposes…") was permissive, and that the rule should therefore put the mandatory requirements of 22 MRS §1812-G(4)("The Department shall list an unlicensed assistive person employed as a direct care worker with disqualifying offense notation …") into rule. Accordingly, the adopted rule includes annotation of DCWs on the Registry only when they are ineligible for employment.

The Department made several changes to the proposed rule, in response to comments and also in response to the Maine State Board of Nursing's revision of 02-380 CMR ch. 5, *Regulations Relating to Training Programs and Delegation by Registered Professional Nurses of Selected Nursing Tasks to Certified Nursing Assistants*, effective January 30, 2019. That rule eliminated the "bridge course" that was previously required for CNAs trained outside of the state of Maine.

Fiscal impact of rule:

This rule is not anticipated to have a fiscal impact on municipalities, the Department, or registrants.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Maine Center for Disease Control and Prevention (Maine CDC)**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS ch. 160
Chapter number/title:	**Ch. 220**, Radiation Protection Rule
Filing number:	**2019-080**
Effective date:	5/20/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This rule applies to all persons who receive, possess, use, transfer, own or acquire any source of radiation in order to protect the health, safety and welfare of the people of Maine. This rule is designed to institute and maintain a regulatory program for sources of ionizing radiation, and to provide for compatibility and equivalency with the standards and regulatory programs of the federal government, an integrated effective system of regulation within the State, and a system consonant insofar as possible with those of other states. These changes to this rule correct errors/omissions and clarify current requirements of this rule. The corrections to this rule were received from the Nuclear Regulatory Commission as comments that are necessary to maintain compatibility of this rule with the federal regulations. The changes proposed clarify references and omissions in the earlier adopted rule.

Basis statement:

The Department of Health and Human Services, Maine Center for Disease Control and Prevention (Department), advertised rulemaking changes for 10-144 CMR ch. 220, the *Radiation Protection Rule*, on December 19, 2018, and held a public hearing on January 8, 2019. The comment period ended on January 18, 2019. No one attended the hearing, and the Department received no comments related to the rulemaking.

The *Atomic Energy Act of 1954*, Section 274, provides the statutory basis under which the U.S. Nuclear Regulatory Commission (NRC) relinquishes portions of its regulatory authority to state agencies to license and regulate byproduct materials (radioisotopes), source materials (uranium and thorium), and certain quantities of special nuclear materials. The mechanism for the transfer of NRC's authority to a state is an agreement signed by the Governor of each state and the Chairman of the NRC Commission, in accordance with section 274b of the Act. As an "agreement state," Maine must remain compliant with the NRC's requirements to regulate sources of ionizing radiation and to maintain the public health and safety with respect to those materials covered in the agreement.

As an agreement state, Maine's regulations must be identical to the NRC's regulations for federal radioactive materials licensees, to achieve compatibility with health and safety categories established in the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedures SA-200.

Therefore, the Department is adopting these changes to the rule, to implement corrections recommended by the NRC via communications dated: August 31, 2006, June 18, 2010 and July 14, 2015. In 2010, the Department amended the Radiation Protection Rule, primarily to change fees. At that time, the Department was unable to address all the NRC's recommendations from its August 31, 2006 correspondence. This current rulemaking implements all corrections not yet addressed from the NRC's 2006 recommendations, as well as all others recommended in the NRC's 2010 and 2015 correspondence to the Department.

These corrections ensure alignment with federal radiation regulations, by correcting errors/omissions and clarifying rule requirements. These rule changes make it easier for the

regulated entities to comply, due to the correction of errors and greater consistency with federal and state radiation rules outside of Maine. The Department made the following changes:

- Part A: updated text for the definition of Total Effective Dose Equivalent (TEDE) to read, "means the sum of the effective dose equivalent for external exposures and…" to comply with 10 CFR §20.1003;
- Part C(3)(A)(1): added a reference to "C.3.A.(4)" to comply with 10 CFR §30.14;
- Part C(6)(C)(1): updated references in four paragraphs of Parts C(6)(C)(1), (2), (3) and (4) to comply with 10 CFR §31.5;
- Part C(6)(C)(3)(c): added a reference to "C.6.C(3)(b)" to comply with 10 CFR §31.5(c)(3);
- Part C(6)(C)(3)(e): added, "and, in the case of detection of 0.005 microcurie or more removable radioactive material or failure of or damage to a source likely to result in contamination of the premises or the environs, a plan for ensuring that the premises and environs are acceptable for unrestricted use, must be furnished to the Agency" to comply with 10 CFR §31.5;
- Part C(6)(C)(3)(i)(i): removed reference to "10 CMR §31.51" as this regulation does not exist;
- Part C(6)(I)(1): updated the reference from "C.6.B(1)" to "C.6.C.(1)" to comply with 10 CFR §31.6;
- Part C(8)(F)(3): added, "Each applicant for a specific license authorizing the possession and use of more than 100 mCi of source material in a readily dispersible form shall submit a decommissioning funding plan as described in C.8.F(5)." This addition allows Maine to comply with 10 CFR §40.36;
- Part C(8)(F)(4)(a): Added regulations for decommissioning funding plans to come into compliance with 10 CFR 40.36 and 10 CFR §70.25;
- Part C(8)(F)(5): added requirements for cost interval requirements and funding plans to comply with 10 CFR §70.25;
- Part C(11)(A)(1): removed this section to comply with 10 CFR §32.11;
- Part C(11)(A)(2): removed this section to comply with 10 CFR §32.12;
- Part C(11)(J)(2)(5): updated reference to C.11.J.(2)(b)(i) and (iii) to comply with 10 CFR §32.72(b)(5)(vii);
- Part C(11)(L)(3): removed language from this section to comply with 10 CFR §32.74;
- Part D (2006): update this section and added, "waste by any waste generator, waste collector, or waste processor licensee, as defined, who ships low-level waste either directly or indirectly through a waste processor to a licensed low-level waste land disposal facility" to comply with 10 CFR §20.2006;
- Part D (2006)(c): update reference to "Section III of Appendix D" to comply with 10 CFR §20.2006;
- Part D (2006)(D): update reference to "Section IV of Appendix D" to comply with 10 CFR §20.2006;
- Part D Appendix B: add "nitrogen" and "oxygen" to comply with 10 CFR 20 Appendix B.
- Remove Part G (57)(A)(3) as it is a duplicate of Part G(57)(B)(3);
- Part G(190)(C)(1)(b)(ii): change the phrase "Calibrating instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;" to "Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters" to comply with 10 CFR §35.190;
- Part G(290)(A)(1): update references to read, "includes the topics listed in paragraphs G.290.C(1)(a) through G.290.C(1)(b)(viii)" to comply with 10 CFR §32.290;

- Part G(290)(C)(1)(b) and Part G(290)(C)(2): update references to read, "in G.57, G.290 or G.390 and G(290)(C)(1)(b)(vii)" to comply with 10 CFR §32.290;
- Part G(290)(C)(2): include a reference to "G.290.A.1." to comply with 10 CFR §32.290.
- Part G(390) update the reference to "G.57" to comply with 10 CFR §35.390;
- Part G(390)(A)(1): change reference to "G.390.B.(1)(b)(vii) and…" to comply with 10 CFR §35.390;
- Part G(390)(B)(2): update reference from "G.390.B.(2)" to G.390.A.(1). and G.390.B.(1)(b)(vii) or G.390.B.(1)" to comply with 10 CFR §35.390;
- Part G(392): update reference from "G.392" to "G.57" to comply with 10 CFR §35.392;
- Part G(392)(C)(3): update reference to read, "as specified in G.390.B(1)(b)(vii)(a) or (b)" instead of "G.390.B(1)(a)(vii)(a) or (b)" to comply with 10 CFR §35.392;
- Part G(396)(A): update reference to read, "for uses listed in G.390.B(1)(b)(vii)(c) and/or G.390.B(1)b(vii)(d) to comply with 10 CFR §35.396;
- Part G(396)(D)(2) and (3): update references to read, "as specified in G.390.B(1)(b)(vii)(c) and/or G.390.B(1)(b)(vii)(d) to comply with 10 CFR §35.396;
- Part G(690)(B)(2): update reference to read, "supervised work experience required by G.690.B.(1)(b)" to comply with 10 CFR §35.690;
- Part G(490)(B)(3): include a reference to "G.490.A(1)" to comply with 10 CFR §35.490;
- Part G(491)(B)(3): deleted the reference to "G.491.A." to comply with 10 CFR §35.491;
- Part G(690)(B)(3): update section to read, "completed the requirements in G.690.A(1) or G.690.B(1) and G.690.B(2) and G.690.B(4)" to comply with 10 CFR §35.690;
- Part L(1)(B): removed reference to 10 CFR §71.22; and
- Non-substantive formatting changes were made throughout.

