



Testimony of Newell Augur, Legal Counsel, Maine Youth Camp Association

Presented to the Joint Standing Committee on Health and Human Services

In Support of LD 2230, An Act to Change Department of Health and Human Services Rules
Regarding Youth Camps to Major Substantive Rules

Sponsored by Senator Stacy Brenner

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Senator Baldacci, Representative Meyer and distinguished members of the Joint Standing Committee on Health and Human Services. My name is Newell Augur. I am a resident of Yarmouth and a partner at Pierce Atwood, LLP. I appreciate the opportunity to provide this testimony on behalf of the Maine Youth Camp Association (“MYCA”), the non-profit organization representing most of the nearly 175 licensed youth camps throughout our state, in support of LD 2230, An Act to Change Department of Health and Human Services Rules Regarding Youth Camps to Major Substantive Rules.

MYCA’s single most important priority is the safety of our campers. All our hiring and programming is oriented around that objective. The current DHHS proposal rule does not advance that objective and would leave Maine Youth Camps awash in bureaucratic challenges. Regardless of whether the rules governing camps are major substantive or routine technical, we hope that DHHS will suspend any revision of this rule and re-open a dialogue with MYCA so that a thoughtful and reasonable rule can be drafted.

Chapter 208 may not have been amended since 2007, but it would be wrong to say that this rule is outdated. Maine camps have to comply with yearly updates from many other rules cross referenced within chapter 208 (Maine food code, boating laws, safe drinking water, etc.) in addition to compliance mandates the Health Inspection Program (HIP) has issued over that time (i.e. updated reportable conditions form, updated requirements for mandated reporter training, emergency medications, etc.). While it’s true the actual rules have not been updated formally since 2007, Maine camps remained compliant with multiple updated yearly mandates.

In January 2020, DHHS provided notice of a public stakeholders meeting regarding an update to Rule 208 and requested input on four items. MYCA provided feedback on these questions and suggested changes on eleven additional matters. This is consistent with the long and productive

history whereby HIP has sought input from MYCA in its regulation of youth camps. For this reason, the regulations forged in Maine have been used by the American Camp Association (ACA) and replicated in other states across the country.

The proposed DHHS changes to Rule 208 were a significant departure from this prior level of communication and presented serious concerns to youth camps. MYCA was not notified or less included in any discussions about new regulations for “farm camping” or the new requirement for fingerprinting all employees and volunteers. As discussed more fully below, it will be incredibly burdensome for youth camps to comply with these and other new requirements, and in some instances practically impossible.

Rule 208 must carefully balance “critical” and “non-critical” violations given that these violations are a matter of public record and only three critical violations result in failure. Under the current rule, there are 161 possible critical violations, 140 critical rules, and 21 swing violations. Under the proposed rule, there are 224 critical violations, an increase of nearly 40%. (Some of these new critical violations have multiple conditions to meet so the total could be even higher.) In many instances, the rules changed to critical designation were overly subjective (bathrooms must “be of a sanitary and cleanable design”) or unusually specific (where provided, the temperature of hot water “must not exceed 120 degrees”). This total does not include the addition of 50 new farm camping rules, 40 of which are designated as critical.

Mandatory fingerprinting as proposed in Section 9 (B)(3)

Maine’s youth camps hire approximately 13,000 counselors and staff every summer. There are thousands more who volunteer. Licensed Maine camps are already required to conduct a background check on all employees. The ACA has similar requirements for camps with ACA accreditation. Generally, camps use a third-party vendor to conduct background checks by supplying the staff members’ name, date of birth, social security number and state of residence.

A fingerprint check is superior to standard name-based background information, but it is not readily accessible. The delays obtaining fingerprinting information are additionally impacted by the reality of the hiring process. Camps usually do not have all their employees hired until shortly before camp begins. Hiring continues through June, and often into July. Camps do not have the time to wait for results of a biometric background check.

Twenty-six states participate in the National Fingerprint File (NFF) system as of October 2023. This is a federal initiative aimed at decentralizing criminal history records such that the state becomes the sole maintainer and provider of its criminal history records. This initiative is meant to streamline the system and allow for quick and effective response to fingerprint data requests, regardless of the US state the individual is from.

