Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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(8), 3173; PL 2015 Ch. 267 Part A
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 96**, Private Duty Nursing and Personal Care Services
Filing number:	**2016-006**
Effective date:	1/25/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The purpose of the rule is to increase the reimbursement rates for Personal Support Services (PSS) provided under the *MaineCare Benefits Manual*, Ch. II and III, Section 96, "Private Duty Nursing and Personal Care Services". This rate increase, retroactive to July 1, 2015, accords with the State's biennial budget. PL 2015 ch. 267 Part A. To avoid a reduction in services available to members as a result of the increase in PSS reimbursement rates, the Department adopts a proportional increase in the monthly cost caps for each affected member's level of care.

Basis statement:

The Department of Health and Human Services (the "Department") adopts this rule to increase reimbursement rates for personal support services.

Pursuant to the State's biennial budget, the Department is increasing the reimbursement rate for providers of personal support services. On June 30, 2015, the Maine State Legislature enacted the budget, Public Law 2015, Ch. 267. Specifically, Part A, Section A-32, "Medical Care – Payments to Providers 0147," which provides funding to increase the rates for personal support services beginning July 1, 2015.

Services reimbursed by *MaineCare Benefits Manual*, Section 96, "Private Duty Nursing and Personal Care Services" must be delivered in accordance with an authorized plan of care that meets medical necessity criteria and is reimbursable within a pre-determined monthly cost cap. The monthly cap is based on the members' eligibility category. To avoid a reduction in services available to members as a result of the increase in reimbursement rates for personal support services, the Department is adopting a proportional increase in the applicable monthly cost caps set forth in Ch. II Section 96, Appendix #2.

The Department submitted a state plan amendment for this change to the Centers for Medicare and Medicaid Services with a proposed effective date of July 1, 2015.

Fiscal impact of rule:

The Department expects that this routine rule-making, in conjunction with the emergency rule-making for Ch. II and III, Section 96, will cost the Department $1,112,552 in SFY 2016, including $417,513 in State dollars and $1,118,512 in SFY 2017, including $417,540 in State dollars.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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(8), 3173, PL 2015 ch. 267, 702 – LD 1019 Parts A, UUUU
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 2**, Adult Family Care Services
Filing number:	**2016-017**
Effective date:	retroactive to 7/1/2015
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The purpose of this rule is to increase the reimbursement rates by 4% for Adult Family Care Services at residential care facilities provided under the *MaineCare Benefits Manual*, Ch. III Section2. This rate increase, retroactive to July 1, 2015, accords with the State's biennial budget, PL 2015 ch. 267 Parts A and UUUU.

Basis statement:

The Department of Health and Human Services adopts this rule to increase reimbursement rates by 4% for Adult Family Care Services at residential care facilities.

In conjunction with the development of the State's biennial budget, the Department proposed to increase the reimbursement rate for providers of Adult Family Care Services at residential care facilities. The Maine State Legislature approved this rate increase when it enacted the budget, PL 2015 ch. 267 (702 – LD 1019). Specifically, Part A, Section A-32, "Medical Care – Payments to Providers 0147" provides funding to increase the reimbursement rates by 3% beginning July 1, 2015. Part UUUU, Section UUUU-1, "Medical Care – Payments to Providers 0147" provides additional funding to increase that rate from 3% to 4%.

Given that the budget approved the rate increase as of July 1, 2015, the Department's adoption of this rule makes the rate increases retroactively effective to July 1, 2015. The Department has authority for the retroactive effective date under 22 MRS §42(8) because these changes increase reimbursement for providers, ensure that members have access to medically necessary covered services, and otherwise have no adverse impact on either MaineCare providers or members.

Fiscal impact of rule:

The Department expects that this rule-making, in conjunction with an emergency rule adoption to implement the rule immediately, will cost the Department approximately $82,987 in SFY 2016.

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Rules Adopted January 1, 2016 to December 31, 2016
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; PL 2015 Parts A & UU; LD 87
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 67**, Principles of Reimbursement for Nursing Facilities
Filing number:	**2016-024**
Effective date:	2/15/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This rule change implements the following:

1. Increase the final prospective rate from 95.12 percent to 97.44 percent;
2. Include the cost of continuing education for direct care staff as a direct care cost component rather than a routine cost component.

These changes are being done in order to comply with PL 2015 ch. 267, Part A, and LD 87, *An Act To Implement the Recommendations of the Commission to Continue the Study of Long-term Care Facilities.* If the Centers for Medicare and Medicaid Services (CMS) approves, the final prospective rate increase will be effective retroactive to July 1, 2015.

Basis statement:

The Department of Health and Human Services ("Department") adopts this rule to effectuate the following changes:

(1) Increase the final prospective per diem rate to be paid to each facility by increasing the reimbursement calculation, excluding fixed costs, from 95.12 percent to 97.44 percent of all of the calculated direct care cost components and all of the routine cost components; and

(2) Include the cost of continuing education for direct care staff as a direct care cost component rather than a routine cost component.

The Department is adopting these changes pursuant to the State's biennial budget, Public Law 2015 ch. 267 Part A, and Resolves 2015 ch. 34, *Resolve, To Implement the Recommendations of the Commission to Continue the Study of Long-term Care Facilities.* Inadequate resources have made it challenging, particularly for small rural facilities, to stay in business and continue to provide essential long-term services to their communities. Further, the adoption of this rule-making is necessary to ensure funding to nursing facilities in rural and underserved areas in the state.

The Department is seeking approval from the Centers for Medicare and Medicaid Services (CMS) for a State Plan Amendment for these changes. If CMS approves, the final prospective rate increase and the cost of continuing education for direct care staff as a direct care cost component will be effective retroactive to July 1, 2015.

The Department is authorized to adopt these changes retroactively under 22 MRS §42(8) because these changes increase reimbursement for providers, ensure that members have access to medically necessary covered services, and otherwise have no adverse impact on either MaineCare providers or members.

Fiscal impact of rule:

For Fiscal Year 2016, there will be a General Fund cost of $9,522,360 and federal expenditures of $15,850,303. For Fiscal Year 2017, there will be a General Fund cost of $9,532,078 and federal expenditures of $16,002,554.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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 MRSA §§ 42(8), 3173; Resolves 2015 ch. 45; PL 2015 ch. 267 Parts A (Section A-32), UU
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 97**, Private Non-Medical Institution Services
Filing number:	**2016-038**
Effective date:	3/8/2016
Type of rule:	Major Substantive
Emergency rule:	Yes

Principal reason or purpose for rule:

These changes are being done in order to comply with:

1) Resolves 2015, ch. 45 *Resolve, To Require the Department of Health and Human Services to Provide Supplemental Reimbursement to Residential Care Facilities in Remote Island Locations.*

2) In addition, this rule-making increases the Private Non-Medical Institutions' (PNMI) assisted living reimbursement rate for Appendix C and F PNMIs by four (4) percent pursuant to PL 2015 ch. 267 Parts A (Section A-32) & UU.

The Department shall seek approval from the federal Centers for Medicare and Medicaid Services (CMS) for a State Plan Amendment. Pursuant to 22 MRSA §42(8), if CMS approves, the supplemental payment for PNMI C facilities that satisfy the definition of "remote island facility" will be effective retroactive to October 1, 2015. A Reimbursement Methodology Notice was published on September 30, 2015.

The increase for Appendix C and F PNMIs' assisted living reimbursement to four (4) percent will be effective retroactive to July 1, 2015. A Reimbursement Methodology Notice was published on August 7, 2015.

This emergency major substantive rule will remain in effect for up to one year or earlier if the Legislature approves the provisionally adopted major substantive rule.

Basis statement:

The Department of Health and Human Services (the "Department") adopts this emergency major substantive rule to increase reimbursement for Appendix C, Private Non-Medical Institutions (PNMI) located in remote island locations and to increase Appendix C and F PNMIs' assisted living reimbursement rate by four (4) percent.

Pursuant to Resolves 2015, ch. 45, *Resolve, To Require the Department of Health and Human Services to Provide Supplemental Reimbursement to Residential Care Facilities in Remote Island Locations*, eligible Appendix C PNMIs will receive supplemental payment representing a fifteen (15) percent rate increase from their MaineCare reimbursement rate effective retroactive to October 1, 2015. This increase will apply only to facilities located on an island not connected to the mainland by a bridge.

In addition, pursuant to PL 2015 ch. 267 Parts A (Section A-32) & UU, this rule-making seeks to increase Appendix C and F PNMIs' assisted living reimbursement rate by four (4) percent, effective retroactive to July 1, 2015.

The Department shall seek approval from the federal Centers for Medicare and Medicaid Services (CMS) for a State Plan Amendment for these changes. If CMS approves, the fifteen (15) percent supplemental payments to Appendix C remote island facilities will be effective retroactive to October 1, 2015. The Department published a notice of change of reimbursement methodology, pursuant to 42 CFR §447.205, on September 30, 2015.

Appendix C and F PNMIs' assisted living reimbursement rate increase of four (4) percent will be effective retroactive to July 1, 2015. The Department published a change in reimbursement methodology on August 7, 2015.

To implement the rate increase for PNMIs, the budget authorized the Department to adopt emergency rules pursuant to 5 MRSA §8054 "without the necessity of demonstrating that immediate adoption is necessary to avoid a threat to public health, safety or general welfare." Part UU Sec. UU-1.

The Department has authority for the retroactive effective dates under 22 MRSA §42(8) because these changes increase reimbursement for providers, ensure that members have access to medically necessary covered services, and otherwise have no adverse impact on either MaineCare providers or members.

This emergency major substantive rule adoption for 10-144 CMR ch. 101, *MaineCare Benefits Manual*, Ch. III Section 97, “Private Non-Medical Institution Services” will remain in effect for up to one year or earlier if the Legislature approves the provisionally adopted major substantive rule, pursuant to 5 MRSA §8073(3).

Fiscal impact of rule:

The Department expects that this rule-making will cost the Department approximately $8,855,344.91 in SFY 2016 including $3,643,910.92 in State dollars and $8,859,678.36 in SFY 2017 including $3,629,368.28 in State dollars.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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 MRSA §§ 42(8), 3173; PL 2015 ch. 267 Parts A (Section A-32) and UU (Section UU-1)
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 19**, Home and Community Benefits for the Elderly and for Adults with Disabilities
Filing number:	**2016-043**
Effective date:	3/15/2016
Type of rule:	Routine Technical
Emergency rule:	No

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

Basis statement:
In conjunction with the development of the state's biennial budget, the Department of Health and Human Services (Department) is adopting an increase to the reimbursement rate for providers of Attendant Care Services and Personal Care Services in the *MaineCare Benefits Manual*, Ch. III Section 19, "Home and Community Benefits for the Elderly and for Adults with Disabilities". The Department is also adopting an increase to the monthly limits in Ch. II for members' Section 19 services so that no member is penalized as a result of these rate increases. The Maine State Legislature approved these increases when it enacted the budget, PL 2015 ch. 267 (702 – LD 109) (Sec. A-32). On June 30, 2015, the Legislature voted to override the Governor's veto of the budget, with the budget becoming effective on July 1, 2015.

Pursuant to 5 MRS §8054 and to Part UU Sec. UU-1 of the budget, the Department filed these emergency rule changes for Section 19 Ch. II and III, on October 28, 2015, and effective retroactive to July 1, 2015. To prevent lapse of the emergency rule changes, which are effective for ninety (90) days, the Department simultaneously engaged in routine rule-making pursuant to 5 MRS §8052 and filed a rule proposal with the Secretary of State on October 28, 2015.

In addition to implementing the rate changes resulting from the budget, the Department also updated the Adult Day Health Services rate through the routine rule-making to be consistent with other Departmental rules.

The Department held a public hearing on the rule proposal on December 1, 2015, and accepted written comments until the December 10, 2015, comment deadline. No changes to the proposed rule resulted from these comments.

In Ch. III Section 19, the Department now adopts an increase to: (1) Attendant Care Services (Personal Care Services, Participant Directed Option), billing code S5125, from $2.93 per quarter hour to $3.21 per quarter hour; and (2) Personal Care Services (Agency PSS), billing code T1019, from $3.75 per quarter hour to $4.10 per quarter hour. In Ch. II Section 19.06(A), the Department adopts an increase in the monthly program cap from $4,200/month per member to $4,603/month per member.

Given that the budget was effective on July 1, 2015, the Department adopts these changes retroactive to July 1, 2015. The Department has authority to do so under 22 MRS §42(8), because these changes increased reimbursement for providers, ensuring that members have access to medically necessary covered services, and otherwise have no adverse impact on either MaineCare providers or members.

In addition to these rate changes resulting from the budget, the Ch. III rule adoption also increases the rate for Adult Day Health Services, billing code S5100, from $2.34 to $3.14

per quarter hour, retroactive to November 1, 2014. *See* 22 MRS 42(8). The increase in Adult Day Health Services assures consistency with the rates for the same service provided under Section 26, "Day Health Services", of the *MaineCare Benefits Manual*, as well as under the state-funded Office of Aging and Disability Services rule, 10 CMR 149 Ch. 5 Section 61, "Adult Day Services". To avoid adversely impacting members, costs for Section 19, "Adult Day Health Services" will no longer be counted towards the monthly program cap in Ch. II effective retroactive to November 1, 2014.

Section 19 services are governed by a Section 1915(c) waiver approved by the Centers for Medicare and Medicaid Services (CMS). The Department is in the process of submitting a waiver amendment for approval by CMS that reflects these rate increases.

The Department has made no substantive changes from the rule proposal to this adoption, however the rule adoption encompasses some minor technical edits as outlined in the Summary of Comments document. For example, the rule proposal inadvertently deleted inapplicable language in the header of the previously adopted version of the rule (effective December 15, 2014) without indicating that language as stricken. That language regarding past rule changes being dependent upon approval by CMS is now included but stricken in the redline version of the adopted rule, as CMS has since approved those changes made in December 2014.

Fiscal impact of rule:

The Department expects that this rule-making will cost an additional $883,727.00 in state funding annually.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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 MRSA §§ 42(8), 3173
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 17**, Community Support Services, *and* Allowances for Community Support Services
Filing number:	**2016-048**
Effective date:	3/22/2016
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 this rule to effectuate the following changes:

1) The Table of Contents has been updated to reflect new page numbers and includes 17.01-18, Primary Diagnosis.

2) List of Definitions includes:

a. Primary Diagnosis, 17.01-18 which reads "for the purposes of this policy, primary diagnosis shall mean the diagnosis that results in qualifying functional deficits." In response to public comments, Primary Diagnosis has been added to clarify 17.02-3 Specific Requirements for eligibility.

b. 17.01-5, Clinician reads "is an individual appropriately licensed or certified in the state or province in which he or she practices, practicing within the scope of that licensure or certification, and qualified to deliver treatment under this section. A clinician includes the following: licensed clinical professional counselor (LCPC); licensed clinical professional counselor-conditional (LCPC-conditional); licensed clinical social worker (LCSW); licensed master social worker conditional (LMSW-conditional clinical); physician; psychiatrist; advance practice registered nurse psychiatric and mental health practitioner (APRN-PMH-NP); advance practice registered nurse psychiatric and mental health clinical nurse specialists (APRN-PMH-CNS); physician assistant (PA); or licensed psychologist." Clinical has been removed from Licensed Clinical Psychologist as it appeared in the proposed language, as suggested by a commenter.

c. 17.01-21, Substance Abuse Counselor reads "means an individual who is licensed by the Maine State Board of Alcohol and Drug Counselors as a Certified Alcohol and Drug Counselor (CADC), Licensed Alcohol and Drug Counselor (LADC); or an Advanced Practice Registered Nurse (APRN), Licensed Physician (MD or DO), Physician Assistant (PA), Licensed Psychologist, Licensed Clinical Social Worker (LCSW), Licensed Clinical Professional Counselor (LCPC), or Licensed Marriage and Family Therapist (LMFT), who has a minimum one (1) year of clinical experience providing substance abuse treatment. Physician Assistant has been added to this definition based on public comment.

3) 17.02-3(A)(2)(a), Specific Requirements for Eligibility reads "has a written opinion from a clinician, based on documented or reported history, stating that he/she is likely to

have future episodes, related to mental illness, with a non-excluded DSM 5 diagnosis, that would result in or have significant risk factors of homelessness, criminal justice involvement or require a mental health inpatient treatment greater than 72 hours, or residential treatment unless community support program services are provided; based on documented or reported history; for the purposes of this section, reported history shall mean an oral or written history obtained from the member, a provider or caregiver; or…". The additional language of "significant risk factors" and "reported history" have been included to clarify eligibility criteria based on comments made.

4) 17.02-3(A)(2)(f), As a result of comments, the Department changed the eligibility criteria to make it a less restrictive criteria (more generous to recipients). The changed provision, reads "until the age of 21, the recipient was eligible as a child with severe emotional disturbance, and the recipient has a written opinion from a clinician, in the last 12 months, stating that the recipient had risk factors for mental health inpatient treatment or residential treatment, unless ongoing case management or community support services are provided." The proposed language, read "and the recipient has a written opinion from a clinician, in the last 12 months, stating that he/she is reasonably likely to have future episodes requiring mental health inpatient or residential treatment, unless ongoing case management or community support services are provided," and thus was more restrictive.

5) 17.02-3(B), reads: "Has significant impairment or limitation in adaptive behavior or functioning directly related to the primary diagnosis and defined by the LOCUS or other acceptable standardized assessment tools approved by the Department." This language was added to clarify the need for significant impairment or limitation in adaptive behavior or functioning as it relates to the primary diagnosis.

6) 17.02-4(C), now reads: "For Community Integration Services only, verify that a member meets specific Eligibility Requirements under 17.02-3 within thirty (30) days of the start date of services. If Eligibility Verification is not submitted by close of business on day thirty (30), MaineCare will cease paying for services, under this section, on day thirty one (31)." In response to public comments indicating that the proposed language was confusing additional language has been included.

7) 17.04-3, Assertive Community Treatment (Medication services), now reads: "capacity to administer medications daily in a member's home or community by an appropriately licensed/certified ACT team. In response to public comment "CRMAs are allowed to administer medications as delegated by the RN or other licensed medical providers" has been removed.

8) 17.07-1(B), now reads: "A psychologist who is a licensed psychologist by the Maine Board of Examiners of Psychologists or by the state or province where services are provided, as documented by written evidence from that Board." Proposed language read "a licensed clinical psychologist", clinical has been removed in response to public comment.

9) 17.07-1(J), now reads: "A registered nurse, under the direction of a psychiatrist, who is a graduate of an accredited nursing program and holds a valid license to practice in the state or province in which services are to be provided." Proposed language read "a registered nurse, under the supervision of a psychiatrist". In response to public comment "under the supervision" has been changed to "under the direction of".

10) Changing the eligibility so that individuals with a sole diagnosis of either autism or intellectual disability ("neurodevelopmental disorders"), are no longer eligible for Section 17 services. However, individuals with neurodevelopmental disorders who also have a qualifying or co-occurring diagnosis, would remain eligible for Section 17 services.

11) Deletion of AMHI Consent Decree Class Member as a stand-alone criterion for eligibility to receive Community Integration services.