Fiscal impact of rule:

These rule changes pose no fiscal impact to the Department, counties or municipalities.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Maine Center for Disease Control and Prevention**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §42
Chapter number/title:	**Ch. 259** *(Repeal)*, Rules Establishing Blind Seroprevalence Surveys for Occurrence of HIV in Newborns
Filing number:	**2019-212**
Effective date:	12/4/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:
The *Rules Establishing Blind Seroprevalence Surveys for Occurrence of HIV in Newborns* originally became effective on July 2, 1998. The rule's intent was to establish procedures for a seroprevalence survey to target public health efforts to control HIV and to ensure the anonymity of all test subjects. The rule provides information on the purpose of the seroprevalence survey; procedures for the survey; and penalties for noncompliance with the rule.

This rule is specific to a study involving newborn bloodspot specimens that occurred between 1988 and 1993. The Department determined there is no impact to the clients served as a result of this rule being repealed. The repeal of this rule does not impact other Departments or Offices and does not result in any additional costs or savings to the Department.

Due to the fact that this rule has never been updated, the survey has long been out of existence and the statute that authorized the Department to adopt this rule has been repealed, 10-144 CMR ch. 259 is no longer necessary and is being repealed.

Fiscal impact of rule:
The rule is not expected to have a fiscal impact on municipalities or counties.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Maine Center for Disease Control and Prevention**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 1951, 3173
Chapter number/title:	**Ch. 273** *(Repeal)*, Rules for the SSI Children's Program of Services
Filing number:	**2019-213**
Effective date:	12/4/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:
The *Rules for the SSI Children's Program of Services* originally became effective on May 19, 1980. The rule's intent was to provide medical and health services to children receiving SSI when referred to the program by the Social Security Administration. The rule provides information on eligibility, services provided and reimbursed through the program, provider reimbursement, confidentially, and right of appeal.

This rule relates to services that have long been provided through other state agencies and is, therefore, no longer necessary at the Maine CDC. Services are no longer provided pursuant to this rule. The repeal of this rule will not impact other Departments and will not result in any additional costs or savings to the Department. The rule has never been updated. Therefore, the Department is repealing this rule.

Fiscal impact of rule:
The rule is not expected to have a fiscal impact on municipalities or counties.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Maine Center for Disease Control and Prevention**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 2173, 3173
Chapter number/title:	**Ch. 282** *(Repeal)*, Prenatal Care Program
Filing number:	**2019-220**
Effective date:	12/11/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The Maine CDC repeals this rule. The Prenatal Care Program rule was originally adopted to define and describe the program standards necessary, that encouraged pregnant adolescent women to obtain prenatal care, including those who lacked healthcare insurance or the financial resources necessary to obtain prenatal care.

Pregnant women 18 years or younger can become eligible for prenatal services under similar eligibility criteria through 10-144 CMR ch. 332, *MaineCare Eligibility Manual* and through the Maine Center for Disease Control and Prevention, Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) program. No services are provided pursuant to this rule. Therefore, the Department has determined that this rule is no longer necessary and is proposing its repeal.

Basis statement:

The Prenatal Care Program Rule had an original effective date of September 27, 1983, which established the Prenatal Care Program. This program provided eligible pregnant adolescent women with a mechanism for payment for routine prenatal care. The rule's intent was to encourage pregnant adolescent women who lacked healthcare insurance or financial resources to obtain prenatal care. The rule established client confidentiality requirements; eligibility criteria; services offered through the program; authorization of services and provider reimbursement guidelines; procedures for closure of client files; and a program appeals process.

The rule was last updated in 1988. The Prenatal Care Program has been out of existence for many years. Pregnant women 18 years or younger can obtain prenatal services under similar eligibility criteria through 10-144 CMR ch. 332, *MaineCare Eligibility Manual* and through the Maine Center for Disease Control and Prevention, Special Supplemental Nutrition Program for Women, Infants and Children (WIC). Services are no longer provided pursuant to 10-144 CMR Ch. 282, and the Prenatal Care Program is no longer funded.

The repeal of 10-144 CMR ch. 282 will have no impact on clients because the Prenatal Care Program no longer exists and is no longer funded. Pregnant women 18 years or younger may be eligible for help with paying for prenatal services through MaineCare and through the Maine CDC WIC program, which use eligibility criteria similar to the Prenatal Care Program's eligibility criteria. The repeal of this rule does not result in any additional costs or savings to the Department. Therefore, the Department has determined that this rule is no longer necessary.

Fiscal impact of rule:

The rule is not expected to have a fiscal impact on municipalities or counties.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Maine Center for Disease Control and Prevention**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §1904
Chapter number/title:	**Ch. 287** *(Repeal)*, Rules for Family Planning Funding
Filing number:	**2019-219**
Effective date:	12/4/2019
Type of rule:	Routine Technical
Emergency rule:	Yes

Principal reason or purpose for rule:

This rule was established to ensure that all State contracts for family planning services include assurances that State contractors are in compliance with federal Title X Program Guidelines for Project Grants for Family Planning Services. Recent changes to the federal Title X Program Guidelines would not permit Maine health care providers who receive Title X funding to discuss all possible health care options with its clients. Pursuant to 5 MRS §8054, the Department finds that the emergency adoption and repeal of 10-144 CMR ch. 287 is necessary to avoid an immediate threat to public health, safety or general welfare. The repeal of this rule ensures continued access to a wider variety of health care services by allowing the State to set its own requirements for program standards through contract negotiations with providers. The *Rules for Family Planning Funding* do not contain enforcement mechanisms nor is there a statutory authority cited in the rule.

Basis statement:

The *Rules for Family Planning Funding* do not contain enforcement mechanisms, nor is there any statutory authority for this rule. This rule was established to ensure that all State contracts for family planning services include assurances that State contractors are in compliance with federal Title X Program Guidelines for Project Grants for Family Planning Services.

Recent changes to the federal Title X Program Guidelines would not permit Maine health care providers who receive Title X funding to discuss all available health care options, including abortion services, with their patients. Therefore, pursuant to 5 MRS §8054, the Department finds that the emergency adoption and repeal of 10-144 CMR ch. 287 is necessary to avoid an immediate threat to public health, safety or general welfare. The Department is repealing this rule through the emergency rulemaking process to prevent a disruption in health care service. The repeal of this rule ensures continued access to all health care services in accordance with program standards and requirements established within provider contracts. Providers can continue to treat patients through services as currently offered. The emergency repeal of this rule does not create additional restrictions on providers.

The Department determined that there is no impact to the clients served as a result of this rule being repealed. Clients already benefit from program language and standards within provider contracts. Program requirements are defined by contract on a case-by-case basis. In addition, there is no impact to providers based on the emergency repeal of this rule as providers are already familiar with the service (and are currently providing that service to their contract requirements). Services will continue in the same manner, as program standards and requirements within existing provider contracts remain unchanged.

The emergency repeal of *The Rules for Family Planning*, 10-144 CMR ch. 287, will be effective for 90 days. During this 90-day time period, the Department will propose routine technical rulemaking to permanently repeal this rule.

Fiscal impact of rule:

(No response)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Maine Center for Disease Control and Prevention**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 1951, 3173
Chapter number/title:	**Ch. 288** *(Repeal)*, Parenting Education Scholarship Program
Filing number:	**2019-115**
Effective date:	7/29/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The program within the Department of Health and Human Services, Maine CDC, is no longer in existence. Therefore, the rule is no longer necessary.

Basis statement:

The Parenting Education Scholarship Program rule was originally adopted on April 22, 1987, due to a program established by Maine CDC (formerly known as the Bureau of Health), to ensure families access to this parenting scholarship type, regardless of a lack of financial resources to purchase such services.

22 MRS §1951 does not require the Department to implement and fund the Parenting Education Scholarship Program. This program went out of existence years ago. Therefore, the rule governing this non-existent program is being repealed.

Fiscal impact of rule:

The repeal of this rule should not result in any costs or savings to the Department. There will be no fiscal impact to counties, municipalities or small businesses.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42(1), 3104-A
Chapter number/title:	**Ch. 301**, Food Supplement Program, **FS Rule #203A** (State Funded Non-Citizen Hardship), Section FS-111-2
Filing number:	**2019-082**
Effective date:	5/28/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

Previously this was a limited period exception set to end when funding was exhausted or by June 30, 2015. Per court order, the Department has reinstituted this hardship exception.

