Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Maine Center for Disease Control and Prevention**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 7702-B(l11), 7703(6), 7704, 7707(3), 7802(7), 8301(8), 8302-A(2), 8303-A(l)
Chapter number/title:	**Ch. 33**, Family Child Care Provider Licensing Rule (*New; replaces 10-148 Ch. 33,* Rules for the Certification of Family Childcare Providers, *filing 2018-104*)
Filing number:	**2018-105**
Effective date:	7/5/2018
Type of rule:	Major Substantive
Emergency rule:	No

Principal reason or purpose for rule:

These rule changes are intended to clarify the health and safety minimum licensing standards for family child care providers, which include adding lead drinking water testing, background checks, and standards for outdoor play areas to address specific health and safety concerns. Further, the Department intends to make the requirements easier to understand for providers to obtain and maintain a license, by clarifying evidence-based measures for child care licensing inspections. Finally, the Department is increasing transparency regarding the inspection, investigation and enforcement procedures, so that providers can more easily understand what will happen in the course of a license, or if violations occur. These changes are designed to increase the statewide access to, and availability of, family child care, and to improve the ability of licensees to comply with this rule.

Basis statement:

The Department's rulemaking advertised the repeal of 10-148 CMR Ch. 33, *Rules for the Certification of Family Child Care Providers* and replacement of 10-144 CMR Ch. 33, *Family Child Care Providers Licensing Rule* on April 19, 2017. A public hearing was held on May 8, 2017, and the comment period ended on through May 18, 2017. Ch. 33 contains both routine technical and major substantive provisions. Routine technical provisions were adopted and became effective on September 20, 2017. The provisionally adopted major substantive provisions, pursuant to 5 MRS §8072, were submitted to the Legislature for review on September 25, 2017.

This rule achieves a variety of goals, which include increasing access to family child care providers in Maine, by affording licensees a chance to grow their business and care for more children, in order to address Maine's current shortage of infant care offered. By reducing administrative and subjective requirements beyond the limited scope of 22 MRS §8302-A(2), this rule clarifies and streamlines the licensing requirements for family child care providers, while retaining important health and safety standards.

The Department adopted all major substantive portions of the rule, with additional changes directed by the 128 'Legislature's *Resolve, Regarding Legislative Review of Portions of Chapter 33: Rule Relating to the Licensing of Family Child Care Providers*, a Major Substantive Rule of the Department of Health and Human Services, Maine Center for Disease Control and Prevention (*Resolves 2017 Ch. 48*), which became law on April 15, 2018.

Fiscal impact of rule:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Maine Center for Disease Control and Prevention**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §8102
Chapter number/title:	**Ch. 36**, Children's Residential Care Facilities Licensing Rule *(New chapter; replaces 10-148 Ch. 18 and 18-A, 14-118 Ch. 18, 14-193 Ch. 18.*
Filing number:	**2018-214** *thru* **218**
Effective date:	10/10/2018
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, Maine CDC, Children's Licensing and Investigation Services (Department) advertised rulemaking changes on May 2, 2018, to repeal four existing children's residential care licensing rules and replace them with a single rule: 10-144 CMR Ch. 36, *Children's Residential Care Facilities Licensing Rule*. The rules advertised for repeal and replacement included: *Rules for the Licensure of Residential Child Care Facilities*, 14-118 CMR Ch. 18; *Rules for the Licensure of Residential Child Care Facilities*, 14-193 CMR Ch. 18; *Rules for the Licensure of Residential Child Care Facilities*, 10-148 CMR Ch. 18; and *Rules for the Licensure of Private-Non-Medical Institutions-Residential Child Care Facilities*, 10-148 CMR Ch.18-A. A public hearing was held on May 21, 2018. The Department accepted written comments through May 31, 2018.