12) Deletion of Intensive Case Management as a covered service.

13) Exceptions for face to face visit requirements members through Assertive Community Treatment includes:

- **a.** All attempts to reach and meet with the member, including if the member was unavailable or the contact occurred through a closed door.
- **b.** Contacts to transition the member to another level of care.
- **c.** Variations in the number of weekly face-to-face contacts i.e. two (2) contacts in one week and four (4) the next.

In response to public comment, "contacts assessed to be clinically inappropriate" has been removed as an exception.

Changes made to the eligibility for Section 17 services were made so that only those individuals for whom Section 17 was clinically appropriate would be eligible for the service. Section 17 services are designed to serve those most in need of intensive support. The Department believes that some of the individuals currently receiving Section 17 services are more appropriately served under other sections of the MaineCare manual, such as Section 65 ("Behavioral Health Services"), or Section 21 ("Home and Community Benefits for Members with Intellectual Disabilities or Autistic Disorder"), Section 29 ("Support Services for Adults with Intellectual Disabilities or Autistic Disorders"), or Section 92 ("Behavioral Health Homes").

The Department carefully evaluated the need for changes to the Section 17 rule and spent nearly a year meeting with a group that included a psychiatrist and other clinicians. The Department spent a great deal of time reviewing and discussing clinical criteria for the appropriate treatment of individuals with severe mental illness and concluded that treating individuals with mild or moderate mental illness (individuals with conditions such as anxiety, mild or moderate depression, and PTSD) with the types of community supports provided in Section 17 is not clinically appropriate and can even be counter indicated. These individuals are better served with counseling and/or medication, and those services are available in Section 65, or through the holistic support provided in the behavioral health home model, Section 92. Individuals with severe and persistent mental illness do benefit from intensive community supports, and they will remain eligible for these Section 17 services. The Department determined that it was in the best interest of the MaineCare population to make these changes to the eligibility criteria. As such, the Department tailored the eligibility criteria to meet the needs of individuals for whom Section 17 is clinically appropriate.

Intensive Case Management services were deleted because the Department determined, after conducting studies, that this service was not being utilized. Case management services continue to be available under Section 13.

The Department deleted the status of an AMHI Consent Decree class member as a stand-alone criterion for eligibility for Section 17 "Community Integration Services", because that is not a standard recognized or authorized in federal Medicaid law or regulation. It is likely that that there will be many Consent Decree class members who will remain eligible for Section 17 Community Integrity services. For those class members who will no longer be eligible for Section 17 Community Integration services, the Department acknowledges its duty to provide services required under the Consent Decree, as provided and funded through non-MaineCare state contracts.

The fiscal impact of this rule-making is largely indeterminable. While the Department is unable to estimate how many recipients will no longer be eligible for Section 17 services because of these rule changes, the Department also cannot accurately predict how many of those recipients will seek out other services, most notably Section 92, "Behavioral Health Homes" and Section 65, "Behavioral Health Services", or Section 29 "Home and Community Benefits for Members with Intellectual Disability or Autistic Disorder". In addition, as regards the Consent decree, if individuals in this group do not meet Section 17 Community Integration eligibility criteria, they will no longer be eligible for Section 17 Community Integration services.

However they would remain eligible to receive Community Integration services, as required by the Consent decree, and as provided and funded through non-Medicaid state contracts.

It is anticipated that this rule-making will not impose any costs on municipal or county governments, or on small businesses employing fewer than twenty employees.

Fiscal impact of rule:

The fiscal impact of this rule-making is largely indeterminable. While the Department anticipates that approximately 8,000 individuals will no longer be eligible for Section 17 services, the Department is unable to determine what percentage of these individuals will seek out other services, most notably Section 92, “Behavioral Health Homes”, and Section 65, “Behavioral Health Services”.

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Rules Adopted January 1, 2016 to December 31, 2016
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(8), 3173, 8054; Resolves 2015 ch. 45
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 2**, Adult Family Care Services
Filing number:	**2016-059**
Effective date:	4/5/2016
Type of rule:	Routine Technical
Emergency rule:	Yes

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

Basis statement:
The Department of Health and Human Services (the "Department") adopts this emergency rule to increase reimbursement for Adult Family Care Homes located in remote island locations.

These changes are being done in order to comply with: Resolves 2015 ch. 45 *Resolve, To Require the Department of Health and Human Services to Provide Supplemental Reimbursement to Adult Family Care Homes in Remote Island Locations.* This law went into effect on July 12, 2015 without the Governor's signature.

The Department is seeking approval from the Centers for Medicare and Medicaid Services (CMS) for a State Plan Amendment. Pursuant to 22 MRSA §42(8), if CMS approves, the supplemental payment for Adult Family Care Homes that satisfy the definition of "remote island facility" will be effective retroactive to October 1, 2015. A Change in Reimbursement Methodology Notice was published on September 30, 2015.

Resolves 2015, ch. 45 provided that the Department is authorized to adopt these changes on an emergency basis, without demonstrating emergency findings pursuant to 5 MRSA §8054. Following the adoption of these emergency rule changes, the Department shall proceed with "regular" proposed routine technical rulemaking in order to make these changes permanent.

Fiscal impact of rule:
The Department expects that this rulemaking will cost the Department $6,421.00 in State dollars in SFY 2016, and $7,004.72 in State dollars in SFY 2017.

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Rules Adopted January 1, 2016 to December 31, 2016
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
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. I Section 1**, General Administrative Policies and Procedures
Filing number:	**2016-063**
Effective date:	4/16/2016
Type of rule:	Routine Technical
Emergency rule:	No

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

Basis statement:
This adopted rule removes the Telehealth section (1.06-2) from Ch. 101, *MaineCare Benefits Manual*, Ch. 1 Section 1, "General Administrative Policies and Procedures", concurrent with the implementation of Ch. 101, *MaineCare Benefits Manual*, Ch. I Section 4, "Telehealth Services".

Fiscal impact of rule:
The fiscal impact associated with this rule-making is accounted for in the Telehealth rule-making.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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; Resolve 2015 ch. 105
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. I Section 4** *(New)*, Telehealth Services
Filing number:	**2016-064**
Effective date:	4/16/2016
Type of rule:	Routine Technical
Emergency rule:	No

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

Basis statement:
This adopted rule provides a new standalone Telehealth policy, as opposed to a subsection of Ch. I Section 1, as it was previously. Current MaineCare policy in Ch. I Section 1.06-2, allows a limited group of providers to provide services remotely to patients through the use of telehealth, which is defined as "the use of electronic communication by a health care provider to deliver clinical services at a distance for the purpose of diagnosis, disease monitoring, or treatment." MaineCare staff and MaineCare providers have found the current telehealth policy to be too restrictive. Providers have found it difficult to obtain approval for telehealth in some cases, and staff has found it challenging to implement a consistent system of review. This rule will be effective upon the repeal of the current telehealth rule (Ch. I Section 1.06-2).

This rule is adopted in order to comply with LD 1596, which was passed by the Legislature in 2014. LD 1596 directed the Department to "convene a working group to review the MaineCare rules regarding the definition of telehealth and the technologies used for provider patient interaction involving MaineCare patients" and to make according changes to MaineCare policy.

MaineCare staff convened a workgroup consisting of providers, industry stakeholders, advocates, and lawmakers. The group met several times over late spring and summer 2014, and a draft policy was written based on the feedback provided by the group and upon extensive research conducted by MaineCare staff. The drafted policy combined stakeholder recommendations with industry best practices. A working draft of the policy was submitted to the stakeholder group for comments in fall 2014, and the comments were compiled in written form and responded to by MaineCare staff.

The major components of the new telehealth rule are as follows:

1. Removes the prior approval process for use of telehealth;
2. Allows telehealth for all medically necessary services that can be delivered remotely at comparable quality;
3. Provides for an "originating site fee" to be paid to the site housing the patient, while the remote, or provider site, bills for the services rendered;
4. Provides for visual/audio, or, if video/audio is not available, the provision of telephonic services;
5. Requires providers to use secure, HIPAA compliant equipment; and;
6. Requires member choice, written informed consent, and member education.

In addition to Interactive Telehealth Services, the policy also provides for a new service known as "Telemonitoring." Telemonitoring provides electronic communication between a member and healthcare provider whereby health-related data is collected, such as pulse and

blood pressure readings that assist healthcare providers in monitoring and assessing the member's medical conditions. Telemonitoring takes place in the home environment. Home Health agencies deliver Telemonitoring Services. In order to be eligible, a member must have had two or more hospitalizations or emergency department visits related to their diagnosis in the past calendar year, or have continuously received telemonitoring services during the past calendar year and have a continuing need for such services, as documented by an annual note from a licensed healthcare provider.

Fiscal impact of rule:

This rule-making is estimated to result in a total cost savings in SFY 2016 of $687,087, including $256,489.58 state dollars and a total cost savings in SFY 2017 of $2,637,328, including $984,514.54 state dollars.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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(8), 3173; Resolve 2015 ch. 50
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 12**, Allowances for Consumer Directed Attendant Services
Filing number:	**2016-068**
Effective date:	4/18/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The purpose of the rule is to comply with Resolve 2015 ch. 50 which requires the Department to increase the reimbursement rate for Attendant Care Services provided under the provisions of 10-144 CMR ch. 101, *MaineCare Benefits Manual*, Ch. III Section 12. The Department shall seek approval from the federal Centers for Medicare and Medicaid Services (CMS) for a State Plan Amendment for this change. Pursuant to 22 MRS §42(8), if CMS approves, the increased reimbursement rates will be effective retroactive to October 1, 2015. The Department published a notice of change in reimbursement methodology, pursuant to 42 CFR §447.205, on September 30, 2015.

In addition to the rate increase, the Department removes from Section 12, Ch. III references Levels I, II, and III for Attendant Care Services (procedure codes S5125, S5125 TF and S5125 TG), since a single procedure code (S5125 U2) is used for all three levels of service. The three Levels of Care are based on the hours of need, as determined by the assessment process, and remain referenced in Ch. II Section 12.

Finally, pursuant to 5 MRS §8052(6), the Department proposes to remove the references to the Maine Integrated Health Management Systems (MIHMS), which was implemented on September 1, 2010. Procedure codes H2014, G9001, and G9002 have been utilized since that time.

Basis statement:

The Department of Health and Human Services (Department) adopts this rule to effectuate the following changes to Ch. III Section 12, "Allowances for Consumer Directed Attendant Services":

(1) Increase the reimbursement rate for Attendant Care Services to $2.93 per quarter hour.
(2) Removal references to Levels I, II, and III for Attendant Care Services (procedure codes S5125, S5125 TF, and S5125 TG), since a single procedure code (S5125 U2) is used for all three levels of service. The three levels of care are based on the hours of need, as determined by the assessment process, and they remain referenced in Ch. II Section 12.
(3) Removal of the reference to the Maine Integrated Health Management Solution (MIHMS), which was implemented on September 1, 2010. Procedure codes H2014, G9001, and G9002 have been utilized since that time.

The Department is adopting these rate changes pursuant to Resolves 2015 ch. 50, *To Increase the Reimbursement Rate for Direct-care Workers Serving Adults with Long-term Care Needs,* which provides funding and requires the Department to amend Ch. III Section 12, "Allowances for Consumer Directed Attendant Services".

The Department is seeking approval from the Centers for Medicare and Medicaid Services (CMS) for a state plan amendment for these changes. If CMS approves, the increased reimbursement rates will be effective retroactive to October 1, 2015. The Department

published a notice of change in reimbursement methodology, pursuant to 42 CFR §447.205, on September 30, 2015.

The Department is authorized to adopt these changes retroactively under 22 MRS §42(8) because these changes increase reimbursement for providers, ensure that members have access to medically necessary covered services, and otherwise have no adverse impact on either MaineCare providers or members.

The Department estimates that the General Fund impact for these changes is $125,000 in SFY 2016 and $125,000 in SFY 2017, and estimates federal expenditures of $208,067 in SFY 2016 and $209,851 in SFY 2017.

This rule-making will not impose any costs on municipal or county governments, or on small businesses employing fewer than twenty employees.

Fiscal impact of rule:

The Department expects that this rule-making will cost the Department approximately $333,067 in SFY 2016 including $125,000 in State dollars and $334,851 in SFY 2017 including $125,000 in State dollars.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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(8), 3173; 5 MRS §8054
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 65**, Behavioral Health Services
Filing number:	**2016-098**
Effective date:	retroactive to 3/22/2016
Type of rule:	Routine Technical
Emergency rule:	Yes

Principal reason or purpose for rule:

The Department is adding coverage of Mental Health Psychological Clubhouse Services and Specialized Group Services to Section 65 on an emergency basis so as to avoid an immediate and adverse impact on the general welfare of members who stand to lose coverage of these services due to recent changes in the Section 17 eligibility criteria.

Basis statement:

The Department of Health and Human Services adopts this emergency rule to transition coverage and reimbursement of two services to Section 65, "Behavioral Health Services", from Section 17, "Community Support Services".

First, this adoption adds coverage to Ch. II Section 65 for Mental Health Psychosocial Clubhouse Services. These services are currently part of Ch. II Section 17's "Day Support Services". In transitioning the Clubhouse Services to Section 65, the Department has decided to separate these particular services from other Day Supports Services. This rule-making also replaces the per-hour Behavioral Health Day Treatment HCPCS procedure code (H2012) utilized in Ch. III Section 17 with the more appropriate per-fifteen minute Mental Health Clubhouse Services HCPCS procedure code (H2030). Reimbursement rates to providers of Clubhouse Services will not be impacted in transitioning from the more general per-hour code to a more specific per-fifteen minute code.

Second, this adoption adds coverage of Specialized Group Services to Ch. II Section 65. These services are currently covered under Ch. II Section 17. This rule-making also adopts reimbursement rates in Ch. III Section 65 that mirror those set forth in Ch. III Section 17.

In adding coverage of these two services to Section 65, the Department has also incorporated a few minor changes to the Ch. II rule, including: adding new definitions related to these services and updating formatting and numbering as a result of the changes.

This Section 65, "Behavioral Health Services" emergency rule-making is precipitated by recent changes to Section 17, "Community Support Services", and is necessary to prevent barriers to services for members that would pose an immediate threat to their general welfare. Specifically, effective March 22, 2016, the Department adopted clinical criteria changes to Section 17, and the Department has determined that some members may no longer be able to access Mental Health Psychosocial Clubhouse Services or Specialized Group Services under Section 17. Recognizing the clinical importance of these services for appropriate members, these services are being transitioned to Section 65 as an emergency measure.

To avoid any lapse in coverage for members who receive Clubhouse and Specialized Group Services, the Department is adopting changes to Ch. II and III Section 65 on an emergency basis and retroactive to March 22, 2016 (the effective date of the Ch. II and III Section 17 rule adoption). 22 MRS §42(8). This emergency rule shall then be effective for ninety (90) days from the date of adoption. 5 MRS §8054(3). To prevent a lapse in this rule and

these services following the expiration of the emergency period, the Department is concurrently engaging in the routine rule-making process for this rule.

Fiscal impact of rule:

The Department anticipates that this rule-making will cost approximately $402.83 in FFY 2016, which includes $150.38 in state dollars and $252.45 in federal dollars, and $1,611.31 in FFY 2017, which includes $580.88 in state dollars and $1,030.43 in federal dollars.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 4**, Ambulatory Surgical Center Services
Filing number:	**2016-101**
Effective date:	6/15/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The Department is aligning ASC policy with the current reimbursement methodology of the all-inclusive rate defined by the outpatient prospective payment system (OPPS) by the Centers for Medicare and Medicaid Services (CMS). This includes clarification on what in included in the all-inclusive rate, what is paid separately under the OPPS, and what is non-covered. The Department is also reimbursing physicians or other qualified providers at the facility rate listed in the MaineCare Fee Schedule for services delivered in ASCs. This is in recognition that ASCs are facilities and that the facility portion of the service is reimbursed through the all-inclusive rate.

CMS-defined all-inclusive rates include prosthetic devices that are considered integral to covered surgical services; therefore, MaineCare will no longer reimburse ASCs separately for prosthetic devices that are outside of the all-inclusive rate for covered surgical procedures. Language is added to Section 4.04(B), "Ancillary Services", to reflect that certain radiology services are eligible for separate payment under the OPPS. Section 4.05, "Non-covered Services", is amended to clarify that per CMS determination, surgeries performed in ASCs are not expected to result in extensive blood loss; when there is a need for blood products, MaineCare considers this a facility service and no separate charge is permitted. Language is also added to describe in more detail which services and supplies are non-covered and where else these services may be covered in the MBM.

This rule-making also adds a general description of which surgical procedures are approved for delivery in an ASC, deletes components of the all-inclusive rate that were listed twice, more closely aligns reimbursement language with the CMS approved State Plan Amendment, removes the disclaimer that the section is dependent upon approval from CMS because approval has been granted, updates the MaineCare provider website URL, and makes minor formatting edits.

Basis statement:

This rule-making more closely aligns Ambulatory Surgical Center policy with the reimbursement methodology used by the Centers for Medicare and Medicaid Services (CMS). Specifically, MaineCare will no longer reimburse ASCs separately for prosthetic devices that are outside of the all-inclusive rate for covered surgical procedures, as defined by CMS. Members may procure any additional medically necessary prosthetics that are not included in the all-inclusive rate through a durable medical equipment provider, physician, or other appropriately licensed provider in accordance with the applicable section of the *MaineCare Benefits Manual* (MBM). Language is also added to Section 4.04(B), "Ancillary Services", to reflect that certain radiology services are eligible for separate payment under the outpatient prospective payment system (OPPS). Section 4.05, "Non-Covered Services", is amended to clarify that surgeries performed in ASCs are not expected to result in extensive blood loss.

When there is a need for blood products, MaineCare considers this a facility service and no separate charge is permitted.

This rule-making also adds a general description of which surgical procedures are approved for delivery in an ASC, deletes components of the all-inclusive rate that were listed twice, more closely aligns reimbursement language with the CMS approved State Plan, removes the disclaimer that the section is dependent upon approval from CMS because approval has been granted, further clarifies which services and supplies are Non-Covered Services under this section, and where else these services may be covered in the MBM, updates the MaineCare provider website URL, and makes minor formatting edits.

As part of this rule-making, physicians delivering covered services in an ASC will be reimbursed for their professional services at the "facility rate" listed in the MaineCare Fee Schedule (https://mainecare.maine.gov/) under MBM, Section 90, "Physician Services".

As a result of public comments, the adopted rule-making improved language around physician reimbursement to clarify that physician and anesthetists professional services are still separately billable under MBM, Section 90, "Physician Services". In addition, the Department added citations to the *Code of Federal Regulations* to assure that the Department's interpretation of "implantable prosthetic devices" will be aligned with CMS.

Fiscal impact of rule:

There is a minimal estimated cost savings due to the reimbursement reduction for physician services delivered in the ASC is $26,063 in SFY 2017, including, $9,729 in State dollars. The other changes in this rule-making are not estimated to carry any costs or cost savings.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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 §3173; Resolves 2015 ch. 45
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 2**, Adult Family Care Services
Filing number:	**2016-105**
Effective date:	6/22/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This change is being done in order to comply with Resolves 2015 ch. 45, *Resolve, To Require the Department of Health and Human Services to Provide Supplemental Reimbursement to Adult Family Care Homes in Remote Island Locations*. This law went into effect on July 12, 2015 without the Governor's signature.