Basis statement:

Previously, state-funded Food Supplement recipients who were eligible under the waiting for work documentation hardship were closed when they received work documentation. In accordance with the Law Court's decision in *Manirakiza v. Department of Health and Human Services*, 2018 ME 10, those recipients will now be potentially eligible anytime they are unemployed.

This rule allows state-funded Food Supplement recipients (and their children under 18) who were eligible due to the hardship of waiting for work documentation to be potentially eligible once work documentation is received, anytime they are unemployed.

This rule will not have an impact on municipalities or small businesses.

Fiscal impact of rule:

It is estimated that this rule will cost the State of Maine $595,242 per year.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42(1), 3104-A
Chapter number/title:	**Ch. 301**, Food Supplement Program, **FS Rule #206A** (Simplified Reporting): Introduction, Sections FS-666-6, 999-1
Filing number:	**2019-083**
Effective date:	6/1/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The purpose of this rule is to simplify the reporting requirements for Maine's Food Supplement Program. Maine utilized simplified six-month reporting for the majority of calendar years 2009 through 2015. Under these reporting requirements Maine realized significant administrative efficiencies by reducing the reporting burden for our recipients. These efficiencies will lead to faster application and recertification processing and will improve customer service for all of Maine's programs. Simplified reporting will also have a positive impact on Maine's Payment Error Rate (PER) by more closely aligning our reporting requirements with other states. Changing to simplified reporting requires the addition of a six-month report which is less burdensome on recipients than certifications, but helps ensure program integrity throughout the certification period.

Basis statement:

The current change reporting rules require recipients to report numerous changes including; changes in employment if there is an associated change in income, changes of more than $50 in the amount of gross monthly unearned income, all changes in household composition, changes in residence and the resulting change in shelter costs, various changes in assets and changes in the legal obligation to pay child support. Under the adopted rule most households will only be required to report if their income exceeds 130% of the federal poverty level (FPL) between certification(s) and their six-month report. A six-month report is required between certifications for many simplified reporting households. Six-month reports require clients to update certain aspects of their case without requiring an interview.

This rule will not have an impact on municipalities or small businesses.

Fiscal impact of rule:

None anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42(1), 3104; 7 CFR §273.9(d)(6)(i); *Agriculture Improvement Act of* 2018, PL 115-334
Chapter number/title:	**Ch. 301**, Food Supplement Program, **FS Rule #207A** (Homeless Shelter Deduction): **Section FS-555-5**
Filing number:	**2019-159**
Effective date:	9/3/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The purpose of this rule is to comply with the *Agriculture Improvement Act of 2018*, PL 115-334, which changed the value of the homeless shelter deduction.

Basis statement:

This rule changes the value of the homeless shelter deduction from $143 to $147.55. This value is used in the budgeting of Food Supplement benefits for homeless households which incur or reasonably expect to incur shelter costs during a month, unless higher shelter costs can be verified.

Fiscal impact of rule:

None anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit:	**10-144**
Statutory authority:	5 MRS §8054; 22 MRS §42(1); 7 CFR 273.24(f)
Chapter number/title:	**Ch. 301**, Food Supplement Program, **FS Rule #210E** (ABAWD Geographic Exemption)
Filing number:	**2019-172**
Effective date:	9/30/2019
Type of rule:	Routine Technical
Emergency rule:	Yes

Principal reason or purpose for rule:

Federal SNAP (Food Supplement) regulations provide that certain able-bodied adults without dependents (ABAWDs) are subject to a maximum of three months of benefits over a 36-month period, unless they work 20 hours or more per week (averaged monthly) or participate in and comply with requirements of a work program. Individuals who reside in certain geographic areas can qualify for an exception to this time limit under 7 CFR §273.24(f).

The Department proposes to waive these work requirements for certain ABAWDs residing in geographic areas that have unemployment rates at or above 10% or have insufficient jobs for recipients residing in those areas. The geographic areas include 247 qualifying cities, towns, unorganized territories, townships, and reservations that qualify individually or as part of a federally defined labor market area. Upon adoption of these rules, ABAWDs residing in those areas will no longer have to meet the work requirements to receive Food Supplement.

An emergency rule change is necessary to comply with the conditions Food and Nutrition Services (FNS) placed on the waiver. The waiver was approved on August 22, 2019 with the stipulation that the effective date is prior to October 1, 2019. This timeframe does not allow for the rule making process, under 5 MRS §8052, and still implement the waiver by the required date of September 30, 2019. Therefore, the Department is using emergency rulemaking as allowed under 5 MRS §8054 to ensure the health and general welfare of Maine citizens residing in the affected regions.

Basis statement:

The Department is adopting rules that waive work requirements for certain able-bodied adults without dependents (ABAWDs) residing in geographic areas that have unemployment rates at or above 10% or have insufficient jobs for recipients residing in those areas. The geographic areas include 247 qualifying cities, towns, unorganized territories, townships, and reservations that qualify individually or as part of a federally defined labor market area. Upon adoption of these rules, ABAWDs residing in those areas will no longer have to meet the work requirements to receive Food Supplement benefits.

Fiscal impact of rule:

None anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit:	**10-144**
Statutory authority:	5 MRS §8054; 22 MRS §42; 7 CFR 273.9(d)
Chapter number/title:	**Ch. 301**, Food Supplement Program, **FS Rule #209E**: COLA SUA FFY 2020
Filing number:	**2019-173**
Effective date:	10/1/2019
Type of rule:	Routine Technical
Emergency rule:	Yes

Principal reason or purpose for rule:

An emergency rule change is necessary to remain in compliance with Federal regulation 7 CFR 273.9(d), which requires annual review and adjustment to federal poverty levels, the standard deduction, and an adjustment to standard utility allowances (SUAs).

Basis statement:

Federal regulation 7 CFR §273.9 requires that income allowances, standard and excess shelter deductions, minimum and maximum benefit limits, standard heating/cooling, non-heat, and phone allowances be updated each year, effective October 1. USDA Food and Nutrition Services (FNS) provides updated income allowances, standard and excess shelter deductions, minimum and maximum benefit standards to states and territories, annually. This year's FNS directives also included an update to the threshold for required reporting of changes in household income. FNS annually approves utility allowances calculated by states. The utility allowance values were calculated using a methodology specific to Maine energy cost changes from the Federal Fiscal Year (FFY) 2018 to FFY 2019 heating season.

The final income allowance, standard and excess shelter deductions, minimum and maximum benefit levels; and the threshold for required reporting of changes in household income were distributed by FNS on July 24, 2019. The final values for Maine's Standard/heating cooling, non-heat and phone allowances were approved by the USDA Food and Nutrition Service on August 9, 2019. (There was no change in the phone allowance from FFY 2019 to FFY 2020.)

Fiscal impact of rule:

This rule will not have an impact on municipalities or small businesses.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §42(1); 7 CFR 273.24(f)
Chapter number/title:	**Ch. 301**, Food Supplement Program, **FS Rule #210A**: ABAWD Geographic Waiver
Filing number:	**2019-253**
Effective date:	12/29/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

Federal SNAP (Food Supplement) regulations provide that certain able-bodied adults without dependents (ABAWDs) are subject to a maximum of three months of benefits over a 36-month period, unless they work 20 hours or more per week (averaged monthly) or participate in and comply with requirements of a work program. Individuals who reside in certain geographic areas can qualify for an exception to this time limit under 7 CFR §273.24(f).

The Department proposes to waive these work requirements for certain ABAWDs residing in geographic areas that have unemployment rates at or above 10% or have insufficient jobs for recipients residing in those areas. The geographic areas include 247 qualifying cities, towns, unorganized territories, townships, and reservations that qualify individually or as part of a federally defined labor market area. Upon adoption of these rules, ABAWDs residing in those areas will no longer have to meet the work requirements to receive Food Supplement.

Basis statement:

The Department is adopting rules that waive work requirements for certain able-bodied adults without dependents (ABAWDs) residing in geographic areas that have unemployment rates at or above 10% or have insufficient jobs for recipients residing in those areas. The geographic areas include 247 qualifying cities, towns, unorganized territories, townships, and reservations that qualify individually or as part of a federally defined labor market area. Upon adoption of these rules, ABAWDs residing in those areas will no longer have to meet the work requirements to receive Food Supplement benefits.