The Department is charged with licensing children's residential care facilities, in accordance with 22 MRS §8102. This adopted rule includes the health and safety licensing standards required to operate a children's residential treatment facility, as well as the enforcement mechanisms necessary to ensure that facilities are meeting those standards. This new rule creates a comprehensive licensing rule for all children's residential care facilities in Maine. Additionally, this rule updates and clarifies language to reflect current practice in application and licensing requirements, due to the repealed rules not being updated for many years. The rule is also structured to clarify requirements for staff training, policies, reporting, maintaining records and caring for residents.

A new service is added: children's residential care facility with secure capacity and psychiatric treatment (Level 2 Facility), which allows residents to receive psychiatric and intensive mental health services in a secure facility that is not in a hospital. Expanding children's residential facilities to this service meets a need for Maine children to be able to receive treatment in a facility that matches their level of need within Maine. Currently, many Maine children requiring this specific level of care are either treated in a less appropriate setting in the State, or those children must be sent outside of Maine, requiring parents, families and other supports to travel long distances to visit these children.

New notification requirements were added for personnel-related criminal activity that occurs at a facility. Requirements were included for a facility's annual program evaluation, to report on the frequency of a facility's use of isolation, restraints and resident elopement. The rule also contains the addition of a close of business plan to the license application. Further detail was provided to the components necessary for full license application for children's residential facilities.

Core licensing standards were created for all children's residential facilities to be licensed in good standing. These core standards include the clarification for waiver requests, the information listed on a license, the specific process for a Department complaint investigation and behavior management requirements, including the use of restraints. The core licensing standards also articulates the Department's right to enter and inspect a facility unannounced.

All policies and records required by the facility for inspection by the Department are identified in this rule, including additional policies for closure, infectious disease, smoking, reportable events, and record management. The Department has updated the rights section, to include the right to freedom from unreasonable search, the right to discharge planning, the right to communication, and notification of these rights. If the Department identifies a violation of resident rights by a facility, then it may cite the facility with a violation.

A requirement is added that all persons at a facility administering medications must demonstrate a minimal qualification of a certified residential medication aide (CRMA). One CRMA certified staff person is now required per shift. Updated and clarified requirements are also added for medication administration and storage, including psychotropic medications and diversion control of schedule II controlled substances. These new requirements are intended to decrease and hopefully eliminate the incidence of medication errors at licensed children's residential care facilities.

Secured capacity facilities are required to be locked at all times, to ensure resident safety by preventing residents and others from harm, if these residents attempt to elope from the facility. Level 2 Secured Capacity Facilities requirements are added to assure that children receive appropriate psychiatric and intensive mental health treatment residential treatment in a setting where a stay may be longer than a hospital can offer.

Compliance and enforcement measures are clarified in response to facilities violating previous rules and to help facilities understand what will happen if they are in violation of the statute and rule.

Fiscal impact of rule:

The Department has determined that there is no expected adverse impact on small business resulting from these rule changes. It is anticipated that there will be no fiscal impact to the Department

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Division of Licensing and Certification**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §9056(1)
Chapter number/title:	**Ch. 60**, Maine Background Check Center Rule
Filing number:	**2018-224**
Effective date:	10/17/2018
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This proposed rule is intended to comply with the Maine Background Check Center Act (22 MRS ch. 1691), passed in 2015. This proposed rule would govern the use and operation of the Maine Background Check Center, which operates an Internet-based system that employers will use to access criminal records and other background information. These employers review the background checks to determine the eligibility of individuals to work in long-term care, home and community-based care, as well as child care.

Basis statement:

The Department is adopting this new rule, 10-144 CMR ch. 60, *Maine Background Check Center Rule*, in order to comply with the requirements of 22 MRS ch. 1691, the *Maine Background Check Center Act*, enacted by PL 2015 ch. 299, effective October 15, 2015. This rule governs the use and operation of the MBCC, which operates the Internet-based system that employers use to access criminal records and other background information. These employers review the background checks to determine the eligibility of individuals to work in long-term care, home and community-based care, as well as child care.