The Department is seeking approval from the Centers for Medicare and Medicaid Services (CMS) for a State Plan Amendment. Pursuant to 22 MRS §42(8), if CMS approves, the supplemental payment for Adult Family Care Homes that satisfy the definition of "remote island facility" will be effective retroactive to October 1, 2015. A Change in Reimbursement Methodology Notice was published on September 30, 2015.

Basis statement:

The Department of Health and Human Services (the "Department") adopts this rule to increase the reimbursement for Adult Family Care Homes located in remote island locations.

These changes comply with Resolves 2015 ch. 45: *Resolve, To Require the Department of Health and Human Services to Provide Supplemental Reimbursement to Adult Family Care Homes in Remote Island Locations.* This law went into effect on July 12, 2015 without the Governor's signature. This rule effectuates supplemental payment to representing fifteen (15) percent rate increase, from the MaineCare rate, to Adult Family Care Homes that satisfy the definition of a "remote island facility".

The Department is seeking approval from the Centers for Medicare and Medicaid Services (CMS) for a State Plan Amendment for these changes. Pursuant to 22 MRS §42(8), if CMS approves, the supplemental payment for Adult Family Care Homes that satisfy the definition of "remote island facility" will be effective retroactive to October 1, 2015. A Change in Reimbursement Methodology Notice was published on September 30, 2015.

This rule-making adopts changes that have already been in effect since April 5, 2016, pursuant to emergency rule-making authorized by Resolves 2015 ch. 45 and 5 MRS §8054. This rule-making adoption avoids a lapse in the rule by implementing the identical changes effective June 22, 2016.

Fiscal impact of rule:

The Department expects that this rule-making will cost the Department approximately $13,944.90 in SFY 2016 including $6,421.00 in State dollars and $15,212.61 in SFY 2017 including $7,004.72 in State dollars.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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; 22 MRS §3174-WW; PL 2015 ch. 267 Part A; "Patient Protection and Affordable Care Act", PL 111-148 Section 6505
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 90**, Physician Services
Filing number:	**2016-124**
Effective date:	7/20/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The Department adopts numerous changes to Section 90, "Physician Services" in order to align with Centers for Medicare and Medicaid Services ("CMS") requirements, comply with recently passed state and federal laws (PL 2015 ch. 267 Part A) *An Act to Reduce Tobacco-related Illness and Lower Health Care Costs in MaineCare* (22 MRS §3174-WW); *Patient Protection and Affordable Care Act*, PL 111-148, Section 6505), ensure alignment with state licensing laws, provide additional clarification to service descriptions and coverage limits, and remove limits and other restrictions for specific behavioral and physical health services.

Basis statement:

The Department is adopting this rule in order to more closely align with Centers for Medicare and Medicaid Services ("CMS") requirements, comply with recently passed state and federal laws, align services and limits across the *MaineCare Benefits Manual* (MBM), align with state licensing laws, provide additional clarification to service descriptions and coverage limits, and remove limits and other restrictions for specific behavioral and physical health services. Changes include revisions made as a result of public comments.

Fiscal impact of rule:

Four components of this rulemaking change may have a financial impact. First, the increase in primary care payments is estimated to result in a total cost in SFY 2016 of $8,103,233, including $2,992,924 State dollars, and a total cost in SFY 2017 of $8,103,233, including $2,977,173 State dollars. The removal of certain limits on psychiatric services, the increased coverage for tobacco cessation treatment, and the allowance of medical providers to deliver select oral health services are expected to result in a minimal increase in costs.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 15**, Chiropractic Services
Filing number:	**2016-129**
Effective date:	8/1/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This rule is being adopted in order to update current billing practices by removing the basic value language that utilizes the units system and replacing the units with rates. Additionally, chiropractic codes will be updated to align with current 2016 CPT codes. These changes include the elimination of code 72090 with the addition of codes 72081, 72082, 72083, and 72084.

Basis statement:

This rule is being adopted to update current billing practices by removing the basic value language that utilizes the units system and replaces the units with rates. The Department converted Medicaid Management Information Systems (MMIS) on September 1, 2010 and implemented the direct rates referenced in Ch. III. Previous to the MMIS system conversion, providers of chiropractic services were reimbursed for radiology serves based on the basic value multiplied by the number of units. The Department sought to clarify the reimbursement for these services by using solely the CPT codes. The providers' reimbursement shall not be negatively impacted.

Additionally, chiropractic codes were updated to align with current 2016 CPT codes in accordance with 45 CFR §§ 162.1000, 162.1002, 162.1011 and the *National Correct Coding Initiative Policy Manual for Medicare Services*, C.M.S. These changes include the elimination of code 72090 ("Radiologic exam, spine, scoliosis study, including supine and erect studies") and replacement with codes 72081, 72082, 72083, and 72084, which more specifically break down this particular chiropractic service/reimbursement. Other codes and allowances were added as well, which generally break down reimbursement amounts into professional and technical components for each chiropractic service.

On March 16, 2016, the Department submitted proposed State Plan Amendment changes to the Centers for Medicare and Medicaid Services (CMS), with a requested retroactive effective date of January 1, 2016. Those changes remain pending. The Department published a change in reimbursement methodology notice, pursuant to 42 CFR § 447.205, on December 29, 2016.

Fiscal impact of rule:

The Department anticipates that this rule-making will have a minimal fiscal impact on State funds.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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; 42 CFR §§ 418.302, 306
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 43**, Hospice Services
Filing number:	**2016-140**
Effective date:	8/26/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This rule is being adopted to comply with the implementation of hospice payment reforms as set out in the Centers for Medicare & Medicaid Services Rule, 42 CFR §§ 418.302, 306. The final rule requires that State Medicaid programs make revisions to their methodologies for determining the payment rate for Routine Home Care (RHC) and other services. These changes include a new payment methodology for Routine Home Care (RHC) to implement two rates that will result in 1) a higher base payment for the first sixty (60) days of hospice care and 2) a reduced base rate for days thereafter. A new Service Intensity Add-on (SIA) payment for services provided by a Registered Nurse (RN) or clinical social worker during the last seven (7) days of a member's life has also been added. The rule proposes a retroactive effective date of January 1, 2016. The rule-making also updates the policy titles and section numbers listed in §43.05-4, "Coverage Restrictions during Hospice Election", to correlate with the current version of the *MaineCare Benefits Manual*.

Basis statement:

This adopted rule implements hospice payment reforms to comply with the CMS September 1, 2015, Directive regarding annual change in Medicaid Hospice payment rate. This directive reflects changes made under the final Medicare hospice rule published on August 6, 2015 (CMS- 1629-F) (42 CFR §§ 418.103, 418.306). This rule changes the payment methodology for Routine Home Care to implement two (2) rates that result in a higher base payment for the first sixty (60) days of hospice care and a reduced base rate for days thereafter. This adopted rule requires hospice providers to set their charge rate to appropriately reflect the transition to the lower Routine Home Care rate after sixty (60) days.

The rule also establishes a Service Intensity Add-on (SIA) payment that provides increased payments for services provided by a registered nurse (RN) or clinical social worker during a visit during the last seven (7) days of a member's life.

In implementing the Service Intensity Add-On (SIA) payment for skilled visits (provided by a registered nurse (RN) and/or medical social worker) it was necessary to add two new G-codes for use when billing SIA direct skilled nursing services in home health or hospice setting (G0299) and SIA services of a clinical social worker (G0155) in home health or hospice setting. These services can be billed in fifteen (15) minutes increments, up to a total of four hours total per day within the Routine Home Care level.

The rule-making also updates the policy titles and section numbers listed in §43.05-4 ("Coverage Restrictions during Hospice Election"), to correlate with the current version of the *MaineCare Benefits Manual*, as well as the list of Professional and other Qualified Staff to include Physician Assistants.

The Department anticipates that this rule-making will not have a direct impact on members. Services provided to members will remain the same.

Fiscal impact of rule:

The Department anticipates that this rule-making will have any impact on municipalities or counties. There is no expected economic impact on small businesses.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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, 42(8), 3173; 5 MRS §8054; PL 2016 ch. 477 (effective April 15, 2016); Resolves 2016 ch. 82 (effective April 26, 2016)
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 17**, Community Support Services
Filing number:	**2016-148**
Effective date:	9/2/2016
Type of rule:	Routine Technical
Emergency rule:	Yes

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

Basis statement:
Following various changes to Ch. II Section 17, "Community Support Services", adopted by the Department on March 22, 2016, certain members no longer met clinical criteria for Community Support Services. This prompted a legislative review of the Section 17 rule changes, after which the legislature enacted Resolves 2016 ch. 82 (eff. Apr. 26, 2016). This Resolve requires the Department to extend the authorized service period for certain individuals who no longer meet clinical criteria for Section 17 services after the rule changes adopted on March 22, 2016. For members affected by the March 22nd rule change, the Department shall authorize a 120 day extension for the member's Section 17 services. Additionally, 90-day extensions may be granted, provided the member is able to reasonably demonstrate to the Department, or Authorized Entity, that he or she has attempted to and has been unable to access medically necessary covered services under any other section of the *MaineCare Benefits Manual*. The Ch. II changes shall be effective retroactive to April 26, 2016. The temporary transition period shall end on June 30, 2017.

Separately, the legislature enacted *An Act to Increase Payments to MaineCare Providers that are Subject to Maine's Service Provider Tax*, PL 2016, ch. 477 (eff. Apr. 15, 2016). Certain MaineCare providers subject to the service provider tax have experienced an increase in the tax to 6% since January 1, 2016. The legislature thus provided additional appropriations to certain MaineCare providers, including Section 17 providers, in an effort to offset the increase in the provider tax. The Department is seeking and anticipates CMS approval of the reimbursement changes for Section 17 providers. Pending approval, the Department will reimburse providers under the new increased rates retroactively to July 1, 2016 pursuant to PL 2016, ch. 4 77 (eff. Apr. 15, 2016).

Each of the new laws were enacted by the Legislature on an emergency basis. Given that each law provides benefits to the regulated community, and the time-sensitive, limited nature of the extension in eligibility, the Department is authorized to enact these changes to Section 17 on an emergency basis, without the findings required by 5 MRS § 8054(2). These emergency rule changes shall be effective for ninety (90) days. The Department shall engage in proposed routine technical rulemaking to permanently adopt these Section 17 rule changes.

Finally, the Department notes that on April 29, 2016, the legislature overrode the Governor's veto of LD 1696, *Resolve, To Establish a Moratorium on Rate Changes Related to Rule Chapter 101: MaineCare Benefits Manual, Sections 13, 17, 28 and 65* (Resolves 2016 ch. 88). That law imposes a moratorium on rule-making to change reimbursement rates, including Section 17, until after a rate study has been completed and presented to the Legislature. The Department consulted with the Office of Attorney General and the Office of the Attorney General determined and has advised the Department that Resolves 2016 ch. 88 does not prevent the instant rule changes because (1) the separate law, PL 2016 ch. 477, is more specific in regard to changing

reimbursement for providers impacted by the Service Provider Tax increase; and (2) these are reimbursement rate increases, thus providing a benefit to MaineCare providers.

Fiscal impact of rule:

The fiscal impact for the Section 17 change in eligibility requirements is unable to be determined because any impact would depend on utilization, and eligibility determinations that have not yet been completed.

The Department anticipates that the Ch. III rule-making will cost approximately $152,861 in SFY 2016, including $57,063 in State dollars and $95,798 in Federal dollars, and $917,163 in SFY 2017, including $330,637 in State dollars and $586,526 in Federal dollars.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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, 3173-G
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. X Section 4**, Limited Family Planning Benefit
Filing number:	**2016-155**
Effective date:	10/1/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

Ch. 356, *An Act to Strengthen the Economic Stability of Qualified Maine Citizens by Expanding Coverage of Reproductive Health Care and Family Services*, enacted by the Maine Legislature on July 12, 2015, ordered the provision of these services. The Limited Family Planning Benefit provides a targeted set of family planning services and supplies and family-planning related services to individuals with income equal to or below 209% of the federal poverty level. These individuals are not otherwise eligible to receive Medicaid services.

Basis statement:

This rule is adopted to comply with PL 2015 ch. 356, *An Act to Strengthen the Economic Stability of Qualified Maine Citizens by Expanding Coverage of Reproductive Health Care and Family Services*, enacted by the Maine Legislature on July 12, 2015, in accordance with the federal *Patient Protection and Affordable Care Act*, PL 111-148, as amended by the federal *Health Care and Education Reconciliation Act of 2010*, Pl 111-152.

This rule establishes the Limited Family Planning Benefit. Under the Limited Family Planning Benefit, the Department provides for the delivery of federally approved Medicaid services for reproductive health care and family planning services to qualified individuals when their income is equal to or below 209% of the nonfarm income official poverty line. The Limited Family Planning Benefit establishes a new MaineCare eligibility group (males and females) who are not otherwise qualified to receive MaineCare services. Services include pregnancy prevention, testing and treatment for sexually transmitted infection, access to contraception, reproductive health care, cancer screening and vaccines to prevent cervical cancer and sexually transmitted infections. The goal is to improve the health of individuals and families in Maine by improving access to family planning services and decreasing the overall costs of healthcare by helping to prevent or delay pregnancies and to improve overall reproductive health of enrollees.

State Plan Amendment (SPA) #15-025 clarifying the state's coverage of family planning and family planning related services in combination with SPA-15-026, which added the Family Planning eligibility option to the State Plan, was approved by the Centers for Medicare and Medicaid Services on March 14, 2016, with an effective date of July 1, 2016.

Fiscal impact of rule:

The Department anticipates that this rule-making will result in savings of approximately $298,743 in State funds in SFY 17. The anticipated Federal cost is $1,122,776, for a State savings of $1,421,519. The Department anticipates savings in SFY18 to be approximately the same as SFY17.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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, 42(8), 3173; 5 MRS §§ 8073, 8054; PL 2016 ch. 477 *(effective April. 15, 2016)*
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 21**, Allowances for Home and Community Benefits for Adults with Intellectual Disabilities or Autistic Disorder
Filing number:	**2016-161**
Effective date:	9/28/2016
Type of rule:	Major Substantive
Emergency rule:	Yes

Principal reason or purpose for rule:

The Department is adopting via emergency major substantive rulemaking an increase to the rates in Ch. III Section 21 in accordance with PL 2016 ch. 477 (*An Act To Increase Payments to MaineCare Providers That Are Subject to Maine's Service Provider Tax*). The Legislature enacted this law as an emergency measure, effective April 15, 2016, to provide additional appropriations to certain MaineCare providers that are subject to the service provider tax and that have experienced an increase in the tax from 5% to 6% since January 1, 2016. This emergency major substantive rule increases the rates of reimbursement by 1% for affected providers on an emergency basis and retroactive to April 15, 2016, when the legislation appropriating additional funding took effect. The emergency adoption will enable the rule to take effect immediately and retroactively, ensuring that providers receive the appropriated funding that will enable them to continue providing MaineCare services.

Basis statement:

The Department is adopting via this emergency major substantive rule-making an increase in the provider reimbursement rates set forth in Ch. III Section 21, in accordance with PL 2016 ch. 477 (*An Act to Increase Payments to MaineCare Providers That Are Subject to Maine's Service Provider Tax*). Effective April 15, 2016, the Legislature enacted PL 2016 ch. 477 to provide funding for an increase in reimbursement rates to eligible MaineCare providers for the last three months of fiscal year 2015-16 and for fiscal year 2016-17. The purpose of the additional funding is to offset an increase in the service provider tax, which took effect January 1, 2016. Ch. III Section 21 lists the procedure codes, descriptions and reimbursement rates for covered services provided to members under its companion rule, Ch. II Section 21, *Home and Community Benefits for Adults with Intellectual Disabilities or Autistic Disorder*. Ch. III Section 21 is a major substantive rule.

The Legislature enacted PL 2016 ch. 477 on an emergency basis, and therefore the legislation took effect on the date that it was approved, April 15, 2016. Pursuant to 22 MRS §42(8), the Department may authorize the adoption of rules that retroactively increase provider reimbursement on an emergency basis "if needed to ensure that MaineCare members have access to covered medically necessary services." The Department makes the following findings in support of this emergency rulemaking, pursuant to 5 MRS §8054. As recognized by the Legislature in PL 2016 ch. 477, MaineCare providers have insufficient reserves to withstand cost increases. Effective January 1, 2016, however, certain MaineCare providers were subject to an increase in the service provider tax, thus increasing their cost of providing services. The providers need the additional funding appropriated by the Legislature as soon as possible in order to continue providing MaineCare services. Given that the law provides benefits to the community, and the time sensitive nature of the law, the Department finds that these changes to Section 21 should be made on an emergency basis.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Under 22 MRS §42(9), because the Department has determined that an emergency rule is necessary pursuant to 5 MRS §8054, and because the rule affects reimbursement rates for licensed health care providers, the increased rates will be effective retroactive to April 15, 2016, the date that the legislation took effect. Further, pursuant to 5 MRS §8073, this emergency major substantive rule will be effective for up to 12 month, or until the Legislature has completed its review. The Department intends to proceed with major substantive rule-making, which will be provisionally adopted, and then submitted to the Legislature for its review.

The following services will have a 1% increase as a result of this rule-making:

- T2017, Home Support (habilitation, residential, waiver);
- T2017 SC, Home Support (habilitation, residential, waiver) - with Medical Add-On;
- T2017 QC, Home Support (habilitation, residential, waiver) - Remote Support-Monitor Only;
- T2017 GT, Home Support (habilitation, residential, waiver) - Remote Support-Interactive Support;
- T2016, Agency Home Support (habilitation, residential, waiver);
- T2016 SC, Agency Home Support (habilitation, residential, waiver) with Medical Add-On;
- T2016 SC, Agency Home Support (habilitation, residential, waiver);
- S5140, Shared Living (Foster Care, adult) - Shared Living Model-One member served;
- S5140 TG, Shared Living (Foster Care, adult) - Shared Living Model-One member served - increased level of support;
- S5140 UN, Shared Living (Foster Care, adult) - Shared Living Model-Two members served;
- S5140 UN TG, Shared Living (Foster Care, adult) - Shared Living Model - Two members served - Increased level of support;
- T2016 U5, Home Support (habilitation, residential, waiver) - Family Centered Support - One member served;
- T2016 TG U5, Home Support (habilitation, residential, waiver) - Family Centered Support - One member served - Increased level of support;
- T2016 UN U5, Home Support (habilitation, residential, waiver) - Family Centered Support - Two members served;
- T2016 UN TG U5, Home Support (habilitation, residential, waiver) - Family Centered Support - Two members served - Increased level of support;
- T2016 UP U5, Home Support (habilitation, residential, waiver) - Family Centered Support - Three members served;
- T2016 UP TG U5, Home Support (habilitation, residential, waiver) - Family Centered Support - Three members served-Increased level of support;
- T2016 UQ U5, Home Support (habilitation, residential, waiver) - Family Centered Support - Four members served;
- T2016 UQ TG U5, Home Support (habilitation, residential, waiver) - Family Centered Support - Four members served - Increased level of support;
- T2016 UR U5, Home Support (habilitation, residential, waiver) - Family Centered Support - Five or members served;
- T2016 UR TG U5, Home Support (habilitation, residential, waiver) - Family Centered Support - Five or members served - Increased level of support;
- T2021, Community Support (day habilitation, waiver);
- T2021 SC, Community Support (day habilitation, waiver);
- Replaced H023 HQ Work Support (supported employment) with the following modifiers below;
  - 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 2 members served);
- H2023 US Work Support (supported employment - Group 2 members served).