Fiscal impact of rule:

None anticipated. Food Supplement benefits are federally funded. The Department expects some costs in modifying its eligibility system, but also anticipates reduced administrative burden due to a waiver of the time limit.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42(1), 3104; 7 CFR 273.8
Chapter number/title:	**Ch. 301**, Food Supplement Program, **FS Rule #208A**: Removal of the Elderly Disabled Asset Limit
Filing number:	**2019-254**
Effective date:	12/24/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This rule removes asset limits for households that qualify for broad based categorical eligibility and in which all members are either elderly or disabled. The purpose of this rule is to improve program access and allow two of Maine's most vulnerable populations to participate in the Food Supplement Program without liquidating their household assets. Additionally, this rule will reduce administrative burden on the Department and help to improve Maine's Payment Error Rate.

Basis statement:

This rule removes asset limits for select households that qualify for broad based categorical eligibility in which all members are either elderly or disabled. The purpose of this rule is to improve program access and allow many of Maine's most vulnerable residents to participate in the Food Supplement Program without liquidating their household assets. Additionally, this rule will reduce administrative burden on the Department and help to improve Maine's Payment Error Rate.

The rule that implemented the current asset limit of $5,000 for Broad-Based Categorical Households was put into effect in November 2015. Since that time the Department has witnessed a reduction of Federally Funded Food Supplement participants of the Elderly and Disabled demographic. The intent of this rule is to remove the asset limit for the Elderly and Disabled population which will increase program access and participation.

Fiscal impact of rule:

None anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §42(1); 7 CFR 273.89(d)
Chapter number/title:	**Ch. 301**, Food Supplement Program, **FS Rule #209A**: COLA SUA FFY 2020
Filing number:	**2019-257**
Effective date:	12/29/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

A rule change is necessary to remain in compliance with Federal regulation 7 CFR 273.9(d) which requires annual review and adjustment to federal poverty levels, the standard deduction, and an adjustment to standard utility allowances (SUAs).

Charts are included in this rule to create a historical record. This record will: facilitate accurate eligibility determinations when months in multiple federal fiscal years are calculated at the same time; facilitate more timely calculation of historical benefits in the cases of Quality Assurance reviews and payment errors; and provide a quick reference for recipients and community partners when trying to determine why benefits have fluctuated from one year to another.

Clarification is provided of budgeting for individuals residing in certain approved institutions that provide the majority of meals. This language will provide clarity for our eligibility staff, recipients, community partners, and the Department's administrative hearings unit.

Basis statement:

7 CFR §273.9 requires that Food Supplement Program income allowances, standard and excess shelter deductions, minimum and maximum benefit limits, standard heating/cooling, non-heat, and phone allowances be updated each year, effective October 1. USDA Food and Nutrition Services (FNS) provides updated income allowances, standard and excess shelter deductions, minimum and maximum benefit standards to states and territories annually. This year, an update to the threshold for required reporting of changes in household income was also included. FNS annually approves utility allowances calculated by states. The utility allowance values were calculated using a methodology specific to Maine energy cost changes from the FFY 2018 to FFY 2019 heating season.

This rule moves these figures from various areas scattered throughout the text to a collection of charts at the end of the Manual. Many points in the Manual reference these figures. For simplicity, the figures will be in charts in a single place and the other sections will reference those charts. Charts are included in this rule to create a historical record. This record will: facilitate accurate eligibility determinations when months in multiple federal fiscal years are being calculated at the same time; facilitate more timely calculation of historical benefits in the cases of Quality Assurance reviews and payment errors; and provide a quick reference for recipients and community partners when trying to determine why benefits have fluctuated from one year to another.

This rule adds verbiage clarifying the calculation of benefits for individuals residing in certain approved institutions that provide the majority of meals, to the extent that those calculations reference these annually updated figures.

The adopted version of this rule varies from the proposed version to incorporate changes that were made by other rules adopted in the interim.

The organization of the information in section FS-444-8 was revamped for clarity as a result of comments.

Fiscal impact of rule:

Direct costs to the Department include the cost of rulemaking activity, and necessary technology changes such as changes to ACES (all of which are covered by the existing budget for such changes). Food Supplement benefits are 100% federally funded so the benefit changes will not have a direct cost to the Department. Changes to State-funded Food Supplement benefit levels will have a minor impact that will be absorbed with current General Fund budgeting.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §42(1), 5 MRS §8054
Chapter number/title:	**Ch. 323**, General Assistance Program Manual: **GA 22E**, Access for Certain Non-Citizens
Filing number:	**2019-124**
Effective date:	7/18/2019
Type of rule:	Routine Technical
Emergency rule:	Yes

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:
This rule amends sections II and IV of the *Maine General Assistance Manual*. The Maine Legislature amended the definition of "eligibility" in the Municipal General Assistance law through PL 2015 ch. 324, codified at 22 MRS §4301(3), by adding the following sentence:

"Beginning July 1, 2015, in accordance with 8 *United States Code*, Section 1621(d), "eligible person" means a person who is lawfully present in the United States or who is pursuing a lawful process to apply for immigration relief, except that assistance for such a person may not exceed 24 months."

These rule changes broaden the scope of the definitions for "lawfully present" and "pursuing a lawful process to apply for immigration relief," in Section II, as well as amend the "Immigration Status" provisions in Section IV, consistent with the 2015 law. As set forth more specifically, below, these changes are necessary and proper for the protection of life, health and welfare, and the successful operation of Maine's health and welfare laws. 22 MRS §42(1).

Pursuant to 5 MRS §8054, the Department finds that emergency rulemaking is necessary to implement these changes as soon as possible given the recent influx of noncitizens, into Maine, who are at the first stages of the asylum-seeking process. Obtaining legal employment while their applications for asylum are pending is often difficult or impossible. These residents thus require immediate assistance with basic needs such as shelter and food. Various Maine municipalities are expending both privately and publicly sourced emergency funds for such care, and have opened emergency shelters to provide temporary housing. Adjacent municipalities have offered assistance of various sorts, but such aid is limited by their own municipal budgetary restrictions. The anticipated exhaustion of local resources will cause a critical problem with the provision of assistance to such migrants, many of them children, including medicine, food and shelter. Pursuant to 22 MRS §4301 (3), these rule changes require municipalities to provide General Assistance to eligible asylum seekers, and allow municipalities to obtain state funding for same. Modification of the usual rulemaking procedures under the *Maine Administrative Procedure Act* is necessary to meet the immediate threat to public health, safety and welfare that would arise if rules addressing this emergency could not be enacted without delay.

This emergency rule will take effect immediately and may be in effect for up to ninety days. 5 MRS §8054. To avoid any lapse in policy, the Department will promptly begin routine technical proposed rulemaking.

The Department does not anticipate any adverse impact to municipalities or small businesses as a result of this rule. Some cities and towns have been providing this assistance

at a local cost. The Department estimates that this rule change will shift approximately $732,000.00 of the cost from municipal budgets to the state budget for state fiscal year 2020.

Fiscal impact of rule:

Some cities and towns have been providing this assistance as a local cost. The Department estimates that this rule change will shift approximately $732,000 of the cost from municipal budgets to the state budget for state fiscal year 2020.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §42(1)
Chapter number/title:	**Ch. 323**, General Assistance Program Manual: **GA 22**, Access for Certain Non-Citizens
Filing number:	**2019-176**
Effective date:	10/16/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

In 2015, the Maine Legislature amended the definition of "eligibility" in the Municipal General Assistance law through PL 2015 ch. 324, codified at 22 MRS §4301(3), by adding the following sentence: "Beginning July 1, 2015, in accordance with 8 *United States Code*, Section 1621(d), "eligible person" means a person who is lawfully present in the United States or who is pursuing a lawful process to apply for immigration relief, except that assistance for such a person may not exceed 24 months." The terms "lawfully present" and "pursuing a lawful process to apply for immigration relief" were not defined in the statute. In April 2016 the Department adopted regulations defining those terms.

On July 18, 2019, the Department adopted emergency rules, which amended the definition of "lawfully present" and "pursuing a lawful process to apply for immigration relief" in Section II of the regulation. The emergency rule broadened the definitions to include asylum seekers who provide proof that they are taking "reasonable good steps" to apply for immigration relief, including pursuit of asylum or other adjustments of immigration status. The definition of 'pursuing a lawful process to apply for immigration relief" also set forth what types of documentation would be required to prove that an individual was taking reasonable, good faith steps to apply for immigration relief with the U.S Citizenship and Immigration Services or before an immigration judge. In addition, the emergency rule made the following changes to Section IV(N): (1) required those individuals provide satisfactory proof to the municipalities, as defined in Section II, that they are either lawfully present or pursuing a lawful process to apply for immigration relief; and (2) required municipalities to provide relevant information to the Department upon request, for purposes of program integrity and coordination and prevention of duplication of services. Pursuant to 5 MRS §8054, the emergency rules can be in effect for up to 90 days.