The Department has developed the Maine Background Check Center (MBCC) website to meet the statutory obligation to "operate an Internet-based system that employers use to access criminal records and other background information to determine the eligibility of individuals to work in direct access positions with vulnerable Maine citizens including children, elderly persons, dependent adults and persons with disabilities." (22 MRS §9052). The online system is maintained by the MBCC in coordination with the Department of Public Safety, the State Bureau of Investigation and with other state and federal agencies, including the Federal Bureau of Investigation (FBI).

The Maine Background Check Center became operational for the first identified group of employers in February 2017. Since then, the implementation process required by 22 MRS §9058 has engaged all mandated employer and provider categories, with the exception of child care providers (centers, family child care providers, and nursery schools). Enrolling this group of employer/providers has been delayed by the passage of PL 2017 ch. 457 on July 9, 2018, which mandated that this group of employers/providers undergo fingerprint-based background checks. The Maine Background Check Center does not currently have this capacity.

The rule requires employers to comply with enrollment, administrator, and user requirements of the MBCC. Employers must obtain written authorization and releases from prospective employees before obtaining background checks, and keep background check records confidential. This rule establishes a list of disqualifying offenses, which is included in this rule. If an individual believes that his or her background check contains an error, then he or she may challenge the accuracy of the information believed to be in error. If employers wish to employ an individual with a disqualifying offense on his or her background check report,

the employer and individual may request a waiver. The rule also outlines the appeal process for employers and applicants.

The rule also authorizes the continued utilization of "approved alternate vendors," rather than the MBCC, for employers who were using an alternate vendor prior to the initiation of the MBCC, and if certain regulatory standards are met.

The rule provides, in Section 3(1) that the MBCC or approved alternate vendors will become operational for employers who are subject to the rule, in a staged and orderly process based on the type of employer and the number of direct access workers employed. Employers will have 14 business days from the date of written notification by the Department to begin use of the MBCC or approved alternate vendors.

The Department made several changes to the final rule from the proposed rule, in response to comments and on the advice of the Office of the Attorney General.

Fiscal impact of rule:

The user fee charges of $56 per background check is intended to fully fund the operation of the new Background Check Center Program

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42(8), 3173; 5 MRS §8054, PL 2017 ch. 284, part MMMMMMM-1
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 19**, Home and Community Benefits for the Elderly and Adults with Disabilities
Filing number:	**2018-004**
Effective date:	1/10/2018
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The purpose of proposing this rule is to permanently adopt rate increases ordered by the legislature and minor technical coding changes. PL 2017 ch. 284 part MMMMMMM-1 requires the Department to amend its rules for reimbursement rates for home-based and community-based personal care and related services provided under the provisions of 10-144 CMR Ch. 101, **MaineCare Benefits Manual**, Ch. III Section 19, "Home and Community Benefits for the Elderly and for Adults with Disabilities" and referenced in the February 1, 2016 report "*Rate Review for Personal Care and Related Services: Final Rate Models*" prepared for the Department by Burns & Associates, Inc. Further, part MMMMMMM-1 directs the Department that the increase in rates of reimbursement must be applied in equal proportion to all home-based and community-based personal care and related services referenced in the Burns & Associates, Inc. report using the funding provided for that purpose in Ch. 284. Ch. 284 provides funding to increase these rates. See part ZZZZZZ section ZZZZZZ-2.

The Department increased rates via emergency rule and this rule will permanently adopt the increased rates for the period 7/1/17 through 6/30/18. The codes for home-based and community-based personal care and related services proposed to receive the rates increase are as follows:

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

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

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

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

T1005 (0669) Respite Care, in the home by CNA/Home Health Aide

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

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

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

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

G0156 (0571) Home Health Aide- Home Health Services
G0156 (0571) Home Health Aide- Home Health Services-2 members served
G0156 (0571) Home Health Aide- Home Health Services-3 members served

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

Additionally, the Department is proposing to add a U7 on all procedure codes in Section 19 to identify Section 19 claims from other sections of policy. The Department is also proposing to add revenue codes to PSS services that bill on a UB-04 billing form, Lastly, the Department is proposing to delete an erroneous procedure code T1005 from Skilled Nursing Visit, other Nursing visit (LPN), Physical Therapy and Occupational Therapy visits.