Fiscal impact of rule:

The Department anticipates that this rule-making will cost approximately $144,502 in SFY 2016, which includes $53,943 state dollars and $90,560 in federal dollars and $867,014 in SFY 2017, including $312,559 in state dollars and $554,456 in federal dollars.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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, 42(8), 3173; 5 MRS §§ 8073, 8054; PL 2016 ch. 477 *(effective April 15, 2016)*
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 29**, Allowances for Support Services for Adults with Intellectual Disabilities or Autistic Disorder
Filing number:	**2016-162**
Effective date:	9/28/2016
Type of rule:	Major Substantive
Emergency rule:	Yes

Principal reason or purpose for rule:

The Department is adopting via emergency major substantive rule-making an increase to the rates in Ch. III Section 29 in accordance with PL 2016 ch. 477 (*An Act To Increase Payments to MaineCare Providers That Are Subject to Maine's Service Provider Tax*). The Legislature enacted this law as an emergency measure, effective April 15, 2016, to provide additional appropriations to certain MaineCare providers that are subject to the service provider tax and that have experienced an increase in the tax from 5% to 6% since January 1, 2016. This emergency major substantive rule increases the rates of reimbursement by 1% for affected providers on an emergency basis and retroactive to April 15, 2016, when the legislation appropriating additional funding took effect. The emergency adoption will enable the rule to take effect immediately and retroactively, ensuring that providers receive the appropriated funding that will enable them to continue providing MaineCare services.

Basis statement:

The Department is adopting via this emergency major substantive rule-making an increase in the provider reimbursement rates set forth in Ch. III Section 29, in accordance with PL 2016 ch. 477 (*An Act to Increase Payments to MaineCare Providers That Are Subject to Maine's Service Provider Tax*). Effective April 15, 2016, the Legislature enacted PL 2016 ch. 477 to provide funding for an increase in reimbursement rates to eligible MaineCare providers for the last three months of fiscal year 2015-16 and for fiscal year 2016-17. The purpose of the additional funding is to offset an increase in the service provider tax, which took effect January 1, 2016. Ch. III Section 29 lists the procedure codes, descriptions and reimbursement rates for covered services provided to members under its companion rule, Ch. II Section 29, *Support Services for Adults with Intellectual Disabilities or Autistic Disorder*. Ch. III Section 29 is a major substantive rule.

The Legislature enacted PL 2016 ch. 477 on an emergency basis, and therefore the legislation took effect on the date that it was approved, April 15, 2016. Pursuant to 22 MRS §42(8), the Department may authorize the adoption of rules that retroactively increase provider reimbursement on an emergency basis "if needed to ensure that MaineCare members have access to covered medically necessary services." The Department makes the following findings in support of this emergency rule-making, pursuant to 5 MRS §8054. As recognized by the Legislature in PL 2016 ch. 477, MaineCare providers have insufficient reserves to withstand cost increases. Effective January 1, 2016, however, certain MaineCare providers were subject to an increase in the service provider tax, thus increasing their cost of providing services. The providers need the additional funding appropriated by the Legislature as soon as possible in order to continue providing MaineCare services. Given that the law provides benefits to the community, and the time sensitive nature of the law, the Department finds that these changes to Section 29 should be made on an emergency basis.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Under 22 MRS §42(9), because the Department has determined that an emergency rule is necessary pursuant to 5 MRS §8054, and because the rule affects reimbursement rates for licensed health care providers, the increased rates will be effective retroactive to April 15, 2016, the date that the legislation took effect. Further, pursuant to 5 MRS §8073, this emergency major substantive rule will be effective for up to 12 month, or until the Legislature has completed its review. The Department intends to proceed with major substantive rulemaking, which will be provisionally adopted, and then submitted to the Legislature for its review.

The following services will have a 1% increase as a result of this rule making:

- T2017, Home Support-Quarter Hour;
- T2017 QC, Home Support-Remote Support - Monitor Only;
- T2017 GT, Home Support-Remote Support - Interactive Support;
- T2021, Community Support (day habilitation);
- T2021 SC, Community Support (day habilitation) with Medical Add-On;
- Replaced H023 HQ Work Support (supported employment) with the following modifiers below:
  - 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 2 members served);
  - H2023 US Work Support (supported employment) - Group 2 members served).

Fiscal impact of rule:

The Department anticipates that this rule-making will cost approximately $38,338 in SFY 2016, which includes $14,311 in state dollars and $24,026 in federal dollars and $230,027 in SFY 2017, including $82,925 in state dollars and $147,102 in federal dollars.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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(8), 3173; 5 MRS §8054; PL 2016 ch. 481 Part C; Resolves 2015 ch. 45
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 2**, Adult Family Care Services
Filing number:	**2016-166**
Effective date:	10/4/2016
Type of rule:	Routine Technical
Emergency rule:	Yes

Principal reason or purpose for rule:

These changes are being done to comply with:

1) PL 2016 ch. 481 Part C, *An Act To Provide Funding to the Maine Budget Stabilization Fund and To Make Additional Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and To Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2016 and June 30, 2017.* Effective retroactive to July 1, 2016, this emergency adopted rule implements a four (4) percent cost-of-living rate increase for Adult Family Care Services for the fiscal year ending June 30, 2017.

2) Resolves 2015 ch. 45, *Resolve, To Require the Department of Health and Human Services to Provide Supplemental Reimbursement to Adult Family Care Homes and Residential Care Facilities in Remote Island Locations.* Although the Department previously engaged in emergency and routine technical rule-making to add language to the rule providing for a supplemental rate payment of fifteen (15) percent to adult family care homes that qualify as remote island facilities, the Department did not include a case mix chart specific to these providers and seeks to do so through this emergency adoption. The supplemental rate payment is effective retroactive to October 1, 2015.

These increases for Adult Family Care Services ensure vulnerable members have access to medically necessary covered services, and otherwise have no adverse impact on either MaineCare providers or members. The emergency adoption will enable the rule to take effect immediately and retroactively.

Basis statement:

The Department of Health and Human Services ("Department") adopts this emergency rule to increase the rates of reimbursement for Adult Family Care Services pursuant to: (1) PL 2016 ch. 481 Part C, *An Act To Provide Funding to the Maine Budget Stabilization Fund and To Make Additional Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and To Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2016 and June 30, 2017*; and (2) Resolves 2015 ch. 45, *Resolve, To Require the Department of Health and Human Services to Provide Supplemental Reimbursement to Adult Family Care Homes and Residential Care Facilities in Remote Island Locations*.

First, following the Governor's approval, the Legislature enacted PL 2016 ch. 481, as emergency legislation effective April 16, 2016. In part, the law directed the Department to amend the MaineCare Benefits Manual, Ch. III Section 2, "Adult Family Care Services", to provide a four (4) percent cost-of-living rate increase for adult family care homes for the fiscal year ending June 30, 2017. The Legislature determined that the legislation should take effect immediately on the grounds certain obligations and expenses incident to the operation of state

departments and institutions would be becoming due and immediately payable, thus emergency legislation was required for the immediate preservation of the public peace, health and safety. The Department now adopts this four percent inflation rate increase to the Ch. III Section 2 rule by increasing the unadjusted price from $44.99 to $46.79 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 four (4) percent cost-of-living increase will be effective retroactive to July 1, 2016. A Change in Reimbursement Methodology Notice was published on June 28, 2016. To comply with future cost-of-living increases set forth in PL 2016 ch. 481, the Department will engage in subsequent rulemaking at a later date.

Second, the Department is making changes to this rule pursuant to Resolves 2015 ch. 45, which effectuates a supplemental rate payment of fifteen (15) percent to adult family care homes that satisfy the definition of remote island facilities. This legislation was enacted as an emergency measure, effective July 12, 2015, without the Governor's signature, and on the grounds that current reimbursement rates to remote island facilities did not account for higher prices compared to the mainland. The Legislature directed the Department to amend its rule by October 1, 2015, to implement the fifteen percent supplemental payment and authorized the Department to do so via emergency rule-making without the necessity of demonstrating emergency findings. The Department engaged in emergency rule-making followed by routine technical rule-making that added a provision to the rule about the supplemental payment. The Department also indicated in these prior rule-makings that it was seeking CMS approval of this change retroactive to October 1, 2015. However, the Department did not include a case mix chart specific to remote island facilities that identifies the increased rates. The Department now seeks to do so with the emergency adoption of this rule. The Department has added a new case mix chart reflecting an unadjusted price of $51.74 (a fifteen percent increase from $44.99) for the period of October 1, 2015, through June 30, 2016, and an unadjusted price of $53.81 (reflecting the fifteen percent supplemental payment and the four percent cost-of-living increase) for the period beginning July 1, 2016.

As noted, the increased rates will be retroactive to October 1, 2015 (rate increase for remote island facilities) and to July 1, 2016 (rate increase for inflation). These increases for Adult Family Care Services are in accordance with 22 MRS §42(8). They ensure vulnerable members have access to medically necessary covered services, and otherwise have no adverse impact on either MaineCare providers or members.

Further, in support of emergency rule-making pursuant to 5 MRS §8054, the Department makes the following findings. Both PL 2016 ch. 481, and Resolves 2015 ch. 45 were enacted as emergency measures to provide additional funding to Adult Family Care Services providers. For the cost-of-living increase, the immediate adoption of this rule is necessary given the time-sensitive nature the law and the fact the law provides benefits to the regulated community. Regarding the supplemental remote island facility payment, the Legislature authorized the Department to implement the change on an emergency basis without the need to demonstrate emergency findings. Although the Department has already engaged in this process, it seeks to do so again so as to provide clarity to providers as to the exact rate increases, especially in light of the additional rate cost-of-living rate increase. These emergency changes to Ch. III Section 2 shall be effective for ninety (90) days. The Department shall proceed with "regular" routine technical rule-making in order to permanently adopt these rule changes.

Fiscal impact of rule:

This rule-making is estimated to cost the Department $197,981 in SFY 2017, which includes $81,501 in state dollars.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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, 42(8), 3173; 5 MRS §8054; PL 2016 ch. 477 *(effective April 15, 2016)*
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 20**, Allowances for Home and Community Based-Services for Adults with Other Related Conditions
Filing number:	**2016-167**
Effective date:	10/5/2016
Type of rule:	Routine Technical
Emergency rule:	Yes

Principal reason or purpose for rule:

The Department is adopting via emergency rule-making an increase to the rates in Ch. III Section 20 in accordance with PL 2016 ch. 477 (*An Act To Increase Payments to MaineCare Providers That Are Subject to Maine's Service Provider Tax*). The Legislature enacted this law as an emergency measure, effective April 15, 2016, to provide additional appropriations to certain MaineCare providers that are subject to the service provider tax and that have experienced an increase in the tax from 5% to 6% since January 1, 2016. The Department now seeks to increase the rates of reimbursement by 1% for affected providers on an emergency basis and retroactive to April 15, 2016, when the legislation appropriating additional funding took effect. The emergency adoption will enable the rule to take effect immediately and retroactively, ensuring that providers receive the appropriated funding that will enable them to continue providing MaineCare services.

Basis statement:

The Department is adopting via emergency rule-making an increase to the rates in Ch. III Section 20 in accordance with LD 1638. Effective April 15, 2016, the legislature enacted PL 2016 ch. 477 (*An Act To Increase Payments to MaineCare Providers That Are Subject to Maine's Service Provider Tax*) providing additional appropriations to certain MaineCare providers that are subject to the service provider tax and that have experienced an increase in the tax from 5% to 6% since January 1, 2016.

Ch. III Section 20 lists the procedure codes, descriptions and reimbursement rates for covered services provided to members under its companion rule, Ch. II Section 20, "Home and Community-Based Services for Adults with Other Related Conditions".

The following services will be increased as a result of this rule-making:

- T2021 U8, Community Support (Day Habilitation) from $5.28 to $5.33 per quarter hour.
- T2016 U8, Home Support (Residential Habilitation) from $285.19 to $287.91 per diem.
- T2017 U8, Home Support (Residential Habilitation) from $6.33 to $6.39 per quarter hour.
- T2017 U8 QC Home Support (Residential Habilitation) - Remote Support - Monitor Only from $1.62 to $1.63 per quarter hour.
- T2017 U8 GT Home Support (Residential Habilitation) - Remote Support - Interactive Support from $6.33 to $6.39 per quarter hour.
- T1019 U8 Personal Care from $3.75 to $3.78 per quarter hour.
- T2019 U8 Employment Specialist Services (Habilitation - Supported Employment) from $7.42 to $7.49 per quarter hour.

The increased rates will be effective retroactive to April 15, 2016, pursuant to 22 MRS §42(8). These changes increase the reimbursement for providers, ensure that members have access to medically necessary covered services, and otherwise have no adverse impact on either MaineCare providers or members. In addition, the Department makes the following findings in support of emergency rule-making pursuant to 5 MRS §8054. The Legislature enacted the new law as an emergency measure with an immediate effective date of April 15, 2016. As recognized by the Legislature within PL 2016 ch. 477, MaineCare providers have insufficient reserves to withstand cost increases. Effective January 1, 2016, however, certain MaineCare providers were subject to an increase (from 5 to 6%) in the service provider tax, thus increasing their cost of providing services. The providers needed additional funding appropriated by the Legislature as soon as possible in order to continue providing MaineCare services. Given that the law provides benefits to the regulated community, and the time sensitive nature of the law, the Department finds that these changes to Section 20 should be made on an emergency basis. These emergency rule changes shall be effective for ninety (90) days. The Department shall engage in "regular" routine technical rule-making to permanently adopt these Section 20 rule changes.

Fiscal impact of rule:

The Department anticipates that this rule-making will cost approximately $3,931 in SFY 2016, which includes $1,467 in state dollars and $2,464 in federal dollars, and $23,587 in SFY 2017, which includes $8,503 in state dollars and $15,084 in federal dollars.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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(8), 3173; 5 MRS §8073; PL 2016 ch. 477; Resolve 2015 ch. 45
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 97** *(including appendices)*, Private Non-Medical Institution (PNMI) Services
Filing number:	**2016-182**
Effective date:	10/25/2016
Type of rule:	Major Substantive
Emergency rule:	Yes

Principal reason or purpose for rule:

These changes are being done to comply with:

1) PL 2016 ch. 477, *An Act to Increase Payments to MaineCare Providers that are Subject to Maine's Service Provider Tax,* Private Non-Medical Institutions have experienced an increase in the tax since January 1, 2016. PNMIs are in need of increased funding to continue providing these services to Maine's vulnerable citizens, including children, individuals with substance use disorders, and adults with intellectual disabilities and autistic disorder. Pursuant to 22 MRS §42(8), the increased reimbursement rates will be effective retroactive to July 1, 2016.

2) Ch. III Section 97 (the "Main Rule") and Ch. III Section 97, Appendix C only, the Department repeals and replaces the March 8, 2016 emergency major substantive rule, which made changes pursuant to Resolves 2015 ch. 45: Resolve, *To Require the Department of Health and Human Services to Provide Supplemental Reimbursement to Residential Care Facilities in Remote Island Locations.* Those changes are incorporated into this emergency major substantive rule-making.

These rate increases to PNMI providers ensure vulnerable members have access to medically necessary covered services, and otherwise have no adverse impact on either MaineCare providers or members. The emergency adoption will enable the rule to take effect immediately and retroactively.

This emergency major substantive rule will remain in effect for up to one year or until the Legislature approves the provisionally adopted major substantive rule.

Basis statement:

The Department of Health and Human Services ("Department") adopts this emergency major substantive rule to increase the rates of reimbursement for Private Non-Medical Institution Services providers pursuant to PL 2016 ch. 477, *An Act To Increase Payments to MaineCare Providers That are Subject to Maine's Service Provider Tax.* In addition, for Ch. III Section 97 (the "Main Rule") and Ch. III Section 97, Appendix C only, the Department repeals and replaces the March 8, 2016 emergency major substantive rule, which made changes pursuant to Resolves 2015 ch. 45, Resolve, *To Require the Department of Health and Human Services to Provide Supplemental Reimbursement to Residential Care Facilities in Remote Island Locations.* Those changes are incorporated into this emergency major substantive rule-making.

Following the Governor's approval, PL 2016 ch. 477 was enacted, as an emergency, effective April 15, 2016. In part, the law directed the Department to increase funding to MaineCare providers subject to the Maine Service Provider Tax pursuant to 36 MRS §2552. The Department implements the new law in Ch. III Section 97 rule by increasing the direct care component rate by an additional one percent to Private Non-Medical Institution (PNMI) service providers.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

The Department makes the following findings in support of this emergency major substantive rule-making. Similar to the determinations made by the Legislature in PL 2016 ch. 477, the Department finds that these rule changes should be implemented immediately to preserve public health and safety. Section 97 providers have insufficient reserves to withstand cost increases and have experienced an increase in the Service Provider Tax since January 1, 2016. In addition, Appendix C providers who are "remote island facilities" also require that the reimbursement increases implemented pursuant to Resolves 2015 ch. 45 and the Department's March 8, 2016 emergency major substantive rule be continued, so that providers are not negatively affected. Remote Island Facilities are facilities located on an island not connected to the mainland by a bridge. All of these changes provide benefits to the Section 97 providers, and ensure the continued provision of services to MaineCare members.

The Change in Reimbursement Methodology Notices required by 42 CFR §447.205 relating to the Service Provider Tax reimbursement increase were published on June 16, 2016 (for Appendices B and D) and August 11, 2016 (for Appendices C, E and F).The Department is seeking and anticipates receiving approval from the federal Centers for Medicare and Medicaid Services (CMS) for these changes to Appendices B and D. Pending approval, the one percent direct care component increase will be effective retroactive to July 1, 2016.

In regard to the remote island facility rule changes, in the "Main Rule" and Appendix C, the Department published its Notice of Change in Reimbursement Methodology on September 30, 2015. The Department is seeking and anticipates receiving approval from CMS for the remote island facility reimbursement increases. Pending CMS approval, those changes shall be effective retroactive to October 1, 2015.

Each of these retroactive effective dates are consistent with 22 MRS §42(8), because they provide benefits to MaineCare providers, ensure that vulnerable members have access to medically necessary covered services, and otherwise have no adverse impact on members or providers.

These emergency rule changes shall be effective for one (1) year or until the Legislature approves the rule. The Department shall engage in "regular" major substantive rule-making to permanently adopt these Section 97 rule changes.