Regrettably, Maine is not one of these states. Instead, it is one of the remaining US states where background information is accessed via a centralized database (Federal Bureau of Investigation) known as the Interstate Identification Index (III). Requesting fingerprint data from these states is considerably slower – up to 12 weeks - and more expensive.

The cost to obtain fingerprint checks for all staff and volunteers would be prohibitively high. Each fingerprint background check is a minimum of \$55, an additional \$700,000 each year. Fingerprint background checks from an III state are more expensive and may not yield any

information until the end of the summer. In the meantime, third party name-based checks bridge that gap until there is full state compliance with NFF.

Even without those challenges, a fingerprint check requirement would be especially difficult for camps that rely on international staff. Many of these individuals are not even in the US until just before camp begins. To further complicate this challenge, social security numbers are required by the Indentigo system used by Maine. International staff must wait a minimum of 10 days in the US prior to applying for a social security number. This is followed by a wait period and eventual completion.

Ineligibility for employment

DHHS proposed language on this subject is nearly identical to its Child Care Provider Background Check Licensing Rule. This model is inappropriate for summer camps. Maine youth camps are a distinct enterprise. Collectively, they employ approximately 13,000 people and are responsible for nearly \$500 million in economic activity every year. Accordingly, the language used to regulate youth camps should be specific to - and written for - youth camps. In this instance, a process similar to that used for Maine public school teachers to obtain credentialing is better suited for youth camps.

Further, the notion of prohibiting certain individuals from employment may be discriminatory against individuals from the BIPOC community, who have historically faced higher rates of incarceration and false sentencing disparity. It also is entirely inconsistent with existing Maine law, the "Fair Chance in Employment" law, passed in 2021. This law prohibits employers from asking about criminal history information in certain situations. Employers cannot request criminal history information on the initial employee application form, nor can they state on the application form that a person with a criminal history need not apply.

Adult Health Supervisor "on site at all times"

MYCA has concerns with the inflexibility of an absolute requirement that an adult health supervisor be "on site at all times." Many smaller camps only have one adult health supervisor available at any time. If that individual is attending to a health emergency off-site, filling a camper prescription at the local pharmacy, or briefly off site for a camper emergency, camps would be in violation of this new language. In the same vein, we would note that when the nurse at a public school is out of the building - or even out sick - the entire school does not shut down for the day.

Checking the driving records of all staff who transport campers

The new requirement that a camp director must check the driving records of all staff who transport campers, including reviews of each driver's records through that staff person's state and/or country where the license was issued is an almost impossible task for the camp director given the high numbers of international staff and the inability to access driving records from foreign countries.

The more appropriate policy - and the one better designed to ensure camper safety - is the ACA requirement that all camp directors or their transportation designee personally conduct a

driving assessment of any staff responsible for transporting campers. In addition to a driving assessment, camps conduct safety training regarding vehicles and responsibilities.

"Farm camping"

Farms are heavily regulated environments. Those that have a summer camp already comply with rules and regulations from multiple other federal and state licensing and advising bodies, including the Department of Agriculture, Conservation and Forestry. These agencies outline agricultural best practices to ensure the land, plants, animals, farmers, and consumers are treated to the highest standard of quality and protect the health and safety of all.

Many of the regulations in DHHS new farm camping section are already covered by other rules and other regulatory bodies. This includes instructions on animal welfare, on interaction between animals and humans and how they are both kept safe and healthy - regardless of age or role on a farm. All camps - whether they are on a farm or not - already know the importance of proper hand washing and follow other practices of disease prevention based on research-backed health and safety standards.

DHHS' proposed requirement prohibiting camper physical contact with farm animals under 60 days of age is a significant extension of the Department's jurisdictional reach. The risk of visiting animals under 60 days of age can be minimal if research-backed health and safety standards are being strictly followed. Lack of access to baby animals, without any clarification, while also following research-backed health and safety standards, would be an extremely detrimental to our programming.

DHHS's rationale for many of the proposed changes in Rule 208 stems, undoubtedly, from individual incidents observed during recent inspections. Yet, on average only 3 camps failed inspections in each of the past three years, about 4% of the total camps inspected and less than 2% of the total. Not every incident requires a new provision in rule, nor is it necessary that each of those new provisions be designated as "critical."

Youth camps would like to have a collaborative exchange with DHHS to better craft Rule 208. We appreciate anything that this Committee can do to accomplish that.

Thank you for the opportunity to testify. I'd be happy to answer any questions.