Basis statement:

On November 1, 2017, the Department adopted an emergency Ch. III Section 19 rule to increase some home-based and community-based personal care and related services in Section 19 rates as required by PL 2017 ch. 284 §§ MMMMMMM-1. Those increased rates were made effective retroactive to July 1, 2017, in accord with 22 MRS §42(8), since there was no adverse financial impact on any MaineCare member or provider. The Department determined that a retroactive increase to the start of the state fiscal year was appropriate, since the appropriation was intended for the entire fiscal year.

This final rule will permanently adopt the emergency rule changes, with the retroactive effective date of July 1, 2017. Additionally, some procedure, modifier and revenue code changes are being adopted at the same time for the system to correctly pay and track the new rates. The additional modifiers will be effective September 29, 2017. This retroactive effective date also comports with 22 MRS §42(8), since there was no adverse financial impact on any MaineCare member or provider. The Legislature did not appropriate additional funding for the

rate increases beyond June 30, 2018; therefore, rates will revert to their pre-July 1, 2017 levels on July 1, 2018. PL 2017 ch. 284 §ZZZZZZ-9.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately $3,146,974.00 in SFY 18, which includes $1,121,896 in state dollars and $2,025,078 in federal dollars.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42(8), 3173; 5 MRS §8054; PL 2017 ch. 284 (128th Legis. 2017) part MMMMMMM-1
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 12**, Allowances for Consumer-Directed Attendant Services
Filing number:	**2018-015**
Effective date:	1/30/2018
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The purpose of this rule is to comply with PL 2017 ch. 284 part MMMMMMM-1, *An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2018 and June 30, 2019*. PL 2017 ch. 284 part MMMMMMM-1 requires the Department to amend its rules for reimbursement rates for the home-based and community-based personal care and related services under the provisions of 10-144 CMR ch. 101, *MaineCare Benefits Manual*, Ch. III Section 12, "Allowances for Consumer-Directed Attendant Services" and referenced in the February 1, 2016 report "Rate Review for Personal Care and Related Services: Final Rate Models" prepared for the Department by Burns & Associates, Inc.

Basis statement:

The Department of Health and Human Services (Department) adopts this rule change to Ch. III Section 12, "Allowances for Consumer-Directed Attendant Services" to increase reimbursement rates for personal care services to comply with PL 2017 ch. 284 parts MMMMMMM-1 and ZZZZZZ-9, *An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2018 and June 30, 2019.*

These changes are consistent with PL 2017 ch. 284 part MMMMMMM-1, which requires the Department to amend its rules to increase reimbursement rates for home-based and community-based personal care and related services and referenced in the February 1, 2016 report "Rate Review for Personal Care and Related Services: Final Rate Models" prepared for the Department by Burns & Associates, Inc., which includes Section 12 services.

On November 14, 2017, the Department adopted an emergency rule to effectuate the increased Section 12 reimbursement rates with a retroactive effective date of July 1, 2017. This rulemaking makes permanent the emergency rule changes.

The Department determined that a retroactive rate increase to the beginning of the state fiscal year was appropriate, since the appropriation is intended for the entire fiscal year. The retroactive application of this rule comports with 22 MRS §42(8) which authorizes the Department to adopt rules with a retroactive application for a period not to exceed eight calendar quarters and will sunset on June 30, 2018, as the rate increases were funded by a single year appropriation. PL 2017 ch. 284 part ZZZZZZ-9. On July 1, 2018, rates will revert back to the June 30, 2017 rate.

The Department is seeking and anticipates receiving approval from the federal Centers for Medicare and Medicaid Services ("CMS") for these changes. Pending approval, the increased reimbursement rates will be effective retroactive to July 1, 2017. In addition, in

September 2015, July 2016, and August 2017, the Department proposed separate reimbursement rate changes to CMS; those changes are pending approval. As such, there are different effective dates for various rate changes, as set forth more specifically in Ch. III.