Fiscal impact of rule:

This rule-making is estimated to cost the Department approximately $7,903,979 in SFY 2017, which includes $3,093,823 in state dollars.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 55**, Laboratory Services
Filing number:	**2016-187**
Effective date:	11/9/2016
Type of rule:	Routine Technical
Emergency rule:	No

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

Basis statement:
This rule was adopted to limit and align urine drug testing to current industry standards. The Department adopted the following from the proposed rule:

- Drug testing must be supported by documentation in the medical record.
- The frequency and choice of assay used should be based on an assessment of the individual member's risk potential.
- Separate payment for testing of adulterants or specimen validity is not reimbursable.
- Substance abuse treatment is to be measured by random testing rather than scheduled testing.
- Routine urine drug screening should focus on detecting specific drugs of concern.
- Standing orders for presumptive testing must be signed and dated no more than sixty (60) days prior to the date of specimen collection. Standing orders for conformation and/or quantitative testing is prohibited.
- The Department clarifies what is considered not medically necessary.
- The Department added language for Prior Authorization to the Definitions.

The Department made the following changes to the final rule based on public comments:

- Confirmation testing is covered only to:
  1. Confirm an unexpected result; or
  2. Identify specific drugs or metabolites that cannot be detected on a urine drug screen.

Confirmation tests should be based on the member's presentation and history and only include what is needed for safe patient management. The definitive test(s) must be supported by documentation that specifies the rationale for each definitive test ordered. Drug confirmation testing must be performed by a second method. A presumptive test cannot be performed to confirm a presumptive test. Confirmation testing must be requested in writing by the ordering provider.

- Urine drug testing is limited to three (3) specimens per rolling month. Additional test(s) may be requested with a Prior Authorization to be issued in six (6) month authorizations. Individuals meeting the following criteria are exempt from this limitation, and are not required to seek Prior Authorization for testing beyond three (3) specimens per month:
  1. Pregnant members;
  2. Members involved with an active Office for Child and Family Services (OCFS) case;
  3. Members in Intensive Outpatient Treatment (IOP);
  4. Members being established in Medicated Assistant Treatment (MAT) up to six months (including methadone, suboxone, and other MAT treatments);
  5. Members receiving services in an Emergency Department; and
  6. Members in Residential Treatment for substance abuse (Ch. 97 Appendix B facilities)

- The Department removed the limit of reflex testing by the lab based on standing order.
- The Department removed the limit of urine drug testing for the courts.

Finally, the Department made minor clerical edits to the final rule.

Fiscal impact of rule:

The Department does not have enough reliable claims history to prepare a fiscal estimate at this time, but anticipates that this rule-making will have a cost savings in the adopted rule.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 31**, Federally Qualified Health Center Services
Filing number:	**2016-194**
Effective date:	12/15/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

To establish and implement consistent and reasonable parameters around the rate setting for the prospective payment system (PPS) used to reimburse Federally Qualified Health Centers (FQHCs).

Basis statement:

This rule amends the rate setting and rate-adjustment processes for the prospective payment system (PPS) used to reimburse Federally Qualified Health Centers (FQHCs).

This rule-making clarifies and expands the current FQHC policy and procedures as follows:

- Provides additional guidance and consistency in the methodology for adjustments of PPS rates;
- Amends the process of rate establishment for newly qualifying FQHCs;
- Provides specific guidance in what constitutes "a change in scope of services"; and
- Expands the reporting requirements in conjunction with a request for rate adjustment due to a "change in scope of services".

The Centers for Medicare and Medicaid Services ("CMS") has approved a Maine State Plan Amendment related to initial rate-setting and "change in scope of services." The payment methodology for FQHCs conforms to Section 702 of the *Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA) of 2000*. According to this methodology, FQHCs are reimbursed based on average reasonable costs of providing MaineCare scope of services during calendar years 1999 and 2000, adjusted annually by the Medicare Economic Index (MEI) for primary care services, and also adjusted to take into account any increase or decrease based on Department approved "change in scope of services."

The Department outlines the types of changes that may or may not be eligible for a rate adjustment based on a "change in scope of services" request, and includes examples as guidance. In addition, MaineCare has changed the data requirements for submitting a "change in scope of services" request. Adjustments to the PPS rate will be effective the first day of the month immediately following either the date the Department approves the "change in scope of services" adjustment or the date an anticipated change will begin, whichever is later.

The rule-making also amends the current process for establishing rates for newly qualifying FQHCs. Newly qualifying sites currently have PPS payments established by reference to payments to other FQHCs in the same or adjacent areas, or in the absence of such other centers, through cost reporting methods. This change requires that reference sites must also have a "similar caseload" in order to provide a basis for the new FQHC's rate.

Additional changes to the rule include broadening the tobacco cessation treatment services to comply with 22 MRS §3174-WW, including a new reference to coverage of tobacco cessation products in Ch. III. Also in Ch. III, the Department has removed various contraceptive procedure codes that have expired or are included in the core services, so should not be listed separately. For example, the Department removed the expired Depo Provera code and replaced it with reference to

a generic version of the drug. No restrictions are being implemented on contraception services; in fact, the array of contraception options has been expanded by the addition to Ch. III of all FDA-approved IUDs.

This rule is being adopted in order to comply with the State Plan Amendment that was approved in February 2016 related to FQHC reimbursement.

Fiscal impact of rule:

The Department anticipates that changes to PPS rate setting and adjustments will be cost neutral in SFY 16/17.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 103**, Rural Health Clinic Services
Filing number:	**2016-195**
Effective date:	12/1/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

To establish and implement consistent and reasonable parameters around the rate setting and billing for the prospective payment system (PPS) used to reimburse Rural Health Clinic Services (RHCs).

Basis statement:

This rule amends the rate setting and rate-adjustment processes for the prospective payment system (PPS) used to reimburse Rural Health Clinic Services (RHCs).

This rule-making clarifies and expands the current RHC policy and procedures as follows:

- Provides additional guidance and consistency in the methodology for adjustments of PPS rates;
- Amends the process of rate establishment for newly qualifying RHCs;
- Provides specific guidance in what constitutes "a change in scope of services"; and
- Expands the reporting requirements in conjunction with a request for rate adjustment due to a "change in scope of services".

The Centers for Medicare and Medicaid Services ("CMS") has approved a Maine State Plan Amendment related to initial rate-setting and "change in scope of services." The payment methodology for RHCs conforms to Section 702 of the *Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA) of 2000*. According to this methodology, RHCs are reimbursed based on average reasonable costs of providing MaineCare scope of services during calendar years 1999 and 2000, adjusted annually by the Medicare Economic Index (MEI) for primary care services, and also adjusted to take into account any increase or decrease based on Department approved "change in scope of services."

The Department outlines the types of changes that may or may not be eligible for a rate adjustment based on a "change in scope of services" request, and includes examples as guidance. In addition, MaineCare has changed the data requirements for submitting a "change in scope of services" request. Adjustments to the PPS rate will be effective the first day of the month immediately following either the date the Department approves the "change in scope of services" adjustment or the date an anticipated change will begin, whichever is later.

The rule-making also amends the current process for establishing rates for newly qualifying RHCs. Newly qualifying sites currently have PPS payments established by reference to payments to other RHCs in the same or adjacent areas, or in the absence of such other centers, through cost reporting methods. This change requires that reference sites must also have a "similar caseload" in order to provide a basis for the new RHC's rate.

Additional changes to the rule include broadening the tobacco cessation treatment services to comply with 22 MRS §3174-WW, including a new reference to coverage of tobacco cessation products in Ch. III. Also in Ch. III, the Department has removed various contraceptive procedure codes that have expired or are included in the core services, so should not be listed separately. For example, the Department removed the expired Depo Provera code and replaced it with

reference to a generic version of the drug. No restrictions are being implemented on contraception services; in fact, the array of contraception options has been expanded by the addition to Ch. III of all FDA-approved IUDs.

This rule is being adopted in order to comply with the State Plan Amendment that was approved in February 2016 related to RHC reimbursement.

Fiscal impact of rule:

The Department anticipates that changes to PPS rate setting and adjustments will be cost neutral in SFY 16/17.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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; 5 MRS §8054; PL 2016 ch. 477 *(effective April 15, 2016)*
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 18**, Allowances for Home and Community Based Services for Adults with Brain Injury
Filing number:	**2016-196**
Effective date:	11/15/2016
Type of rule:	Routine Technical
Emergency rule:	Yes

Principal reason or purpose for rule:

The Department is adopting via emergency rule-making an increase to the rates in Ch. III Section 18 in accordance with PL 2016 ch. 477 (*An Act To Increase Payments to MaineCare Providers That Are Subject to Maine's Service Provider Tax*). The Legislature enacted this law as an emergency measure, effective April 15, 2016, to provide additional appropriations to certain MaineCare providers that are subject to the service provider tax and that have experienced an increase in the tax from 5% to 6% since January 1, 2016. The Department now seeks to increase the rates of reimbursement by 1% for affected providers on an emergency basis and retroactive to April 15, 2016, when the legislation appropriating additional funding took effect. The emergency adoption will enable the rule to take effect immediately and retroactively, ensuring that providers receive the appropriated funding that will enable them to continue providing MaineCare services.

Basis statement:

The Department is adopting via emergency rule-making an increase to the rates in Ch. III Section 18 in accordance with LD 1638. Effective April 15, 2016, the Legislature enacted PL 2016 ch. 477 (*An Act To Increase Payments to MaineCare Providers That Are Subject to Maine's Service Provider Tax*) providing additional appropriations to certain MaineCare providers that are subject to the service provider tax and that have experienced an increase in the tax from 5% to 6% since January 1, 2016.

Ch. III Section 18 lists the procedure codes, descriptions, and reimbursement rates for covered services provided to members under its companion rule, Ch. II Section 18, "Home and Community Based Services for Adults with Brain Injury". The following services will have a 1% increase as a result of this rule-making:

- T2019 U9, Employment Specialist Services (Habilitation, supported employment waiver), from $7.42 to $7.49 per ¼ hour.
- T2016 U9, Home Support (Residential Habilitation) Level II, from $298.35 to $301.39 per diem.
- T2016 U9 TG, Home Support (Residential Habilitation) Level III – Increased Neurobehavioral, from $485.00 to $489.61 per diem.
- T2017 U9, Home Support (Residential Habilitation) Level I, from $6.27 to $6.33 per ¼ hour.
- T2017 U9 QC, Home Support (Residential Habilitation)-Remote Support-Monitor Only, from $1.62 to $1.63 per ¼ hour.
- T2017 U9 GT, Home Support (Residential Habilitation)-Remote Support-Interactive Support, from $6.27 to $6.33 per ¼ hour.

- 97535 U9 Self Care/Home Management Reintegration-Individual, from $14.39 to $14.52 per ¼ hour.
- 97535 U9 HQ Self Care/Home Management Reintegration-Group, from $9.59 to $9.68 per ¼ hour.

The increased rates will be effective retroactive to April 15, 2016, pursuant to 22 MRS §42(8). These changes increase the reimbursement for providers, ensure that members have access to medically necessary covered services, and otherwise have no adverse impact on either MaineCare providers or members.

In addition, the Department makes the following findings in support of emergency rulemaking pursuant to 5 MRS §8054. The Legislature enacted the new law as an emergency measure with an immediate effective date of April 15, 2016. As recognized by the Legislature within PL 2016 ch. 477, MaineCare providers have insufficient reserves to withstand cost increases. Effective January 1, 2016, however, certain MaineCare providers were subject to an increase (from 5 to 6%) in the service provider tax, thus increasing their cost of providing services. The providers needed additional funding appropriated by the Legislature as soon as possible in order to continue providing MaineCare services. Given that the law provides benefits to the regulated community, and the time sensitive nature of the law, the Department finds that these changes to Section 18 should be made on an emergency basis. These emergency rule changes shall be effective for ninety (90) days. The Department shall engage in "regular" routine technical rule-making to permanently adopt these Section 18 rule changes.

Fiscal impact of rule:

The Department anticipates that this rule-making will cost approximately $21,636 in SFY 2016, which includes $8,077 in state dollars and $13,559 in federal dollars, and $129,813 in SFY 2017, which includes $46,798 in state dollars and $83,016 in federal dollars.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 65**, Behavioral Health Services
Filing number:	**2016-198**
Effective date:	11/23/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This rule adds a Medication-Assisted Treatment section to help MaineCare policy align better with federal and state guidelines surrounding substance use treatment. Due to clinical criteria changes for Section 17, "Community Support Services", members may no longer be able to access Clubhouse services or Specialized Group Services under Section 17. Recognizing the clinical importance of these services for appropriate members, the Department is adding these services to Section 65, "Behavioral Health Services".

Basis statement:

The Department of Health and Human Services adopts this rule in order to more closely align with federal SAMSHA guidelines as well as state licensing rules around opioid treatment, to move certain services from Section 17, "Community Support Services", to Section 65, "Behavioral Health Services", and to make minor technical edits. Overall, these changes are being added to support clinical best practices and improve the quality of care for MaineCare members. As a result of public comments and further review by the Department and the Office of the Attorney General, there were additional technical changes, formatting updates, minor adjustments to align with other sections of the MBM, and changes to language for clarity.

Fiscal impact of rule:

For the Medication-Assisted Treatment changes, a fiscal impact could not be determined at this time. For the Clubhouse services changes, the Department anticipates that this rule-making will cost approximately $805.66 in FFY 2016, which includes $300.76 in state dollars and $504.90 in federal dollars, and $1,611.31 in FFY 2017, which includes $573.95 in state dollars and $1,037.36 in federal dollars.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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; 45 CFR §§ 162.1000, 162.1002, 162.1011
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 109**, Speech and Hearing Services
Filing number:	**2016-202**
Effective date:	11/28/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This rule is being adopted to reduce rates for codes 92587 (Agency Rate) and 92588 (Agency and Independent Rate) to align with current Medicare rates for Speech and Hearing Services. The Department also adds code 92586 for clarification of limited services. Finally, the Department adopts minor technical edits.

Basis statement:

This adopted rule makes the following changes:

(1) It reduces the agency rate for Code 92587 (distortion product);

(2) It reduces both the agency rate and the independent rate for Code 92588 (distortion product);

(3) It adds a new code: Code 92586 (Limited auditory evoked potentials);

(4) It clarifies the description for some codes

The Department is seeking, and anticipates receiving, approval from the federal Center for Medicare and Medicaid Services (CMS) for the rate changes, and the addition of a new code. Pending approval, the rate changes and the new code will be effective as of November 28, 2016. A methodology change notice was published on March 4, 2016.

Fiscal impact of rule:

The Department anticipates that this rule-making will save approximately $1,693.45 in SFY 2016 and $2,007.90 in SFY 2017 in State funds. Additionally, the Department anticipates that this rule-making will save approximately $3,004.05 in SFY 2016 and $3,629.09 in SFY 2017 in Federal funds.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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(8), 3173; PL 2015 ch. 481 Part C; Resolves 2015 ch. 45
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 2**, Adult Family Care Services
Filing number:	**2016-231**
Effective date:	1/2/2017
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This rule complies with:

1) PL 2015 ch. 481 (Part C), *An Act To Provide Funding to the Maine Budget Stabilization Fund and To Make Additional Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and To Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2016 and June 30, 2017,* which directs the Department of Health and Human Services to amend Ch. III Section 2, "Adult Family Care Services", to provide a four (4) percent cost-of-living increase for Adult Family Care Services. This rule seeks to implement a four (4) percent cost-of-living rate increase for Adult Family Care Services for the fiscal year ending June 30, 2017.

2) Resolve 2015 ch. 45, *Resolve, To Require the Department of Health and Human Services to Provide Supplemental Reimbursement to Adult Family Care Homes and Residential Care Facilities in Remote Island Locations.* Although the Department previously engaged in emergency and routine technical rule-making to add language to the rule providing for a supplemental rate payment of fifteen (15) percent to adult family care homes that qualify as remote island facilities, the Department did not include a case mix chart specific to these providers and seeks to do so through this rule-making. The supplemental rate payment is effective retroactive to October 1, 2015.

Basis statement:

The Department of Health and Human Services (Department) adopts these rule changes to Ch. III Section 2, "Adult Family Care Services", to effectuate a four (4) percent cost-of-living rate increase for the fiscal year ending June 30, 2017. In addition, Ch. III includes a case mix chart that identifies a fifteen (15) percent supplemental rate for remote island facilities. While this supplemental rate increase was included in prior rule-makings, the case mix chart was not included, and the Department seeks to adopt this change in this rule-making. These changes were enacted on an emergency basis on October 4, 2016, and the Department now seeks to adopt them permanently.

The Department is seeking and anticipates receiving approval from the federal Centers for Medicare and Medicaid Services ("CMS") for these changes. Pending approval, the four (4) percent cost-of-living increase will be effective retroactive to July 1, 2016. The Department indicated in prior rulemakings that it was seeking CMS approval for the remote island facility supplemental payment change retroactive to October 1, 2015.

The Department is authorized to 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, because the Department submitted the requested State Plan Amendment changes to CMS by September 30, 2016 and December 31, 2015, respectively, the retroactive effective dates are consistent with federal Medicaid law. 42 CFR §447.256(c).

Fiscal impact of rule:

This rule-making is estimated to cost the Department $197,981 in SFY, which includes $81,501 in state dollars.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name:	Department of Health and Human Services, Maine CDC, Division of Environmental and Community Health, **Drinking Water Program**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 2605, 2611, 2620-C
Chapter number/title:	**Ch. 231**, Rules Relating to Drinking Water
Filing number:	**2016-082**
Effective date:	5/9/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The principal reason that the Drinking Water Program is adopting these changes is to update and clarify regulation of public water systems. By removing definitions unused within these rules, adding new definitions related to the upcoming Revised Total Coliform rule and incorporated bottled water regulations, these updates will help operators and managers of public water systems understand what is required much better with these changes.

Basis statement:

These rules are established to protect public health by ensuring that all public water systems in Maine are serving safe drinking water to the residents and visitors of Maine. The following changes further the purpose of protecting public health:

- Clarify the definitions section by removing definitions unused within these rules, because it made no sense to define terms found nowhere in the rule;
- Further explain new sections of the rule by adding new definitions pertaining to those new sections, including bottled water regulation, water vending machine regulation, and the new Revised Total Coliform rule;
- Create a more comprehensive rule for all public water systems to consult, by inserting relevant portions of Ch. 235 (the Bottled Water Bulk Water & Water Vending Machine rules). Currently, bottled water facilities and water vending machines regulations are located in a separate rule, so public water systems must consult different rules, to know whether they are in compliance with drinking water regulations. This change also reflects the 2012 Memorandum of Understanding (MOU) between the Department of Health & Human Services Maine Center for Disease Control & Prevention Drinking Water Program and the Department of Agriculture, Conservation & Forestry;
- Hold transient public water systems demonstrating vulnerabilities to public health threats more accountable by adding a measure that would assure they hire a licensed water operator, which is already required of all other public water systems;
- Help the regulated public water systems understand what exactly must be tested when a new source is approved, by replacing the vague language with individually named contaminants. Because there are so many certified laboratories in Maine, the understanding of screens may vary with each facility. Now, the standards are clearly stated in Section 3 and Appendix A;
- Further assure drinking water is safe, by adding requirements when public water systems make tank and clear well repairs, so that coating and painting of surfaces touching finished water is safe for consumption;
- Improve the timeliness of reporting acute contaminants, including e. coli, from certified laboratories to the Drinking Water Program. Instead of one week, labs must report acute contaminants within 24 hours;

- Meet the conditions of the DWP's primacy agreement with EPA and explain the new federal Revised Total Coliform rule, by incorporating the rule into this chapter; and
- Decrease frustration or misunderstanding by updating and correcting outdated or wrong references, citations, and typos throughout the rule.