This rulemaking makes the July 18, 2019 emergency changes permanent. Pursuant to 5 MRS §8052, the Department finds that permanent rulemaking is necessary to conform the General Assistance Program to existing law particularly given the ongoing influx, into Maine, of noncitizens who are at the first stages of seeking asylum or other immigration status. Obtaining legal employment while their applications are pending is often difficult or impossible. These residents thus require immediate assistance with basic needs such as shelter and food. Various Maine municipalities expend both privately and publicly sourced emergency funds for such care, and have opened emergency shelters to provide temporary housing. Adjacent municipalities offer assistance of various sorts, but such aid is limited by their own municipal budgetary restrictions. If the emergency rule is not made permanent, the anticipated exhaustion of local resources will cause a critical problem with the provision of assistance to such migrants, many of them children, including medicine, food and shelter.

In addition to the July 18, 2019 emergency changes, the Department proposes to amend the definition of "eligible person" in Section II, so that it more closely comports with the statutory definition in 22 MRS §4301(3).

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Basis statement:

This rule amends sections II, and IV of the *Maine General Assistance Manual*.

In 2015, the Maine Legislature amended the definition of "eligibility" in the Municipal General Assistance law through PL 2015 ch. 324, codified at 22 MRS §4301(3), by adding the following sentence: "Beginning July 1, 2015, in accordance with 8 United States Code, Section 1621(d), "eligible person" means a person who is lawfully present in the United States or who is pursuing a lawful process to apply for immigration relief, except that assistance for such a person may not exceed 24 months." The terms "lawfully present" and "pursuing a lawful process to apply for immigration relief" were not defined in the statute. In April 2016 the Department adopted regulations defining those terms.

On July 18, 2019, the Department adopted emergency rules, which amended the definition of "lawfully present" and "pursuing a lawful process to apply for immigration relief" in Section II of the regulation. The emergency rule broadened the definitions to include asylum seekers who provide proof that they are taking "reasonable good steps" to apply for immigration relief, including pursuit of asylum or other adjustments of immigration status. The definition of 'pursuing a lawful process to apply for immigration relief" also set forth what types of documentation would be required to prove that an individual was taking reasonable, good faith steps to apply for immigration relief with the U.S. Citizenship and Immigration Services or before an immigration judge. In addition, the emergency rule made the following changes to Section IV(N): (1) required those individuals provide satisfactory proof to the municipalities, as defined in Section II, that they are either lawfully present or pursuing a lawful process to apply for immigration relief; and (2) required municipalities to provide relevant information to the Department upon request, for purposes of program integrity and coordination and prevention of duplication of services.

This rulemaking proposes to make the July 18, 2019 emergency changes permanent.

Fiscal impact of rule:

Some cities and towns were providing this assistance as a local cost. The Department estimates that this rule change will shift approximately $732,000 of the cost from municipal budgets to the state budget for state fiscal year 2020.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §3790-A
Chapter number/title:	**Ch. 330** *(New)*, Higher Opportunity for Pathways to Employment (HOPE) Program Rules
Filing number:	**2019-256**
Effective date:	1/1/2020
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This rule implements state law by defining the way the HOPE Program determines program eligibility, and delivers program assistance, supports, and navigation to low-income parents and caregivers who are attending training or education programs.

Basis statement:

The Maine State Legislature enacted PL 2017 ch. 387, codified at 22 MRS §3790-A which authorized the Department to establish a student financial aid program based on need, called the Higher Pathways to Employment (HOPE) Program.

This new rule governs the HOPE program. The rule introduces requirements for HOPE Program services, which are supports to low-income parents and caregivers attending educational institutions, which promote attainment of educational goals. The rule provides for an application process, financial and non-financial eligibility and participation requirements, verification and reporting responsibilities, types of eligible training/education programs, and support services conditions. This rule defines navigation services available to HOPE participants. The rule provides for an appeal process for applicants and participants.

This benefit is a limited one. The Legislature limited the number of participants to 500. The Legislature also authorized the Commissioner to limit or suspend enrollment or program services to the extent necessary to avoid negative effects to services provided under the Temporary Assistance for Needy Families program pursuant to Title 22 ch. 1053-B or from the operation of the Additional Support for People in Retraining and Employment – Temporary Assistance for Needy Families program pursuant to Title 22 ch. 1054-A.

The Department does not anticipate any adverse impact to municipalities or small businesses as a result of this rule. Local school districts may see increased use of adult education offerings as students enroll in short-term occupational trainings or remedial course work required for entry to degree programs.

Fiscal impact of rule:

The estimated fiscal impact is $2,166,582 in Block Grant spending. The costs for implementing HOPE Program rules are covered under the Temporary Assistance for Needy Families block grant and funds transferred from that block grant to the social services block grant and the Child Care and Development Fund block grant.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §3762(3)(B)(d)
Chapter number/title:	**Ch. 331**, Maine Public Assistance Manual (TANF), **Rule #110A** (State Funded Non-Citizen Hardship)
Filing number:	**2019-084**
Effective date:	6/1/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:
This rule is promulgated to comply with Maine statute that requires the Department to provide cash assistance in certain circumstances to legally admitted aliens who would be eligible for the TANF program but for their status as aliens under PRWORA. The rule adds an eligibility category for legally admitted aliens who have obtained proper work documentation from USCIS but who have not yet obtained employment.

Other Changes:
In addition to the change in policy, this proposed rule also contains the following changes to correct formatting or punctuation errors or to clarify intent:

Section III(b) – Changed "An" to "a"
Section III(b)(3) – Corrected bullet list type
Section IV-Corrected Section number.
Section IV(a)(E) – Corrected citations
Section IV(a)(2) – Clarified that eligibility for a Pregnant Woman grant is dependent on whether there are other TANF otherwise eligible children in the home.
Section IV(b)(2)(B)(v)-Made wording consistent with prior paragraph.
Section IV(b)(2)(B)(iii) – Corrected punctuation
Section V(b)(3) – Corrected citation
Section V(b)(1) – Clarified policy when a caretaker relative opts off the TANF grant and claims the TANF children as tax dependents. This was left out in error during the recent repeal and replace of Ch. II.
Section V(d)- Clarified that an SSI or State Supplement individual must receive a benefit in order to opt out of the TANF AG.
Section V(d)(1) and (2)-Clarified when an otherwise eligible caretaker relative of an SSI child may receive TANF while excluding the other eligible children in the household.

Fiscal impact of rule:
Costs associated with the rule are anticipated to be $393,582 annually.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit:	**10-144**
Statutory authority:	5 MRS §8054; 22 MRS §§ 42(1), 3769-C
Chapter number/title:	**Ch. 331**, Maine Public Assistance Manual (TANF), **Rule #113E** (TANF Max Benefit 2019)
Filing number:	**2019-174**
Effective date:	10/1/2019
Type of rule:	Routine Technical
Emergency rule:	Yes

Principal reason or purpose for rule:

An emergency rule change is necessary to comply with 22 MRS §3769-C(1)(D).

Basis statement:

This rule is promulgated to comply with Maine statute 22 MRS §3769-C(1)(D), which requires the Department to increase the Temporary Assistance for Needy Families (TANF) maximum benefit on an annual basis by the amount of the cost of living allowance as determined by the Social Security Administration. The statute also requires the Department to make a related increase to the standard of need, provided the funds are available.

This rule will not have an adverse impact on municipalities or small businesses.

Fiscal impact of rule:

Based on the level of benefits issued in SFY19, the impact of a 2.8% COLA increase is estimated to be $545,097 annually. This impact would be in the TANF Block Grant (015) funding.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42(1), 3769-C
Chapter number/title:	**Ch. 331**, Maine Public Assistance Manual (TANF), **Rule #113A** (TANF Max Benefit 2019)
Filing number:	**2019-243**
Effective date:	12/30/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

A rule change is necessary to comply with 22 MRS §3769-C(1)(D).

Basis statement:

This rule is promulgated to comply with Maine statute 22 MRS §3769-C(1)(D), which requires the Department to increase the Temporary Assistance for Needy Families (TANF) maximum benefit on an annual basis by the amount of the cost of living allowance as determined by the Social Security Administration. The statute also requires the Department to make a related increase to the standard of need, provided the funds are available.