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

Fiscal impact of rule:

The Department expects this rulemaking will cost the Department approximately $407,024 in SFY 2018, which includes $145,104 in state dollars and $261,920 in federal dollars.

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42(8), 3173; 5 MRS §8054, PL 2017 ch. 284 (128th Legis. 2017), part MMMMMMM-1
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 96**, Private Duty Nursing and Personal Care Services
Filing number:	**2018-021**
Effective date:	2/12/2018
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

These rulemakings increase reimbursement rates and level of care limits to comply with PL 2017 ch. 284 Part MMMMMMM-1, *An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2018 and June 30, 2019*.

PL 2017 ch. 284 part MMMMMMM-1 requires the Department to amend its rules for reimbursement rates for the home-based and community-based personal care and related services under the provisions of 10-144 CMR ch. 101, *MaineCare Benefits Manual*, Ch. II & III Section 96, "Private Duty Nursing and Personal Care Services" and referenced in the February 1, 2016 report "Rate Review for Personal Care and Related Services: Final Rate Models" prepared for the Department by Burns & Associates, Inc. Further, part MMMMMMM-1 directs the Department that the increase in rates of reimbursement must be applied in equal proportion to all home-based and community-based personal care and related services referenced in the Burns & Associates, Inc., report using the funding provided for that purpose in Ch. 284. Ch. 284 provides funding to increase rates. See part ZZZZZZ section ZZZZZZ-2. In addition, part MMMMMMM-1 directs the Department to ensure caps and limitations on home-based and community-based personal care and related services are increased to reflect the increases in reimbursement rates that result from this section.

The Legislature did not appropriate additional funding for these reimbursement rate and level of care increases beyond June 30, 2018 therefore, rates will revert back to their current levels (pre-July 1, 2017) on July 1, 2018.

Basis statement:

The Department of Health and Human Services (Department) adopts these rule changes to Ch. II & III Section 96, "Private Duty Nursing and Personal Care Services" to change reimbursement rates and level of care limits for personal care services and related services to comply with PL 2017 ch. 284, part MMMMMMM-1, *An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2018 and June 30, 2019*.

These changes are consistent with PL 2017 ch. 284 part MMMMMMM-1, which requires the Department to amend its rules to increase reimbursement rates for the home-based and community-based personal care services referenced in the February 1, 2016 report "Rate Review for Personal Care and Related Services: Final Rate Models" prepared for the Department by Burns & Associates, Inc., which includes Section 96 services, and also increases level of care caps. Part MMMMMMM-1 directs the Department that the increase in rates of reimbursement must be applied in equal proportion to all home-based and

community-based personal care and related services referenced in the Burns & Associates, Inc. report using the funding provided for that purpose in Ch. 284. See part ZZZZZZ section ZZZZZZ-9. In addition, part MMMMMMM-1 directs the Department to ensure caps and limitations on home-based and community-based personal care and related services are increased to reflect the increases in reimbursement rates that result from this section.

On November 14, 2017, the Department adopted emergency rules to effectuate the increased reimbursement rates to Ch. III, with a retroactive application date of July 1, 2017, and also adopted increases to the level of care caps in Chapter II, also with a retroactive application date of July 1, 2017. These rulemakings make permanent the emergency rule changes for increased reimbursement rates and level of care caps.

Upon further review, the Department has determined it is necessary to make formatting changes from the proposed rulemakings to Ch. II Appendix 2 and Ch. III. These changes clearly identify various retroactive dates and the sunset date for increased level of care limits and reimbursement rates, pending approval from the federal Centers for Medicare and Medicaid Services ("CMS"). There are no substantive changes to the rates or level of care limits made to these adopted rules.