Fiscal impact of rule:

Counties/Municipalities: These rule changes pose no fiscal impact to counties or municipalities.

Department: The requirement for annual routine inspection of the bottling facility by D.H.H.S. Maine CDC Drinking Water Program has been reduced in scope to only source and treatment oversight, as well as a reduction in frequency from annually to once every three years. These changes will save the Department approximately $6,000, when considering all 30 facilities and all 8 field inspectors.

Small Businesses: These rule changes would save money for small businesses like bottlers, due to the potential for reducing sampling frequency.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name:	Department of Health and Human Services, Maine CDC, Division of Environmental and Community Health, **Drinking Water Program**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 2605, 2611, 2620-C
Chapter number/title:	**Ch. 235**, Rules Relating to Bulk Water
Filing number:	**2016-083**
Effective date:	5/9/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This rule revision simplifies the process of licensing and compliance for bottled water producers by eliminating duplicate requirement and inspections. These changes also implement the Memo of Understanding between DHHS and DACF that clarifies the duties of each with regard to bottled water, which is regulated both as a food product and as drinking water.

Basis statement:

These rule changes within Ch. 235 remove all references to bottled water and water vending machines, because they were moved to the *Rules Relating to Drinking Water*, 10-144 CMR Ch. 231. This move allows for all public water systems to refer to one set of rules at Ch. 231.

The removal of references to bottled water reflects the 2012 Memorandum of Understanding (MOU) between the Department of Health and Human Services (DHHS) Maine Center for Disease Control & Prevention (Maine CDC) Drinking Water Program and the Department of Agriculture, Conservation & Forestry (DACF). In that MOU, both parties agreed that DHHS would oversee regulation of the well/source and treatment to prior to the bottling process. DACF then oversees the bottling process, labeling and recall procedures. Therefore, much of the labeling, bottling and recall language was removed entirely and left for DACF to oversee. Changing the Rule to reflect the 2012 MOU and current practice of both Departments creates consistency and clarity in describing each Department's role and responsibility regarding regulation of bottled water facilities and water vending machines. Because Ch. 235 shall only pertain to the regulation of bulk water transportation in Maine, the title of the rule was changed from *Rules Relating to Bottled Water, Bulk Water and Water Vending Machines* to *Rules Relating to Bulk Water*.

Fiscal impact of rule:

With bottled water facility inspections being reduced from annually to once every three years, DHHS Maine CDC Drinking Water Program field inspectors will spend less time performing this inspection work, for a savings of $6,000 per year ($750 per inspector). This savings will be realized in a Special Revenue account for the Drinking Water Program.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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:	20-A MRS §§ 6352-6358
Chapter number/title:	**Ch. 261**, Immunization Requirements for School Children *(jointly with the Department of Education, Ch. 126)*
Filing number:	**2016-228**
Effective date:	12/21/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

These changes include adding a Tdap vaccine to the required school entry for children entering 7th grade, to protect Maine students. Maine is one of only three remaining states yet to implement this requirement. The update to the number of Varicella exclusion days align with recommendations issued by the U.S. Centers for Disease Control and Prevention. These changes also remove outdated implementation language and more clearly reflect the DHHS Office names and structure, to reduce confusion in following the rules.

Basis statement / summary:

These joint rules are established to ensure a safe and healthful school environment for all Maine students by requiring all children attending public or private schools in the State of Maine receive the required vaccines recommended by the federal Centers for Disease Control (CDC) and the Advisory Committee on Immunization Practices (ACIP). These rules prescribe the dosage for required immunization and refine record-keeping and reporting requirements for school officials.

In recent years, new vaccines against pertussis have been introduced to the routine immunization schedule for children and adolescents, recommended for youths aged 11 to 12 years, with a catch-up vaccination for older adolescents. Pertussis is a highly contagious infection often causing school or community outbreaks. Among healthy adolescents, pertussis is usually a self-limited illness characterized by a prolonged cough. However, secondary complications can occur, and adolescents serve as an important reservoir for transmission to infants, for whom infection can lead to pneumonia, respiratory failure, apnea, and even death. The tetanus toxoid, reduced diphtheria toxoid, and acellular pertussis vaccine (Tdap) has been shown to be 92% effective in preventing culture-confirmed pertussis. Maine is one of only five states in the nation without a current Tdap school requirement.

Changes to the rules include updating the vaccine dosage requirement to include 1 dose of Tdap vaccine for 7th grade entry. This will align with the CDC and ACIP current recommendations. Additionally, the required number of exclusion dates for varicella disease will change from 16 days to 21 days to reflect the current CDC school exclusion guidelines, an oversight from the previous substantive change to this rule. Outdated implementation requirements for the varicella vaccination have also been removed. A number of non-substantive changes to the rule have also been made, including: (1) inserting a cover page, table of contents, and pagination; (2) updating department names to reflect current DHHS department names; and (3) and making minor formatting changes to align the DOE and DHHS rules.

As this is a joint rule adoption, both DHHS and DOE have concurrently updated their chaptered rules to reflect the above changes.

Fiscal impact of rule:

None

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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, **Childhood Lead Control Program**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS ch. 252 §1315-A
Chapter number/title:	**Ch. 292**, Rules Relating to the *Lead Poisoning Control Act*
Filing number:	**2016-149**
Effective date:	9/12/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The reason for the changes is due to the 127th Legislature amending the *Lead Poisoning Control Act* (LPCA), requiring the Department to adopt by rule a new definition of a lead poisoned child. The definition is required to be based on the new lower federal reference level for blood lead, currently 5 ug/dL. The statutory requirement to perform environmental lead hazard inspections is linked to the definition of a lead poisoned child. These recent amendments provided the Department with the authority to levy administrative fines for violation of the Act.

Basis statement:

These rules were established to protect public health by ensuring that rental properties housing lead-poisoned children are abated and landlords fulfill their responsibilities as identified in the *Lead Poisoning Control Act* (22 MRS §§ 1320 & 1320A).

The adoption of these changes to the *Rules Relating to the Lead Poisoning Control Act* is intended to clarify requirements relating to the scope of Environmental Lead Hazard Investigations when a lead poisoned child is found, clarify requirements for supplying substitute dwelling units to residents of dwellings impacted by lead hazards, describe certain requirements regarding inspections, posting and abatement orders, and also clarify the Department's enforcement authority for violations of the Act.

Specifically, the following changes to the Rules are being adopted, in furtherance of the protection of public health:

- The amended Rules include a new definition of "lead poisoned" or "lead poisoning," as required by changes to the Lead Poisoning Control Act. "Lead poisoned" or "lead poisoning," is now defined as having a blood lead level equal to, or exceeding, 5 micrograms of lead per deciliter of blood (5 ug/dL).
- Definitions have been made consistent with Department of Environmental Protection rules 06-096 CMR ch. 424, where those definitions and requirements overlap with this rule.
- The amendments further explain new sections of the Rule, by adding or modifying definitions pertaining to those new sections, including changes to investigations, relocation, and violations.
- The amendments clarify the sections of the rules identifying when the Department must inspect a dwelling unit and when it may inspect a dwelling unit.
- The amended rules further protect tenants residing in unsafe buildings by clarifying when and how the Department will notify tenants of environmental lead hazards.
- Potential new owners of affected properties have been protected through clarifications of the requirements of landlords who wish to sell a property under an abatement order.

- The amendments clarify a landlord's requirements when an Order to Abate is placed on a property, including requirements for relocating a family residing in the affected property to a lead-safe location.
- The rule changes correct citations, and delete unnecessary definitions and notes.

The amended rules also include a more thorough explanation of the administrative penalty process for violations of the *Lead Poisoning Control Act*, which was authorized by recent change to that Act. The Department estimates that this rule is likely to require DHHS to increase the number of annual lead inspections performed from approximately 140 per year to more than 900.

Fiscal impact of rule:

Counties/Municipalities: There is expected to be no impact on counties or municipalities.

Department: This rule will require DHHS to increase the number of lead inspections performed from approximately 140 per year to over 900. A fiscal note was prepared for the 127th legislative session that estimates a $1.3 million impact in 2015/16, decreasing to $1.1 million by 2018/2019. The fiscal impact is based on increased contractual costs for inspections and increased staff (4 permanent and 4 limited period Environmental Specialist IIIs) to review and act on inspection reports and work with families on interim controls of identified lead hazards while awaiting more permanent corrective action. This fiscal note assumed an estimated 1,300 additional inspections. New blood lead surveillance data on confirmation rates for blood lead testing support a revised estimate of 900 additional inspections in 2016. The above costs and staff estimates may be able to be reduced by 30%.

Small Businesses: Small businesses, specifically landlords, could be impacted if they do not maintain their property as lead safe and a child living in a rented dwelling becomes lead poisoned. An increase in inspections by the Department will result in more landlords receiving an order to abate lead hazards, and landlords will be impacted by the cost of removing lead hazards and could additionally be impacted by fines if they do not comply with the *Lead Poisoning Control Act*. The average lead removal project costs $12,000 per unit.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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 Regulatory Services (DLRS)**
Umbrella-Unit:	**10-144**
Statutory authority:	PL 2015 ch. 108; 36 RS §5219-LL; 22 MRS §42; 22-A MRS §205
Chapter number/title:	**Ch. 298** *(New)*, Rules Governing the Certification Program for Primary Care Tax Credit
Filing number:	**2016-090**
Effective date:	5/19/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

These new rules administer a "certification program" operated by the Department of Health and Human Services that selects up to 5 primary care professionals to receive a Maine state income tax credit. Professionals identified in the statute who have outstanding student loans are eligible for certification when they agree to work in a primary care practice in an underserved area of Maine for 5 years. The Legislature enacted this five-year income tax credit program to provide an incentive for eligible professionals to practice in areas with an identified shortage of primary health care professionals.

Basis statement:

The adopted *Rules Governing the Certification Program for Primary Care Tax Credit* implement a tax credit certification program enacted by the Maine Legislature. The Division of Licensing and Regulatory Services (DLRS) in consultation with the Maine Revenue Services (MRS) developed these rules to administer the certification program. Up to five eligible primary care professionals, with outstanding student loans who work in a primary care practice located in an underserved area of Maine will be certified by DHHS to receive an income tax credit each year the program is in effect.

The Legislature has funded this program for five tax years: 2014 through 2018. DLRS submits the names of the certified individuals to the Maine Revenue Services (MRS). MRS will manage the income tax credit through the certified professional's annual income tax return.

Two legislative processes supported the promulgation of these rules: (1) the creation of this primary care access credit program via PL 2013 ch. 599, and (2) the amendment of the program via PL 2015 ch. 108. Through that amendment, the single statute 36 MRS §5219-LL supports the promulgation of this rule.

The goal of the five-year program is to test the effectiveness of an income tax credit aimed at offsetting student loan debt as a method of meeting a public need to recruit and retain primary care professionals to work in underserved areas of Maine.

Initial selection is on a competitive process. To encourage retention, once certified for a tax credit, priority is given to certified primary care professionals who reapply for certification in subsequent tax years. The income tax credit that may be claimed is an amount equal to the annual payments made on the student loan (not to exceed statutory caps) each tax year the program is in effect.

Fiscal impact of rule:

This rule is not expected to fiscally impact or create new recording burdens for small businesses. This rule is not expected to yield new costs for municipal or county governments.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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 (OFI)**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42(1), 3104
Chapter number/title:	**Ch. 301**, Food Supplement Program Manual, **Rule #192A**: Simplified Reporting to Change Reporting
Filing number:	**2016-001**
Effective date:	1/11/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

According to federal rule 7 CFR §273.12, "Requirements for change reporting households," state agencies have the option to change reporting requirements within specific parameters provided by this federal rule.

Changing reporting requirements to within 10 days of a change becoming known to a household will improve program integrity by incorporating changes as they happen, rather than only at a due date of six months or annual review.

Basis statement:

The purpose of this rule is to change the Food Supplement reporting requirements for changes in circumstance from a six-month period to within 10 days of a change becoming known to the household. According to federal rule 7 CFR §273.12, "Requirements for change reporting households," state agencies have the option to change reporting requirements within specific parameters provided by this federal rule.

Changing reporting requirements to within 10 days of a change becoming known to a household will improve program integrity by incorporating changes as they happen, rather than only at a due date of six months or at annual review.

Although it does not dispute that the Department may adopt this rule, FNS has very recently suggested that doing so would require us to reduce client recertification periods to no more than six months. But, adopting change reporting does not compel that result, and OFI does not intend to reduce the recertification period for the Food Supplement Program from twelve to six months.

Specifically, FNS has cited 7 CFR §273.12(a)(l)(i)(C) for the proposition that such subsection of the CFR requires change reporting households reporting certain earned income to be certified for no more than six months. By its terms, however, that section simply does not impose a maximum reporting period of any kind. 7 CFR §273.12(a) generally sets out the various pieces of information that change reporting households must report. For example, change reporting households must report changes of more than $50 of unearned income (subject to some exceptions), id. §273.12(a)(l)(i)(A), changes in the source of income, id. §273.12(a)(l)(i)(B), changes in household composition, id.§273.12(a)(l)(ii), and changes in residence, id. §273.12(a)(l)(iii). None of those reporting requirements, or any other except the one at issue, makes any reference to certification period. Nor does section 273.12 in general purport to impose any kind of certification period requirements on change reporting households.

Instead, section 273.12(a)(l)(i)(C) - and only that specific section - establishes that one of two things regarding earned income must be reported, "provided that the household is certified for no more than 6 months." (emphasis added). "Provided that" means "if' or "as long as." As such, the only reasonable interpretation of the section in question is: if a household has a certification period of six months or fewer, then it must disclose the specifically enumerated

income information. And, correspondingly, if a household does not have a certification period of six months or fewer, then it is not required to report the types of changes in income addressed in 7 CFR §273.12(a)(l)(i)(C).

Because change reporting households in Maine will have twelve month certification periods, it follows only that such households will be required to report all changes listed in section 273.12(a) - such as changes in household composition and income sources - except the specific information concerning earned income set out in section 273.12(a)(l)(i)(C). That is all a natural reading of that section compels, and thus that is what Maine will require of change reporting households. Nevertheless, FNS somehow reads the conditional "provided that" clause to unconditionally impose a six month certification maximum on change reporting households with earned income. That interpretation in neither supported by the text of §273.12(a)(l)(i)(C), nor by that subsection's placement within the regulatory scheme.

Fiscal impact of rule:

This rule can affect both the federally funded, and smaller state funded programs due to more restrictive time frames to report changes that may impact benefit levels in either a positive or negative manner. These types of future changes cannot be determined at this time.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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 (OFI)**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3104; 5 MRS §8054; 7 CFR 273.9(d)(6)(iii)(B)
Chapter number/title:	**Ch. 301**, Food Supplement Program Manual, **Rule #197E**: SUA Changes for FFY 2017: **Section FS-555-5**, Income and Deductions
Filing number:	**2016-163**
Effective date:	10/1/2016
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)(6)(iii)(B), which requires annual review and adjustment to the SUA(s).

Basis statement:

This rule implements updated standard utility allowances (SUA), as approved by USDA Food and Nutrition Services (FNS) for FFY 2017, effective October 1, 2016. Federal regulation 7 CPR 273.9(d) (6)(iii)(B) requires that SUA(s) be reviewed and updated annually. The SUA values are based on changes in the Consumer Price Index (CPI) for fuel and utilities from June 2015 to June 2016, subject to approval by FNS, which was obtained by the Department prior to this rule-making.

Findings of Emergency

The final approved values, which will cause benefits to decrease, were not provided in a timeframe that would allow the Department to comply with the non-emergency rule-making process and implement by the required date of October 1, 2016. The Department finds that an emergency rule change is necessary to preclude federal penalties or loss of federal funds.

Fiscal impact of rule:

There are no implementation costs associated with this rule. This rule will not have an impact on municipalities or small businesses.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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 (OFI)**
Umbrella-Unit:	**10-144**
Statutory authority:	7 USC §2015(s); 22 MRS §§ 42(1), 3103
Chapter number/title:	**Ch. 301**, Food Supplement Program Manual, **Rule #194A**: **Section FS-444-12**, Households with Special Circumstances (Lottery Winnings)
Filing number:	**2016-197**
Effective date:	10/21/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The rule creates a basis for termination of benefits based on substantial lottery and/or gambling winnings. The current Food Supplement rules do not address lottery/gambling winnings and effect on eligibility. The rule would cause immediate termination of benefits when anyone in the benefit household has lottery/gambling winnings of $5,000.00 or more in one calendar month. The winnings would be treated as assets. Affected households may immediately reapply and are subject to eligibility guidelines to requalify for benefits. The Department will coordinate with the Maine Lottery Commission in implementing this rule to receive confirmation of significant winnings.

Basis statement:

The rule disqualifies a Food Supplement household from receiving benefits after having received substantial lottery and/or gambling winnings. The rule makes a household ineligible for benefits when anyone in the household receives lottery or gambling winnings of $5,000.00 or more in one calendar month. This amount is calculated based on winnings received after any legally required setoffs or interceptions as required by Maine law. After being disqualified by operation of this rule, a household could immediately reapply and be subject to all applicable financial eligibility guidelines for a new determination of eligibility.

The rule effectuates Section 4009 of the *Agricultural Act of 2014*, PL 113-79 (the "Farm Bill"), codified at 7 USC §2015(s), enacted February 7, 2014, which has not yet been otherwise addressed in the Federal Register or the Maine Food Supplement rules. This omission has made it possible for participants who have won substantial sums of money to continue receiving Food Supplement benefits, notwithstanding Congress's intent to make such households ineligible. While the Farm Bill requires that the Secretary of Agriculture establish the amount of lottery or gambling winnings necessary to make a household ineligible, he has not done so. Accordingly, this rule sets a limit of $5,000 – which is equal to the highest asset test currently applied in the Food Supplement Program – and otherwise operates exactly as the Farm Bill provides.

There are three changes in the final rule made after the comment period. The Department removed the requirement that "gross" winnings count against the household and added that only winnings that are actually received count against the household, allowing for required offsets (such as outstanding tax debt or child support arrears). These changes more closely align the rule to the federal statute, and were made upon the recommendation of the Office of the Attorney General. Finally, the Department added a reference to Section FS 333 (Assets) so that it is clear a participant must meet all financial eligibility requirements when re-applying for benefits in addition to FS 444 and FS 555.