Fiscal impact of rule:

Based on the level of benefits issued in SFY19, the impact of a 2.8% COLA increase is estimated to be $545,097 annually. This impact would be in the TANF Block Grant (015) funding.

This rule will not have an adverse impact on municipalities or small businesses.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 42(8), 3174-G(1)(H); 42 CFR §435.119
Chapter number/title:	**Ch. 332**, MaineCare Eligibility Manual, **MC Rule #290E** (Medicaid Expansion): **Part 3**, Eligibility Groups Requirements; **Part 4**, Budgeting - MAGI
Filing number:	**2019-015**
Effective date:	1/18/2019
Type of rule:	Routine Technical
Emergency rule:	Yes

Principal reason or purpose for rule:

These emergency rule changes implement the MaineCare expansion as set forth in 22 MRS §3174-G(1)(H), which was enacted through a citizens' initiative on November 7, 2017 (the "Expansion Act"). The Expansion Act requires the Department to provide covered MaineCare services to adults ages 19 through 64 who satisfy the eligibility requirements as set forth more specifically below and in the *MaineCare Eligibility Manual* (the "Expansion Population"). The Expansion Act requires the Department to submit a State Plan Amendment ("SPA") to the Centers for Medicare and Medicaid Services ("CMS") and engage in rulemaking to implement coverage for the Expansion Population.

Basis statement:

On April 30, 2018, a lawsuit was filed in Superior Court under M.R. Civ. P. 80C challenging the Department's failure to submit a SPA to begin coverage for the Expansion Population. *Maine Equal Justice Partners vs. Commissioner, Department of Health and Human Services*, BCD-AP-18-02. On June 4, 2018, the Court entered an order requiring the Department to submit a SPA by June 11, 2018. The Department timely appealed that order to the Law Court. On August 23, 2018, the Law Court dismissed the appeal as interlocutory and directed that the matter be remanded to the Superior Court for expedited review and analysis of the facts and law.

Given this development, and the requirements of the June 4, 2018 order, on September 4, 2018, the Department filed SPA #s 18-006 and 18-007 with CMS. On or about October 24, 2018, CMS informed the Department that, in addition to the first two SPAs, it must file an Alternative Benefit Plan ("ABP") SPA. The Department began working on the ABP SPA and continued its communications with CMS regarding the two other pending SPAs.

On November 21, 2018, the Superior Court entered an order finding, among other things, that the effective date of the Expansion Act is January 3, 2018, and thus 180 days from the effective date is July 2, 2018; the Court ordered that July 2, 2018 should be the date of implementation of the Expansion Act. It ordered that the Department amend the eligibility SPA (#18-006) to reflect an effective date of July 2, 2018, and ordered that, by December 5, 2018, the Department must adopt rules retroactive to July 2, 2018.

The Department appealed the November 21, 2018 order, requesting clarification and a partial stay. On December 6, 2018, the Superior Court denied the Department's motion for clarification/partial stay, but changed the deadline for adopting rules from December 5, 2018 to February 1, 2019. On December 10, 2018, the Department appealed the November 21, 2018 order to the Law Court and filed a motion to expedite the appeal. On December 18, 2018, the Law Court denied the motion to expedite.

On December 21, 2018, the Department filed its ABP SPA with CMS.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

On January 3, 2019, Governor Mills sent a letter to U.S. DHHS Secretary Azar and CMS Administrator Seema Verma attaching an amendment to the three outstanding SPAs to amend the effective date to July 2, 2018, and also submitting responses to CMS's Requests for Additional Information on SPA #s 18-0006 and 18-0007. Similarly, on January 3, 2019, Governor Mills issued EXECUTIVE ORDER #01-FY 19/20 ordering the Department to take all steps to implement the Expansion Act, including working with CMS as well as the Legislature in order to ensure financial sustainability.

Expansion Act Rule

The rule updates Parts 3 and 4 of the *MaineCare Eligibility Manual* to establish an eligibility category for adults age 19 through 64 who meet the following requirements: are not pregnant; are not eligible for or currently receiving Medicare Part A or Medicare Part B; are not otherwise eligible for Medicaid in the State of Maine; and have income less than or equal to 133% of the federal poverty level ("FPL"). The rule also distinguishes between two types of parent/caretaker relatives: those with income under 133% FPL who do not meet the current qualifications for parent/caretaker relatives under Part 3, Section 2.2; and those with income between 100-133% FPL who do meet the qualifications for parent/caretaker relatives under Sec. 2.2. The Department makes this distinction for purposes of receipt of the proper amount of federal matching funds. Pursuant to 42 CFR 435.119(c), if a parent/caretaker relative has a dependent child living in the home under the age of 21, the child must be receiving benefits under Medicaid, CHIP or otherwise be enrolled in minimum essential health coverage as defined in 42 CFR §435.4.

The referendum provides authority to adopt rules on an emergency basis if necessary to implement the program in a timely manner. Pursuant to 5 MRS §8054, the Department further finds that emergency rulemaking is necessary to implement the Expansion Act as soon as possible, particularly given the background set forth, above. Members of the Expansion Population may need covered health services urgently, and thus this rule should take effect immediately to further public health and safety.

Individuals who are eligible and who applied for coverage between July 2, 2018 and January 2, 2019, may be eligible for coverage back to the first day of the month of application, and if requested up to three months retroactive, but no earlier than July 2, 2018.

Fiscal impact of rule:

An estimated $525 million federal dollars will enter Maine's economy annually, in payments to healthcare providers.

Approximately 70,000 Mainers will be newly eligible for MaineCare. Interest groups and hospitals have increased staff volume to assist those newly eligible with the application process. There is no expected impact on other Maine businesses.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 42(8), 3174-G(1)(H); 42 CFR §435.119
Chapter number/title:	**Ch. 332**, MaineCare Eligibility Manual, **MC Rule #290A** (Medicaid Expansion): **Part 3**, Eligibility Groups Requirements; **Part 4**, Budgeting – MAGI; **Part 18**, Presumptive Eligibility Determined by Hospitals
Filing number:	**2019-063**
Effective date:	4/17/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:
This rule change implements the MaineCare expansion as set forth in 22 MRS §3174-G(1)(H), which was enacted through a citizens' initiative on November 7, 2017 (the "Expansion Act"). The Expansion Act requires the Department to provide covered MaineCare services to adults ages 19 through 64 who satisfy the eligibility requirements as set forth more specifically below and in the *MaineCare Eligibility Manual* (the "Expansion Population"). The Expansion Act requires the Department to submit a State Plan Amendment ("SPA") to the Centers for Medicare and Medicaid Services ("CMS") and engage in rulemaking to implement coverage for the Expansion Population.

The Department initially made these changes through emergency rulemaking pursuant to 5 M.R.S. §8054. Those changes were effective January 18, 2019 and shall expire after ninety days. The Department files this rule to finally adopt the changes required for MaineCare expansion.

Background

On April 30, 2018, a lawsuit was filed in Superior Court under M.R. Civ. P. 80C challenging the Department's failure to submit a SPA to begin coverage for the Expansion Population. *Maine Equal Justice Partners vs. Commissioner, Department of Health and Human Services*, BCD-AP-18-02. On June 4, 2018, the Court entered an order requiring the Department to submit a SPA by June 11, 2018. The Department timely appealed that order to the Law Court. On August 23, 2018, the Law Court dismissed the appeal as interlocutory and directed that the matter be remanded to the Superior Court for expedited review and analysis of the facts and law.

Given this development, and the requirements of the June 4, 2018 order, on September 4, 2018, the Department filed SPA #s 18-006 and 18-007 with CMS. On or about October 24, 2018, CMS informed the Department that, in addition to the first two SPAs, it must file an Alternative Benefit Plan ("ABP") SPA. The Department began working on the ABP SPA and continued its communications with CMS regarding the two other pending SPAs.

On November 21, 2018, the Superior Court entered an order finding, among other things, that the effective date of the Expansion Act is January 3, 2018, and thus 180 days from the effective date is July 2, 2018; the Court ordered that July 2, 2018 should be the date of implementation of the Expansion Act. It ordered that the Department amend the eligibility SPA (#18-006) to reflect an effective date of July 2, 2018, and ordered that, by December 5, 2018, the Department must adopt rules retroactive to July 2, 2018.