The Department determined that retroactive application dates for both the reimbursement rate increases and the increases to the level of care caps was appropriate, since the appropriation was intended for the entire fiscal year. The retroactive application of these rules comports with 22 MRS §42(8) which authorizes the Department to adopt rules with a retroactive application for a period not to exceed eight calendar quarters and if there is on adverse financial impact on any MaineCare member or provider. The increased reimbursement rates, and increased level of care caps will sunset on June 30, 2018, as the rate increases were funded by a single year appropriation. PL 2017 ch. 284 part ZZZZZZ-9. On July 1, 2018, rates and level of care caps will revert back to the June 30, 2017, rates and caps.

The Department is seeking and anticipates receiving approval from the federal Centers for Medicare and Medicaid Services ("CMS") for these changes. Pending approval, the increased reimbursement rates will be effective retroactive to July 1, 2017. In addition, in September 2015, July 2016, and September 2017, the Department proposed separate reimbursement rate and level of care changes to CMS; those changes are pending approval. As such, there are different effective dates for level of care limits and various rates, as set forth more specifically in Ch. II Appendix 2, and in Ch. III. The Department finds that formatting changes were required in Ch. II Appendix 2 as well as in Ch. III to make this clear for the regulated community.

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

Fiscal impact of rule:

The Department expects these rulemakings will cost the Department approximately $2,826,925 in SFY 2018, which includes $1,007,574 in state dollars and $1,818,721 in federal dollars.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. VII Section 5**, Estate Recovery
Filing number:	**2018-033**
Effective date:	3/7/2018
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The purpose of this rule is to assure that there are no gaps in the policy allowing personal representatives to avoid liability or responsibility.

Basis statement:

The Department is adopting various rule changes in its MaineCare estate recovery program, including:

- Adds language to the definition of "Disability" in Section 5.02-4, to clarify that persons are qualified as "disabled" under the Estate Recovery rule if they are considered disabled by the Maine Public Employee Retirement System. In addition, in the Recovery Procedures section (5.04), the Department added language to require that any disabled child must have already been determined disabled at the time of the MaineCare member's death. This language provides a clear standard for the Third Party Liability unit to enforce.
- Rewrites Section 5.07, "General Requirements for All Waivers", to strengthen the standards applied by the Third Party Liability unit in making determinations regarding waiver requests. For example, this rule adds language regarding the timing of when information must be received by the Department and when determinations on waiver requests must be made, as well as clarifying the process for appeals.
- As a result of review by the Office of Attorney General, the Department finds that the hardship waiver provisions of the final rule required reorganization in order to clarify the intent of the rule. As such, there is now one section, 5.07, which sets forth generally applicable requirements for both types of Hardship Waivers, and a separate section 5.08 that reflect the specific requirements applicable to the two different types of Hardship Waivers.
- In order to clarify policy and preserve state and federal Medicaid funding, the Department is adding a limitation that only one type of hardship waiver will be granted per estate. Additionally, this rulemaking implements numerous changes in the undue hardship waiver provisions (Sec. 5.08) to further strengthen the eligibility and other standards by which determinations are made regarding waiver requests.
- Under Section 5.08(B), "Hardship Waiver Based on Care Given Exemption", added a limitation that the waiver request shall not be granted if the applicant created the undue hardship by various methods to divert assets for the purposes of defeating estate recovery.
- Changes the timing requirement under Section 5.10, "Claim Reduction", from "during the member's lifetime" to "last two years that the member was institutionalized if the Member executed a Department approved Intent to Return Home form and delivered that signed form to the eligibility office." This change limits personal representatives from including reductions from the distant past.

The Department is seeking and expects to receive approval from the Centers for Medicare and Medicaid Services for changes to its Estate Recovery State Plan Amendment consistent with these rule changes.