Fiscal impact of rule:

No State fiscal impact.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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 (OFI)**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3104; 7 CFR 273.9(a), (d)(6)(iii)(B)
Chapter number/title:	**Ch. 301**, Food Supplement Program Manual, **Rule #197A** – SUA Changes for FFY 2017: **Section FS-000-1**, Basis of Issuance; **Section FS-555-5** pages 1-11, Income and Deductions
Filing number:	**2016-226**
Effective date:	10/1/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

An change is necessary to remain in compliance with Federal regulation 7 CFR 273.9(a), (d)(6)(iii)(B), which require annual review and adjustment to the SUA and COLA values.

Basis statement:

This rule adopts annual changes in the standard utility allowances (SUA) and cost of living allowances (COLA) used to calculate benefits. The annual changes are mandated by federal regulations 7 CFR 273.9(a) and (d), and are based on USDA Food and Nutrition Sevices (FNS) requirements. To avoid causing overpayments, the SUA values had to be in place on October 1, 2016. Thus, an emergency rule-making was promulgated to meet that deadline. This rule-making makes the emergency rule permanent. The COLA values did not require an emergency rule-making because they represent increases in allowances and, as such, can be applied retroactively to October 1, 2016.

While the COLA values increased, SUA values decreased for FFY 2017. The marginal decrease in the SUAs and marginal increase in the COLAs will have minor impacts on household benefit amounts, and will affect housesholds based on factors distinct to each household. Some members may see a minor increase in benefits, while others will have a minor decrease.

Finally, the rule removes a “note” related to outdated LIHEAP policy that was not deleted when the Department’s rule-making on updated LIHEAP policy was promulgated.

Fiscal impact of rule:

None anticipated

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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 (OFI)**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42(1), 4301(3)
Chapter number/title:	**Ch. 323**, Maine General Assistance Manual: **Section 3** pages 4, 6; **Section 5** pages 1, 2
Filing number:	**2016-079**
Effective date:	5/16/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The purpose of this rule is to implement changes to 22 MRS §4301(3), per PL ch. 324 (*An Act to Clarify the Immigration Status of Noncitizens Eligible for General Assistance*) passed by the 127th Legislature. This rule will clarify who is newly eligible under that law and who is not. It interprets "pursuing a lawful process" to include only an affirmative application for asylum that follows U.S.C.I.S. rules and that it is submitted prior to being placed in removal proceedings. Those lawfully present and those "pursuing a lawful process" will have a 24 month lifetime eligibility limit. The rule also interprets the statute's 24 month limit to include months in which they received G.A. prior to the law's passage.

A paragraph that stated that eligibility is determined solely on the basis of need was removed to clarify that there are other factors used in determining eligibility.

Additionally, the rule establishes a requirement on the municipalities for tracking of the 24 month lifetime limit. And, it sets reporting and verification requirements for the municipalities to follow as a condition of reimbursement. This rule will ensure program integrity is maintained with the implementation of PL ch. 324.

Basis statement:

This rule-making implements new classifications of eligible individuals for General Assistance, as well as a 24 month time limit, made by PL ch. 324 (*An Act to Clarify the Immigration Status of Noncitizens Eligible for General Assistance*), passed by the 127th Legislature and codified under 22 MRS §4301(3).

The rule defines the two new classifications of individuals who are not U.S. citizens, but are "lawfully present" or are "pursuing a lawful process to apply for immigration relief." The Department defines a "lawfully present" individual as one who meets the federal criteria under 8 USC §162l(a)(l)-(3). This rule-making establishes that an individual is "pursuing a lawful process" within the meaning of section 4301(3) when he or she has filed an application for immigration relief with the U.S. Citizenship and Immigration Services. The rule provides that Department reimbursement to municipalities is conditioned upon adhering to reporting and verification requirements of "lawfully present" and "pursuing a lawful process" individuals. The rule also sets a procedure for municipalities to track and report to the Department assistance months for those considered "pursuing a lawful process," because the statute sets a 24 month eligibility limit for such newly eligible noncitizens.

As a result of comments, there were several changes to the final rule after it was proposed. The changes are summarized below and explained in detail at the end of the Summary of Comments and Responses document.

In section III, “Definitions”, there are two changes. The definition of "lawfully present" has been changed to add the actual the language of 8 USC §1621(a)(l)-(3), rather than just the citation to the statute. Also, the definition of "pursuing a lawful process to apply for immigration relief' has been changed to provide that both defensive and affirmative

applications meet the definition. The latter change expands the rule's coverage of who is eligible for GA, consistent with PL 324.

In section V, the Department made several changes. While, because of the new eligibility requirements in statute, the proposed rule had removed a sentence stating that eligibility is determined solely on the basis of need (page 1),the Department restored this sentence in the final rule, but added a phrase that applicants must also be eligible pursuant to 22 MRS §4301(3). On page 2, Immigration Status, there are three changes. The term "U.S. Citizen" was removed because this paragraph is intended to apply to noncitizens. Likewise, the 24 month time limit should apply only to those individuals "pursuing a lawful process," so the term "lawfully present" was removed. Finally, an added sentence plainly states that only those "pursuing a lawful process" have a 24 month time limit, which limit begins after July 1, 2015.

Several changes were made to the proposed VERIFICATION, RECORDS RETENTION, AND REPORTING RESPONSIBILITIES, section V, page 2. The Department clarified that the applicant is responsible for verifying the lawful pursuit of immigration relief to the municipality, instead of requiring the municipality to confirm the applicant's status. The Department removed reference to "official federal government documentation," and added language to make clear that verification an applicant may provide includes documentation from a federal agency, the USCIS or other court documentation. The Department clarified that GA administrators are only responsible for tracking assistance months provided in their own municipalities, and only for those recipients who are "pursuing a lawful process."

In addition to the rule, in the near future the Department will issue detailed, updated guidance to the municipalities regarding what applicants are eligible for GA, consistent with 22 MRS §4301(3) and the requirements of the rule.

Fiscal impact of rule:

It is estimated that this rule will cost the State of Maine $3,068,510.05 for SFY 2016 and $3,221,935.55 for SFY 2017. A reduction was never made in the baseline budget when reimbursements for this population were stopped. Therefore, $1,752,289.09 in SFY 2016 and $1,702,403.40 for SFY 2017 will be covered with those funds. The net General Fund fiscal impact will be $1,316,220.96 for SFY 2016 and $1,519,532.15 for SFY 2017.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name:	Department of Health and Human Service, **Office for Family Independence (OFI)**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42(1), 3762(3)(A), 3762(8) and 3769-A, and PL 2015 ch. 267 Pt. RRRR-2, Pt. RRRR-3
Chapter number/title:	**Ch. 331**, Maine Public Assistance Manual (TANF), **Rule #105A**: **Ch. IV**, Budgeting Process; **Ch. V**, Post-TANF Benefits; **Appendices**
Filing number:	**2016-060**
Effective date:	4/10/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This rule implements portions of the Fiscal Year 2016-2017 biennial budget, which included the following changes to Maine's TANF Program:

- Eliminates the Gross Income Test for ongoing TANF cases. The test will be used for applications only.
- Increases the duration of the Transitional Assistance Program from 12 months to 18 months, and sets the daily reimbursement cap during months 13-18 at $15 per day.

Basis statement:

This rule implements the amendment and additions to 22 MRS §§ 3762(3)7-A and 3762(8)B by PL 2015 ch. 267 Pt. RRRR-2 and RRRR-3, thereby adopting into the TANF manual the following:

a) Eliminate the Gross Income Test for ongoing TANF cases. The Gross Income Test will be used for applicants only. The test for ongoing recipients will be the Standard of Need (SON). This rule change is necessary to conform regulations with the new statutory requirement.

b) Increase the duration of the Transitional Assistance Program for transportation costs from twelve (12) months to eighteen (18) months to meet employment related travel costs where the recipient lost TANF eligibility due to employment. While the increase from 12 to 18 months is statutorily compelled, the Department has elected to set the maximum daily reimbursement cap during months thirteen (13) through eighteen (18) to fifteen dollars ($15.00) per day. The purpose in reducing the maximum daily cap in the last six months of the program is to gradually decrease the subsidy in an effort to transition the recipient from public benefits to self-sufficiency.

Some non-substantive changes were made to the rule after it was proposed, for clarification purposes and as part of reformatting. The Department made a change to the term "both parents" working instead of "both adults" working, in Ch. V, III(b). The reason for the change was that an adult may be part of the household and not a parent.

Fiscal impact of rule:

Estimated cost of the extension of the period of eligibility for Transitional Transportation - $775,878.00. This will be funded by the TANF Block Grant.

Estimated cost of the elimination of the Gross Income Test for ongoing eligibility is unknown. This will be funded by the TANF Block grant.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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 (OFI)**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173, 3174 *et seq.*; 42 USC §1396a, 9902(2)
Chapter number/title:	**Ch. 332**, MaineCare Eligibility Manual, **Rule #283A**: **Chart 6**, Federal Poverty Levels
Filing number:	**2016-128**
Effective date:	8/1/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The State of Maine administers the MaineCare program pursuant to a State Plan, which requires that the State rules reflect prevailing federal standards and arithmetical values. The federal poverty guidelines are updates periodically in the Federal Register by the U.S. Department of Health and Human Services.

Basis statement:

This rule updates the *MaineCare Eligibility Manual* with the Federal Poverty Level (FPL) amounts that were determined by the U.S. Department of Health and Human Services and published in the Federal Register on January 25, 2016. This change will be retroactive to January 1, 2016. The 2016 Federal Poverty Level must be applied to all eligibility decisions effective January 1, 2016, as required by federal law. Pursuant to 22 MRS §42(8), the Department is authorized to adopt rules that have a retroactive application to comply with federal requirements or to conform to the State Medicaid Plan as filed with the federal government as long as there is no adverse financial impact on recipients. These rules produce no adverse financial impact on recipients.

Fiscal impact of rule:

There will be a fiscal impact on the General Fund due to increased eligibility for some recipients. The amount cannot be determined, however.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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 (OFI)**
Umbrella-Unit:	**10-144**
Statutory Authority:	42 CFR §431231(c)(2); 42 CFR §431916(a)(3)(i)(B); 42 CFR §431916(a)(3)(iii); 42 CFR §457805; *American Taxpayer Relief Act of 2012*; PL 2005 ch. 12 DDD-12
Chapter number/title:	**Ch. 332**, MaineCare Eligibility Manual, **Rule #278A**: MaineCare Eligibility Manual *(multiple revisions)*
Filing number:	**2016-153**
Effective date:	10/1/2016
Type of rule:	Routine Technical
Emergency rule:	No

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

Basis statement:
This rule makes revisions to several Parts of Ch. 332, *MaineCare Eligibility Manual*. Most of the revisions provide more clarity, correct typographical errors, or delete outdated references to the current MaineCare eligibility rule. The remainder of the revisions comply with federal requirements (i.e., increasing the noticing requirement from 12 to 15 days, increasing to 90 days the time in which one can complete a review form, and excluding income tax refunds as a countable asset for 12 months from receipt). None of the changes and/or corrections that have been made are expected to be controversial.

There were several minor changes made after the comment period, most are additional clarification of program eligibility. A complete list of the changes made after the comment period are listed in the Summary of Public Comments and Department's Response and List of Changes Made to the Final Rule.

Fiscal impact of rule:
No fiscal impact is anticipated.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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 (OFI)**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; 42 USC §1396a *et seq.*
Chapter number/title:	**Ch. 332**, MaineCare Eligibility Manual, **Rule #281A**: **Chart 3.10,** Premium Increase for Benefit for Special Benefits Waiver
Filing number:	**2016-154**
Effective date:	10/1/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The monthly premiums to enroll in the HIV/AIDS Waiver are updated to comply with the Waiver agreement between DHHS and CMS [Maine Section 1115 "Health Care Reform Demonstration for Individuals with HIV/AIDS", Part V, Paragraph 21].

Basis statement:

This rule results in changes to Chart 3.10, "Premiums for Special Benefit Waiver of the *MaineCare Eligibility Manual*", and increases the 2016 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 monthly premium is $34.22 for people with income between 150.1% of the FPL up to and including 200% of the FPL, and $68.43 for people with income between 200.01% and 250% of the FPL.

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

Fiscal impact of rule:

None known.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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 (OFI)**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; 42 USC §1396a; 22 MRS §3173-G
Chapter number/title:	**Ch. 332**, MaineCare Eligibility Manual, **Rule #282A** - Family Planning: **Part 9**, Special Groups – HIV/AIDS Waiver, Breast and Cervical, Family Planning: **Section 4**, Family Planning Coverage; **Part 18**, Presumptive Eligibility Determined by Hospitals: **Section 2**, Eligibility for Presumptive Eligibility Determination by Hospitals
Filing number:	**2016-181**
Effective date:	10/1/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This rule aligns the *MaineCare Eligibility Manual* with statutory changes to 22 MRS §3173-G, *Medicaid Coverage for Reproductive Health Care and Family Planning Services*, creating a limited benefit coverage group for adult and adolescent individuals in need of reproductive health care and family planning services who meet certain income guidelines.

Basis statement:

These rule changes align the *MaineCare Eligibility Manual* with recently enacted 22 MRS §3173-G, *Medicaid coverage for reproductive health care and family planning services*. This statute creates a limited Medicaid benefit coverage group for adult and adolescent individuals in need of reproductive health care and family planning services who have an income at or below 209% of the Federal Poverty Level (FPL).

The Legislature enacted 22 MRS §3173-G in accordance with the *Patient Protection and Affordable Care Act*, 42 USC §1396a(ii). Federal law provides states with the option to expand Medicaid coverage for family planning services.

To implement §3173-G, the Department adds a Section 4 (Family Planning Coverage) to Part 9 (Special Groups) of the *MaineCare Eligibility Manual*. Coverage is available only to individuals who are not otherwise eligible for any Categorically Needy or Medically Needy coverage group, and those who are not pregnant. Eligibility must be determined based on only the individual applicant's income, using the modified adjusted gross income (MAGI) methodology. Other basic eligibility requirements apply. There is no asset test for this coverage group. This limited benefit may be granted to all individuals regardless of age and gender.

The Office of MaineCare Services is adopting a rule for the *MaineCare Benefits Manual* (10-144 CMR ch. 101) setting forth the covered family planning services for this expanded eligibility group, as required by 22 MRS §3173-G.

In addition, the Department adopts changes to Part 18 ("Presumptive Eligibility Determined by Hospitals") of the *MaineCare Eligibility Manual*. Hospitals may make presumptive eligibility determinations for those who meet the requirements of Part 9, Section 4.

The Department obtained CMS approval for this expanded eligibility group on March 3, 2016. However, the Department's submission for approval included eligibility based on household income instead of individual income. Thus, the Department filed a request to obtain CMS approval to change income eligibility from household income to individual income, and that each applicant will be considered a household of one. The Department anticipates receiving CMS approval for these changes. Pending approval, the rule shall be effective retroactive to October 1, 2016.

Even though the rule includes no such restriction, the rule-making Fact Sheet and Notice of Agency Rule-making Proposal incorrectly indicated that individuals receiving benefits under the MaineRx Plus and Low Cost Drugs for the Elderly and Disabled (DEL) were ineligible for Family Planning under the rule.

There were changes made to the rule after its proposal. The most significant change made to the final rule is that the income of the individual, instead of the household, is used to determine eligibility. This change was made to comply with state law, which incorporates the federal option for states to count individual income, and it is consistent with the latest submissions made to CMS.

Fiscal impact of rule:

The Department anticipates that this rule-making will result in savings of approximately $298,743 in State funds in SFY17. The anticipated Federal cost is $1,122,776, for a State savings of $1,421,519. The Department anticipates savings in SFY18 to be approximately the same as SFY17.

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

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Division of Support Enforcement and Recovery (DSER)**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §42(1); PL 2015 ch. 296; 19-A MRS §§ 1601-1616, 2304; Ch. 65 Article 3 sub-Article 3, and Ch. 67; 10 MRS §4013; 26 MRS §1191(7); 36 MRS §5276-A(2); 45 CFR §§ 302.51(a)(1), 303.7
Chapter number/title:	**Ch. 351**, Maine Child Support Enforcement Manual (*internal chapters 2, 3, 8, 9, 15, 17, 18, 27*)
Filing number:	**2016-028**
Effective date:	3/1/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:
This rule-making will update various provisions of the *Maine Child Support Enforcement Manual*, to update and clarify provisions and keep the Manual current with changes made in the last legislative session.

Basis statement:
This rule-making will update various provisions of the *Maine Child Support Enforcement Manual*, to update and clarify various provisions and keep the Manual current with changes made in the last legislative session. The adopted rules will ensure that the Manual is easily understandable, consistent with pertinent statutes and reflective of current practices.
Chapter 2: This rule updates the definitions used in the Manual to reflect Maine statute and federal regulation changes.
Chapter 3: This rule updates and clarifies the process for case closure, and clarifies some of the language of the previous rule to make it more easily understandable.
Chapter 8: This rule incorporates changes anticipated by the passage of the *Maine Parentage Act*, effective July 1, 2016. As such, it adds provisions pertaining to *de facto* parentage and the non-marital presumption of parentage, and clarifies the language of the previous rule.
Chapter 9: This rule clarifies and updates the administrative process of establishing paternity, and incorporates changes anticipated by the passage of the Maine Parentage Act, effective July 1, 2016. As such, it adds provisions pertaining to assisted reproduction and the non-marital presumption of parentage. It simplifies the process to establish the paternity of a non-custodial parent who is unmarried to the custodial parent, but held out the child as his own, and clarifies the rules for parents who use assisted reproduction to conceive their child(ren).
Chapter 15: This rule provides clarity, adds a provision made necessary by a change in statute, requiring that all liens be discharged within 60 days of satisfaction, and reflects a change in practice in that the Withhold and Deliver mechanism is now used for disposition of property, whereas the Immediate Income Withholding Order is used to garnish wages.
Chapter 17: This rule ensures that those who wish to appeal a state tax refund offset are afforded the statutory allotment of time in which to do so.
Chapter 18: This rule reflects changes in practice due to advances in technology since the rule was written.
Chapter 27: This rule clarifies the procedure for providing services in Intergovernmental cases by adding definitions under the *Uniform Interstate Family Support Act*, and by streamlining and simplifying the rule for easier reading.

Fiscal impact of rule: None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Division of Support Enforcement and Recovery (DSER)**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §42(1); 19-A MRS §2011
Chapter number/title:	**Ch. 351**, Maine Child Support Enforcement Manual (*internal Chapter 6*)
Filing number:	**2016-029**
Effective date:	7/1/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The studies on which the current Guidelines are based were done in the early 1980's. The newest studies report that the differences between raising younger and older children in a single parent household cannot be consistently shown. The latest two expert reviews of the Maine Guidelines suggested that the use of an age differential is no longer necessary, and contributes to a 14% error rate in the determination of Maine child support orders. This change will simplify the determination of child support and reduce errors, and thereby contribute to ensuring that child support obligations are fair and reasonable.

Basis statement:

Pursuant to 45 CFR §302.56, as a condition of approval of its State plan, each State shall establish one set of child support Guidelines by law or by judicial or administrative action for setting and modifying child support award amounts within the State. These guideline numbers become a rebuttable presumption in child support actions. Every four years, each State must review, and revise, if appropriate, the Guidelines to ensure that their system results in the determination of appropriate child support award amounts.