The Department appealed the November 21, 2018 order, requesting clarification and a partial stay. On December 6, 2018, the Superior Court denied the Department's motion for clarification/partial stay, but changed the deadline for adopting rules from December 5, 2018 to February 1, 2019. On December 10, 2018, the Department appealed the November 21, 2018 order to the Law Court and filed a motion to expedite the appeal. On December 18, 2018, the Law Court denied the motion to expedite.

On December 21, 2018, the Department filed its ABP SPA with CMS.

On January 3, 2019, Governor Mills sent a letter to U.S. DHHS Secretary Azar and CMS Administrator Seema Verma attaching an amendment to the three outstanding SPAs to amend the effective date to July 2, 2018, and also submitting responses to CMS's Requests for Additional Information on SPA #s 18-0006 and 18-0007. Similarly, on January 3, 2019, Governor Mills issued EXECUTIVE ORDER #01-FY 19/20 ordering the Department to take all steps to implement the Expansion Act, including working with CMS as well as the Legislature in order to ensure financial sustainability.

On April 3, 2019, CMS approved all three of Maine's Medicaid expansion SPAs, effective July 2, 2018.

Expansion Act Rule

The rule updates Parts 3 and 4 of the MaineCare Eligibility Manual to establish an eligibility category for adults age 19 through 64 who meet the following requirements: are not pregnant; are not eligible for or currently receiving Medicare Part A or Medicare Part B; are not otherwise eligible for Medicaid in the State of Maine; and have income less than or equal to 133% of the federal poverty level ("FPL"). Part 3 Section 2.4 of the rule also distinguishes between two types of parent/caretaker relatives for purposes of receipt of the proper amount of federal matching funds. Maine previously provided MaineCare coverage to parent/caretaker relatives with income under 100% FPL, pursuant to Part 3, Section 2.2. Maine continues to offer this coverage for parent/caretakers under 100% FPL. In addition, Maine now provides coverage under Medicaid expansion to parent/caretakers with income between 100% and 133% FPL. Pursuant to 42 CFR 435.119(c) and 2.4, if a parent/caretaker relative with income between 100% and 133% FPL has a dependent child living in the home under the age of 21, the child must be receiving benefits under Medicaid, CHIP or otherwise be enrolled in minimum essential health coverage as defined in 42 CFR §435.4.

As a result of comments, the Department made some changes to improve the clarity of Part 3, Section 2.4 with regard to the parent/caretaker group distinctions. The Department also updated Part 4, Section 4 to reflect the changes made in Part 3, Section 2.4. Those changes are specifically set forth in the Summary of Comments and Responses and List of Changes to the Final Rule.

Furthermore, as a result of legal review by the Office of the Attorney General, the Department finds that it must update Part 18 of the MaineCare Eligibility Manual to add the Expansion Group to the list for hospital presumptive eligibility determinations.

Individuals who are eligible and who applied for coverage between July 2, 2018 and January 2, 2019, may be eligible for coverage back to the first day of the month of application, and if requested up to three months retroactive, but no earlier than July 2, 2018.

Finally, the Department also added reference to, "*Types of countable income are described in Part 17"* in various provisions in order to improve clarity of the manual.

Fiscal impact of rule:

To be determined.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; 42 USC §1396a *et seq.*
Chapter number/title:	**Ch. 332**, MaineCare Eligibility Manual, **MC Rule #291A** (SBW Premium Rule)
Filing number:	**2019-229**
Effective date:	1/1/2020
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The increase of monthly premiums, required under certain circumstances for enrollment in the Special Benefits Waiver (SBW) program, is necessary to comply with the waiver agreement (Maine Section 1115 Health Care Reform Demonstration for Individuals with HIV/AIDS, Part V, Paragraph 21) between The Department of Health and Human Services (DHHS) and The Centers for Medicare and Medicaid Services (CMS).

Basis statement:

This rule makes changes to Chart 3.8 - Premiums for Special Benefit Waiver of the MaineCare Eligibility Manual. It sets the monthly premium for individuals enrolled in the Special Benefits Waiver [10-144 CMR ch. 101, *MaineCare Benefits Manual*, ch. X section 1, "Benefit for People Living with HIV/AIDS"]. For persons with income equal to or less than 150% of the Federal Poverty Level (FPL) the monthly premium remains at zero. The current monthly premium is $35.93 for people with income between 150.1% of the FPL up to and including 200% of the FPL, and $71.85 for people with income between 200.01% and 250% of the FPL. The chart details the annual 5% increases to these premiums, beginning with the current figures for 2019 and providing prospective figures through the year 2028.

The changes are necessary to comply with federal law and the waiver agreement between the Maine Department of Health and Human Services (DHHS) and the Centers for Medicare and Medicaid Services (CMS), through which this initiative is operated (See Maine Section 1115 Health Care Reform Demonstration for Individuals with HIV/AIDS, Part V, Paragraph 21).

The rule will not be implemented until it has been adopted, properly filed with the Secretary of State and becomes effective in accordance with 5 MRS §§ 8001, 8052, *Maine Administrative Procedure Act*.

Fiscal impact of rule:

The Department does not anticipate an adverse impact on small businesses or municipalities. Direct costs to the Department include the cost of rulemaking activity and necessary technology changes (which are covered by existing budget for such things). Based on current participation at each premium level of the SBW program, the Department anticipates a gross increase in revenue from these premiums of three thousand six hundred thirty-one dollars and ninety-two cents ($3,631.92) for state fiscal year 2020, and three hundred seventy-four thousand, six hundred fifty-four dollars and sixty-four cents ($374,654.64) for the duration of the rule (January 1, 2020 through December 31, 2028).

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Maine Center for Disease Control and Prevention**
Umbrella-Unit:	**10-146**
Statutory authority:	22 MRS ch. 418 §2140; 5 MRS §§ 8054, 8073
Chapter number/title:	**Ch.** *(New).* Death with Dignity Act Reporting Rule
Filing number:	**2019-170**
Effective date:	9/19/2019
Type of rule:	Major Substantive
Emergency rule:	Yes

Principal reason or purpose for rule:

The Department is adopting this emergency major substantive rule to comply with the Maine Death with Dignity Act ("Act"), 22 MRS §2140, and to exercise the Department's authority to collect certain data from healthcare providers related to patient-directed care at the end of life and to establish criteria for witnesses to patients making written requests for life-ending medications when the patients reside at long-term care facilities.

Basis statement:

The Department of Health and Human Services ("Department") is adopting this new rule pursuant to PL 2019 ch. 271, *An Act to Enact the Maine Death with Dignity Act* (effective September 19, 2019), codified at 22 MRS §2140 (the "Act"); pursuant to the Department's emergency rulemaking authority under 5 MRS §§ 8054 and 8073; and in response to the Governor's Executive Order 9 FY 19/20, "An Order Implementing the Death with Dignity Act" (June 12, 2019).

The underlying legislation establishes criteria for when a physician may prescribe medication to certain qualified patients for the purpose of the patient self-administering the medication to end the patient's life in a humane and dignified manner. 22 MRS §2140. In addition to setting forth numerous requirements for the patient, the attending physician, other health care providers, and others, the law requires the Department to collect and review documentation related to patient-directed care at the end of life for compliance purposes and for use in compiling an annual report to the Legislature. *Id.* §2140(17). The Department is also tasked with establishing criteria for one of the two witnesses to the patient's written request for medication if the patient is residing at a long-term care facility. *Id.* §2140(5)(E). To meet these requirements, the Department is adopting this rule which sets forth protocol for healthcare providers involved in patient end-of-life decisions to produce documentation and information to the Department, describes the data to be collected through Department-generated forms, and advises providers on reporting deadlines.

The terms of the rule are consistent with those set forth in the Act. In addition, the adoption of this rule will address the concerns outlined in the Governor's Executive Order about the implementation of the Act by providing clear guidance through rulemaking to healthcare providers so as to help prevent the potential for abuse. Consistent with the Executive Order, the rule also contemplates that the Department will act within the scope of its authority to collect additional data not prescribed in the Act so as to ensure provider compliance and to aid in the Department's production of a useful and meaningful statistical report that monitors the impact of the Act. To that end, the Department has consulted with stakeholders with expertise in end-of-life care to solicit input pertaining to data elements, form accessibility, and witness qualifications, and will continue to do so.

Findings of Emergency: The Department is adopting this major substantive rule on an emergency basis to coincide with the September 19, 2019 effective date of the Act. Although the Act requires the Department to adopt rules within six months, 22 MRS §2140(17)(C), the

Department believes that immediate adoption of the rule is necessary to avoid an immediate threat to public health, safety, or general welfare. 5 MRS §8054(1) and §8073. Consistent with the Governor's Executive Order, the Department finds there is a potential for abuse and inappropriate pressure on patients facing end-of-life decisions which could be exacerbated by the rule - which serves as a means of ensuring compliance with the Act - not being in place at the time the Act takes effect.

In conjunction with this emergency rulemaking, the Department will be engaging in the major substantive rulemaking process to permanently adopt the rule following legislative review. 5 MRS §5072. In the meantime, this emergency major substantive rule adoption will be effective for up to 12 months or until the Legislature has completed its review of the rule the Department intends to permanently adopt.

Fiscal impact of rule:

No significant fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of Child and Family Services**
Umbrella-Unit:	**10-148**
Statutory authority:	22 MRS §42
Chapter number/title:	**Ch. 6**, Child Care Subsidy Program Rules
Filing number:	**2019-206**
Effective date:	11/26/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The rule clarifies program definitions and program eligibility standards. The rule repeals and replaces the existing rule and will implement the federal regulations at 45.CFR.98.11. The rules incorporates current best practices and federal requirements under the *Child Care and Development Block Grant (CCDBG) Act of 2014* in the operation of the Child Care Subsidy Program.

Basis statement:

The Department repeals the previous rule and replaces it with this adopted rule to update and clarify program definitions and eligibility standards, as well as to ensure Maine's Child Care Subsidy Program complies with updated federal rules that went into effect September 23, 2016 governing the Department's administration of Child Care and Development Block Grant funds. 45 CFR §98. The Department adopts these rules with the following changes:

Section 9(F)(G): The Department added Emergency Preparedness and Response Planning to comply with 45 CFR §98.16(aa) and 98.41(a)(l)(vii). The adopted rule requires the Department to have a statewide child care disaster plan and all child care providers have in place an emergency preparedness and response plan.

Section (1)(10),(79): The Department updated the rule pursuant to 45 CFR §98.2l(a)(5) to add conditions of eligibility to the child care subsidy award on re-determination period of no less than 12 months. This includes a new definition of "Temporary Change".

Section 9(G): The Department added Health and Safety Standards to comply with 45 CFR. §98.41 and §98.42(b)(2)(iv)(A). The rule requires the Department to set health and safety standards on the ten (10) health and safety requirements provided for in 45 CFR §98.41. All Providers must complete the health and safety training within ninety (90) calendar days of beginning their work with children.

Section 9(E): The Department added Health and Safety Standards to comply with 45 CFR §98.43. The rule requires the Department to have policies and procedures in place for Providers to have a criminal background check prior to beginning work with a child. The background check must include; Child Protective Services (CPS), State Bureau of Identification (SBI) with fingerprints, Department of Motor Vehicle (DMV), State Sex Offender Registry, National Crime Information Center National Sex Offender Registry, and FBI fingerprint check using Next Generation Identification.

Various technical, non-substantive changes relating to section numbers, spelling, formatting, and grammar have been made throughout the rules.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of Substance Abuse and Mental Health Services**
Umbrella-Unit:	**14-118**
Statutory authority:	22 MRS §§ 42, 2353; 5 MRS §8054
Chapter number/title:	**Ch. 19** *(New).* Rules Governing Community-Based Drug Overdose Prevention Programs
Filing number:	**2019-078**
Effective date:	5/16/2019
Type of rule:	Routine Technical
Emergency rule:	Yes

Principal reason or purpose for rule:

The Department is adopting this new rule pursuant to 22 MRS §2353(4). This emergency rulemaking will also further the Department's efforts to address the ongoing opioid crisis and the directives of the Governor's Executive Order 2 FY 19/20, *An Order to Implement Immediate Responses to Maine's Opioid Epidemic*.

Basis statement:

The Department of Health and Human Services ("Department") is adopting this new rule pursuant to PL 2015 ch. 351 §2, *An Act To Expand Access To Lifesaving Opioid Overdose Medication* (effective July 12, 2015), codified at 22 MRS §2353(2); pursuant to the Department's emergency rulemaking authority under 5 MRS §8054; and in response to the Governor's Executive Order 2 FY 19/20, *An Order To Implement Immediate Responses to Maine's Opioid Epidemic* (effective February 6, 2019).

The underlying legislation allows for the establishment of community-based drug overdose prevention programs. 22 MRS §2353(4). Acting under the standing order of a licensed health care professional, a community-based agency may acquire the opioid antagonist naloxone hydrochloride for the dual purpose of dispensing the medication to certain populations and of distributing the medication to individuals who have successfully completed training to possess and administer the medication. To implement this legislation, the Department is adopting this emergency rule to establish various policies and procedures, including on: standing orders to community-based agencies; the storage of naloxone hydrochloride; to whom the medication can be dispensed under the standing order; minimum training requirements for when the medication can be distributed to an individual who seeks to be able to possess and administer naloxone in an overdose situation; and what written documentation and recordkeeping is required of the community-based agency.

The adoption of this emergency rule will coincide with other initiatives by the Department already underway pursuant to the Governor's Executive Order. This includes the Department contracting with and providing funding to community-based agencies with overdose prevention programs so that naloxone hydrochloride can be readily and widely available to individuals at risk of an opioid-related drug overdose as well as to friends, family, and others in a position to assist individuals who may be experiencing an opioid-related drug overdose.

The Department is adopting this rule on an emergency basis pursuant to 5 MRS §8054. There is an ongoing opioid epidemic in the State which claimed the lives of 418 individuals in 2017 alone. Given the urgent need to address this public health crisis, the Department has determined that immediate adoption of this rule is necessary in order to further avoid an immediate threat to public health, safety or general welfare.

This emergency rule will take effect immediately upon adoption and will be in effect for ninety days. 5 MRS §8054. To avoid any lapse in policy, the Department is concurrently engaging in the routine technical rulemaking process.

Fiscal impact of rule:

There are no expected fiscal impacts of this rule. This rule will only clarify policies and procedures regarding distribution and administration.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Health and Human Services, **Office of Substance Abuse and Mental Health Services**
Umbrella-Unit:	**14-118**
Statutory authority:	22 MRS §§ 42, 2353; 5 MRS §8054
Chapter number/title:	**Ch. 19** *(New).* Rules Governing Community-Based Drug Overdose Prevention Programs
Filing number:	**2019-144**
Effective date:	8/13/2019
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The Department is adopting this new rule pursuant to 22 MRS §2353(4). This rulemaking will also further the Department's efforts to address the ongoing opioid crisis and the directives of the Governor's Executive Order 2 FY 19/20, *An Order to Implement Immediate Responses to Maine's Opioid Epidemic*.

Basis statement:

The Department of Health and Human Services ("Department") is adopting this new rule pursuant to PL 2015 ch. 351 §2, *An Act To Expand Access To Lifesaving Opioid Overdose Medication* (effective July 12, 2015), codified at 22 MRS §2353(2); pursuant to the Department's emergency rulemaking authority under 5 MRS §8054; and in response to the Governor's Executive Order 2 FY 19/20, *An Order To Implement Immediate Responses to Maine's Opioid Epidemic* (effective February 6, 2019).

The underlying legislation allows for the establishment of community-based drug overdose prevention programs. 22 MRS §2353(4). Acting under the standing order of a licensed health care professional, a community-based agency may acquire the opioid antagonist naloxone hydrochloride for the dual purpose of dispensing the medication to certain populations and of distributing the medication to individuals who have successfully completed training to possess and administer the medication. To implement this legislation, the Department adopted an emergency rule on May 16, 2019 that established various policies and procedures, including on: standing orders to community-based agencies; the storage of naloxone hydrochloride; to whom the medication can be dispensed under the standing order; minimum training requirements for when the medication can be distributed to an individual who seeks to be able to possess and administer naloxone in an overdose situation; and what written documentation and recordkeeping is required of the community-based agency. This routine technical rule adopts those same policies and procedures on a permanent basis

The adoption of this rule will coincide with other initiatives by the Department already underway pursuant to the Governor's Executive Order. This includes the Department contracting with and providing funding to community-based agencies with overdose prevention programs so that naloxone hydrochloride can be readily and widely available to individuals at risk of an opioid-related drug overdose as well as to friends, family, and others in a position to assist individuals who may be experiencing an opioid-related drug overdose.

Fiscal impact of rule:

There are no expected fiscal impacts of this rule. This rule will only clarify policies and procedures regarding distribution and administration.