Although DSER has reviewed the Maine Child Support Guidelines quadrennially since they were established, and updated the numerical data contained therein as appropriate, the structure of the table has not changed since its inception. The age differential used currently (a multi-tiered approach using two different tables, one for children under the age of twelve and one for children from age 12-18) was recommended in the final report of the National Child Support Guidelines Project, published in 1990, based on a study done in 1984-87 - close to 30 years ago. Dr. David Betson, on whose studies the current Maine system is based (as updated in 2006) no longer recommends an adjustment for the child's age (latest study in 2010). Economist and Child Support expert Dr. Jane Venohr recommended in her 2007 review of the Maine Child Support Guidelines that Maine update the table at that time to eliminate the two-tier system and convert to a format that uses one amount per combined income category, without adjustments for the age of the child. The Cutler Institute, which performed the latest review, published in 2012, also recommended that the tiered system be revisited, due to its complexity and the high level of errors associated with misreading or misinterpreting the tables. All but two other states have abandoned multi-tier guideline tables.

The necessity of the multi-tier table to allow for differences in the cost of raising children of different ages is no longer consistently borne out in studies. Although at one time studies seemed to indicate that older children cost more to raise than younger children, recent studies show inconsistent results, mainly because of the inability to control for the myriad variables that are inherent in the new American family. Attempting to extrapolate the costs of raising children in two single-parent households from studies on intact two-parent households is an inexact science at best.

A multi-tier table is cumbersome to use, and, according to the Cutler Institute's findings, a large contributor to the 14% error rate in child support orders, costing some families hundreds of dollars per year. The change to Guidelines based only on income and number of children will simplify the determination of child support and reduce errors, and thereby contribute to ensuring that child support obligations are fair and reasonable. This would promote judicial economy, aid all those who calculate child support obligations, especially pro-se litigants, and ultimately benefit Maine's children.

Fiscal impact of rule:

There will be some cost involved in changing computer computation systems to accommodate the new guideline numbers, and in changing forms used to calculate child support orders. The cost to change forms will be minimal. The cost for changes to the CSEME data tracking system is estimated to be $79,665, of which will be paid using Other Special Revenue Funds.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Division of Support Enforcement and Recovery (DSER)**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §42(1); 19-A MRS §2011
Chapter number/title:	**Ch. 351**, Maine Child Support Enforcement Manual (*internal Chapter 6*)
Filing number:	**2016-102**
Effective date:	6/15/2016
Type of rule:	Routine Technical
Emergency rule:	Yes

Principal reason or purpose for rule:

The recently adopted rule #2016-029 used incorrect dollar amounts per child to populate the new Child Support Guideline table. This emergency rule-making is to correct those numbers. There is a threat to public general welfare, as if the table is not corrected as of July 1, 2016, Maine children will receive less child support than that to which they are entitled. In addition, the header of the new table will be changed to reflect that the table will apply to all children, aged 0-18 (19 if the child is still in school), avoiding confusion due to any references to two age categories as mentioned in 19-A MRS ch. 63. The effective date of the new Guideline table will be July 29, 2016.

Basis statement:

The recently adopted rule #2016-029 used incorrect dollar amounts per child to populate the new Child Support Guideline table. This emergency rule-making is to correct those numbers. There is a threat to public general welfare, as the Department has made a finding that the current Guideline table is incorrect, and if it is not corrected immediately, children will receive less child support than that to which they are entitled.

Pursuant to 45 CFR §302.56, as a condition of approval of its State plan, each State shall establish one set of child support Guidelines by law or by judicial or administrative action for setting and modifying child support award amounts within the State. These guideline numbers become a rebuttable presumption in child support actions. Every four years, each State must review, and revise, if appropriate, the Guidelines to ensure that their system results in the determination of appropriate child support award amounts. As part of its most recent quadrennial review, the Department decided to simplify and update its Child Support Guideline Table by eliminating the longstanding "two-tier" table setting the presumed per-child amount according to the age of the children (0-11 for one tier, 12-18 for the other).

After the adoption of rule #2016-029, the Department discovered that the numbers used in the new one-tier table established by the rule were actually the former numbers for the 0-11 age group tier. These numbers are 15% lower across the board than those calculated by the quadrennial reviewers and intended to be used in the new one-tier table.

Unless this rule-making is put into place on an emergency basis to correct this error, child support orders made after July 1, 2016 will short-change Maine children by 15% less than what they should receive from their non-custodial parent.

Fiscal impact of rule:

All costs involved were addressed in previous rule-making. No additional costs will be incurred.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Division of Support Enforcement and Recovery (DSER)**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §42(1); 19-A MRS §§ 2001, 2006, 2007; 5 MRS §9053(2)
Chapter number/title:	**Ch. 351**, Maine Child Support Enforcement Manual: **Ch. 7**, Implementation of Child Support Guidelines; **Ch. 13**, Disposition of Proceedings by Settlement, Stipulation or Consent Decision; Waivers
Filing number:	**2016-114**
Effective date:	7/6/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

Chapter 7: This rule updates the *Maine Child Support Enforcement Manual* to clarify the decision-making process for imputing income to certain non-custodial parents, and the burden of persuasion when requesting a deviation in the child support amount; and updates the rule to reflect recent Manual changes.

Chapter 13: To allow for an expedited consent decision process for incarcerated obligors who have no means to pay a support order while in prison, to avoid unnecessary hearings.

Basis statement:

Chapter 7:

If States are unable to obtain data on the earnings and income of the noncustodial parent in a child support proceeding, many States impute the noncustodial parent's income. In some cases, imputation of income is based on an analysis of a parent's specific education, skills, and work experience, while in other cases, imputation of income is standardized based on full-time, full year work at minimum or median wage, particularly if a noncustodial parent is not working, or there is no available income information.

Research suggests that support orders based on imputed income often go unpaid because they are set beyond the ability of parents to pay them. The result is high uncollectible arrears balances that can provide a disincentive for obligors to maintain employment in the regular economy. Inaccurate support orders also can help fuel resentment toward the child support system and a sense of injustice that can decrease willingness to comply with the law. The research supports the conclusion that accurate support orders that reflect a noncustodial parent's actual income are more likely to result in compliance with the order, make child support a more reliable source of income for children, and reduce uncollectible child support arrearages. A current Federal Notice of Proposed Rule Making will require States to base all support orders on actual income when/if it becomes effective.

Before child support programs were computerized, imputation of income was used as the basis for establishing support obligations because limited information was available to decision-makers. Today, however, States have access to multiple interstate data systems, including the State and National Directories of New Hires as well as the Financial Institution Data Match (FIDM) and Multistate Financial Institution Data Match (MSFIDM), that can verify when a noncustodial parent has a new job, is claiming unemployment insurance benefits, or has quarterly wage information available. Data, not assumptions, are a more accurate method of determining the income and resources of noncustodial parents.

Accordingly, we modernize standard practices for setting child support awards in order to set more accurate orders based on actual income. This will have the effect of increasing

child support collections and prevent languishing cases that go uncollected because they are based on theories rather than reality.

This rule-making also removes references to a 2-tier system of support guidelines based on the age of the children, which will change as of July 29, 2016 to a one-tier system based only on the number of children in a household.

Chapter 13:

The Department understands that when non-custodial parents are incarcerated they are often unable to meet their child support obligation, because they are unable to work. Although some incarcerated obligors are able to make a nominal amount of money while in prison (which may be garnished by the Department), it does not come close to meeting most support obligations. Federal regulations upon which the *Maine Child Support Enforcement Manual* is based make allowances for incarcerated obligors to suspend their obligation while in prison, to avoid the accumulation of an uncollectible debt during the period of incarceration. States are allowed to suspend child support orders while the obligor is incarcerated, through a modification process in the tribunal in which the order was established, either through the Court system or through the Administrative Hearings process.

Since the Department, and the vast majority of custodial parents to whom child support is owed, do not object to the suspension of a child support obligation until the non-custodial parent has been released from incarceration, the hearings process in these cases is a formality which unnecessarily costs time and money. A simple method of incorporating the consent agreement of all parties into a decision is an easy and cost-effective means of ensuring this inevitable result. This rule-making allows for an expedited consent decision process for incarcerated obligors who have no means to pay a support order while in prison, to avoid unnecessary hearings. A simple method of allowing parents to modify their support order while the obligor is incarcerated will cut down on the number of unnecessary hearings, saving scarce Department funds and resources.

Fiscal impact of rule:

Ch. 7: No fiscal impact

Ch. 13: Changes will save the Department hearing costs. An Administrative Hearing costs the Department approximately $200, DSER's cost-sharing portion of the DAH's expenses. Specific impact is unknown, as it is impossible to determine how many hearings will be prevented by this measure.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Division of Support Enforcement and Recovery (DSER)**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §42(1); 19-A MRS §2011
Chapter number/title:	**Ch. 351**, Maine Child Support Enforcement Manual (*internal Chapter 6*)
Filing number:	**2016-139**
Effective date:	8/22/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The recently adopted rule #2016-029 used incorrect dollar amounts per child to populate the new Child Support Guideline table. This adopted rule-making corrects those numbers, making permanent the changes made in emergency rule #2016-102. In addition, the header of the new table will be changed to reflect that the table will apply to all children, aged 0-18 (19 if the child is still in school), avoiding confusion due to any references to two age categories as mentioned in 19-A MRS Ch. 63. The effective date of the new Guideline table will be July 29, 2016.

Basis statement:

Pursuant to 45 CFR §302.56, as a condition of approval of its State plan, each State shall establish one set of child support Guidelines by law or by judicial or administrative action for setting and modifying child support award amounts within the State. These guideline numbers become a rebuttable presumption in child support actions. Every four years, each State must review, and revise, if appropriate, the Guidelines to ensure that their system results in the determination of appropriate child support award amounts. As part of its most recent quadrennial review, the Department decided to heed the advice of the reviewers and simplify and update its Child Support Guideline Table by eliminating the longstanding "two-tier" table setting the presumed per-child amount according to the age of the children (0-11 for one tier, 12-18 for the other). The table made permanent by this adopted rule simplifies the two-tier table so that the calculation of child support is based on the combined income of the parents and the number or children in the household, not the ages of the children.

Fiscal impact of rule:

There will be some cost involved in changing computer computation systems to accommodate the new guideline numbers, and in changing forms used to calculate child support orders. Specifically, $79,665.00 will be needed in other special revenue for just over 1,000 hours of work on DSER's CSEME data tracking system. These changes have already been made, since the emergency rule became effective.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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 (OFI)**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42(1), 3762(3)(A), 3785, 3785-A, 3786
Chapter number/title:	**Ch. 607**, ASPIRE-TANF Program Rule (Sections 3, 4)
Filing number:	**2016-050**
Effective date:	3/26/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This rule revises the scheduling process in Section 3 to clarify that an unexcused failure to appear for an appointment with ASPIRE, or any of the service providers included in the Family Contract Amendment, or to provide prior notice to ASPIRE of good cause (as determined by ASPIRE/TANF), will result in a Notice of Sanction.

The ASPIRE/TANF program has determined that the current noticing process is duplicative, and delays participant compliance. In Section 4, the initial and duplicative notice of non-compliance and ten workday waiting period will be removed. The current sanctioning process includes a provision that allows the participant ten workdays to prove good cause and request a fair hearing if the participant disagrees with the Department's determination of good cause. A supervisor shall review the participant's file prior to the recommendation to start the sanction process, and again at the end of the process but prior to the imposition of the sanction of benefits.

Basis statement:

The U.S. Department of Health-and Human Services has imposed approximately $29 million in fines against the State of Maine for failing to meet the Federal Work Participation Rates (WPR) for the period of 2007 to 2012. It is likely that additional federal fines will be assessed against the State after 2012 since the Department has historically not enforced or maintained federally required WPR rates for ASPIRE participants. In an effort to bring WPR to the required levels and avoid additional fines, the Department is carefully reviewing ASPIRE/TANF program processes and goals. As part of that review process, it has been determined that the current sanction procedure delays participant compliance by providing duplicative notice and response periods prolonging the enforcement of decision. Under the new rule, the sanction process will be streamlined while still protecting the rights of the Participant. The rule does not remove any of the State statutory sanction process requirements or due process.

This rule also revises the scheduling process in Section 3 to clarify that failure to appear for an appointment with ASPIRE, or with any of the service providers included in the Family Contract Amendment, without good cause (as determined by ASPIRE/TANF) will result in a Notice of Decision (NOD). The NOD will be sent to the Office for Family Independence Eligibility Unit to apply the Sanction.

The Department made changes after publication to Section 4, VI(A) and (B) after receiving comments to clarify compliance with statutory authority under 22 MRS §3785-A. Also, The Department discovered a reference to first class mail in Section 4(V)(l) that was the same as the language change in Section 3(VI)(A), but was not included in the rule-making. The language indicating that a scheduling letter would be sent by first class mail . . . by the postal service was removed, which is consistent with participants' right to choose electronic noticing.

Fiscal impact of rule:

Unable to determine, however, the rule is being changed to avoid further fines from the U.S. Health and Human Services for not meeting Federal Work participation Rates (WPR).

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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 (SAMHS)**
Umbrella-Unit:	**14-118**
Statutory authority:	22 MRS §7252; PL 2015 ch. 488; 5 MRS §§ 8054, 8073
Chapter number/title:	**Ch. 11**, Rules Governing the Controlled Substances Prescription Monitoring Program and Prescription of Opioid Medications
Filing number:	**2016-232**
Effective date:	1/1/2017
Type of rule:	Routine Technical *and* Major Substantive
Emergency rule:	Yes

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

Basis statement:
Pursuant to 5 MRS §§ 8054 and 8073, the Department has determined that immediate adoption of this rule is necessary to avoid an immediate threat to public health, safety or general welfare and the Department's findings of emergency are as follows: There is an opioid epidemic facing the State of Maine and the nation as a whole. In 2015, Maine experienced an unprecedented 272 overdose related fatalities. In an effort to combat the Maine opioid epidemic, the Maine Legislature enacted PL 2015 ch. 488 (*An Act to Prevent Opiate Abuse by Strengthening the Controlled Substances Prescription Monitoring Program*). Ch. 488 included prescriber limits on opioid medication prescribing, effective January 1, 2017; included veterinarians in the definition of prescribers; required electronic prescribing and required prescribers and dispensers to check the Prescription Monitoring Program (PMP) database. Ch. 488 required the Department to establish reasonable exceptions to prescriber limits, and ordered the Department to include prescribers in the process of drafting appropriate exceptions and in the drafting of draft rules. With the guidance of the Maine State Health Officer Dr. Christopher Pezullo, the Department convened a PMP Stakeholder Group that included the Maine Medical Association, the Maine Hospital Association, the Maine Physician Assistant Association, the Maine Nurse Practitioners Association, the Maine Veterinary Medical Association, the Maine Pharmacy Association, and the Maine Osteopathic Association. This Group met at least once monthly, starting in June, 2016. The Maine Legislature mandated a January 1, 2016, effective date for the limits on opiate prescribing, but also mandated that the Department confer with the PMP Stakeholder Group, which continued to meet and confer until early December. This, together with the opioid epidemic facing the State of Maine, constitutes an emergency that can only be remedied by the immediate adoption of this emergency rule. This emergency rule is effective January 1, 2017.

This emergency rule makes the following changes:

(1) Adds definitions (including definitions for "acute pain", "Benzodiazepine", "chronic pain", "hospital", "inpatient status", "opioid medication", "serious illness" and also includes veterinarians in the definition of "prescribers";
(2) Adds general requirements for prescribing and dispensing, including the requirement that all prescribers must acquire DEA numbers and include the DEA number on each prescription, and includes exemption codes to match the exemptions from the opioid limitations set forth in the rule;
(3) Requires prescribers, dispensers and veterinarians to register as PMP data requesters;
(4) Indicates the statutory requirement regarding electronic prescriptions and waivers of such;

(5) Requires that dispensers report information to the PMP by electronic means and indicates the statutory waivers of such;
(6) Requires prescribers, dispensers and veterinarians to check the PMP system;
(7) Indicates the statutory limits on opioid medication prescribing;
(8) Defines exemptions to limits on opioid medication prescribing;
(9) Authorizes the Department to provide and receive PMP data from another state or Canadian province that has entered into an agreement with the Department for such sharing;
(10) Establishes civil violations for prescribers and dispensers;
(11) Establishes administrative sanctions for prescribers and dispensers;
(12) Establishes standards for immunity from liability for disclosure of information;
(13) Establishes standards for immunity from liability for a pharmacists which might result from dispensing medication in excess of the limit, if such dispensing was done in accordance with a prescription issued by a practitioner; and
(14) Authorizes the Department to verify and audit prescriber and dispenser compliance with the rules.

The Maine Legislature has designated the PMP regulations as major substantive rules. 22 MRS §7252. However, Ch. 488 assigned some of its PMP rule changes as routine technical rules. Therefore, this emergency rule contains both major substantive provisions and routine technical provisions. The routine technical provisions are so labeled in the rule. Pursuant to 5 MRS §8054, the emergency routine technical rule provisions are effective for up to 90 days. Pursuant to 5 MRS §8073, emergency major substantive rule provisions may be effective for up to twelve months or until the Legislature has completed review of the rules. The Department intends to engage in a single rule-making which will make permanent the emergency routine technical rule provisions and which will also provisionally adopt the emergency major substantive rule provisions, which will then be submitted to the Maine Legislature for its review.

Fiscal impact of rule:

This fiscal impact of this rule-making could not be determined.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of Aging and Disability Services (OADS)**
Umbrella-Unit:	**14-197**
Statutory authority:	34-B MRS §§ 5201, 5604, 5605, 5201(9), 5604(3)(D), 5605(17)
Chapter number/title:	**Ch. 5**, Regulations Governing Behavioral Support, Modification and Management for People with Intellectual Disabilities or Autism in Maine
Filing number:	**2016-070**
Effective date:	4/25/2016
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The Department of Health and Human Services adopts changes to 14-197 C.M.R. Ch. 5, *Regulations Governing Behavioral Support, Modification and Management for People with Intellectual Disabilities or Autism in Maine*, to bring this regulation in closer compliance with the current best practice for behavior support, modification and management. This regulation provides enhanced guidance and direction on less restrictive alternatives which will decrease the number and severity of restraints used as behavioral support, modification and management. The regulation clarifies prohibitions and expands prohibited practices. It requires Positive Supports as the first line of treatment. These proposed changes more closely align this rule with the right to dignity, privacy and humane treatment guaranteed by Maine law.

Basis statement:

The adoption of this rule brings the behavior support, modification and management practices for persons with intellectual disabilities or autism in closer compliance with state law and current best practice for such behavior support, modification and management. These changes provide enhanced guidance and direction on less restrictive alternatives which will decrease the number and severity of restraints used as behavioral support, modification and management. The adopted rule better defines prohibitions and prohibited practices. It requires Positive Supports as the first line of treatment. These changes more closely align this rule with the right to dignity, privacy and humane treatment guaranteed persons with intellectual disabilities or autism under 34-B MRS ch. 5.

Fiscal impact of rule:

Municipalities: none anticipated
Department: none anticipated
Small Business: none anticipated