Fiscal impact of rule:

The Department anticipates that this rulemaking will result in a cost savings for the Department, but the magnitude of that savings cannot be determined at this time.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; PL 2017 ch. 307
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. I Section 4**, Telehealth Services
Filing number:	**2018-055**
Effective date:	4/9/2018
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The Department is adding clarifying language in Ch. I Section 4, "Telehealth Services", Section 4.07-2, Paragraph B. 5 to allow Telehealth Services to be included in a Federally Qualified Health Center (FQHC), Rural Health Clinic (RHC), or Indian Health Center (IHC) scope of practice, as approved by HRSA and the State. If approved, these facilities would be able to serve as the provider site and bill under the encounter rate. The Department will also be removing the telemonitoring requirement that members have had two or more hospitalizations or Emergency Department visits in the past year, and replacing it with a documentation requirement pursuant to PL 2017 ch. 307.

Basis statement:

The Department is adopting the following changes to Ch. I Section 4, "Telehealth Services". First, in Section 4.07-2, Paragraph B(5), the Department formally changed the provision in order to allow Telehealth Services to be included in the scope of practice of a Federally Qualified Health Center (FQHC), Rural Health Clinic (RHC), or Indian Health Center (IHC), as approved by Health Resources and Services Administration (HRSA) and the State. These facilities will now be able to serve as the provider site and bill under their encounter rate. The Department is adopting this change retroactive to April, 16, 2016. Second, pursuant to PL 2017 ch. 307, which enacted 22 MRS §3173-H, the Department removed the telemonitoring requirement that members have had two or more hospitalizations or Emergency Department visits in the past year; instead, for telemonitoring services, a member's record must only reflect a risk of hospitalization or admission to an emergency room.

Finally, as a result of public comments and further review by the Department and the Office of the Attorney General, there were two terms removed and replaced in the rule for clarity. Also, there were additional technical changes, formatting updates, and changes to language in the rule.

Fiscal impact of rule:

The Department anticipates that this rulemaking will be cost neutral.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; PL 2012 ch. 542 §B-5; PL 111-148
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 92**, Behavioral Health Services
Filing number:	**2018-061**
Effective date:	4/21/2018
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This rule contains numerous changes primarily to increase the reimbursement rate for BHHOs and implement value based purchasing through pay-for-performance. This rule also amends requirements for reimbursement, aligns the rule with the approved Maine State Plan, improves Department administrative flexibility, strengthens the use of assessment tools in care planning, and clarifies and strengthens provider requirements.

Basis statement:

This rule is being adopted to institute pay-for-performance in the Behavioral Health Home program by making one percent of Behavioral Health Home Organization (BHHO) total Per Member Per Month (PMPM) payments subject to recoupment if the BHHO does not achieve a minimum level of quality, as defined by performance on Department-defined performance measures related to chronic disease management. In addition, this rule promulgates the increase in BHHO reimbursement, effective retroactively to January 1, 2016.

Fiscal impact of rule:

This rulemaking is estimated to save $19,736 in SFY 2018, which includes $7,038 in state dollars.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; PL 2017 ch. 284
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 29**, Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder
Filing number:	**2018-062**
Effective date:	5/13/2018
Type of rule:	Major Substantive
Emergency rule:	No

Principal reason or purpose for rule:

The rule implements the direction of the Legislature in PL 2017 ch. 284.

Basis statement:

The Department is finally adopting this major substantive rule in accordance with PL 2017 ch. 284, *An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2018 and June 30, 2019* (the "Act"). The Act provides funding to increase reimbursement rates for 16 procedure codes in Ch. III Section 29. See Part ZZZZZZ, Sec. ZZZZZZ-9. The legislation directs the Department to increase the rates for the specific procedure codes in equal proportion to the funding provided for that purpose, and to do so via major substantive rulemaking. *See* Part MMMMMMM, Sec. MMMMMMM-2(2) through -2(4).

In accordance with Part III, Sec. TTTT-1 of the Act and 5 MRS §§ 8054, 8073, the Department adopted an emergency major substantive rule effective October 1, 2017, also retroactive to July 1, 2017. The Department then engaged in proposed rulemaking for Ch. III, Section 29, pursuant to 5 MRS §8072(1), provisionally adopting a rule on January 12, 2018, to make the emergency changes permanent. The Department submitted the provisionally-adopted rule to the Legislature, which authorized adoption of the rule pursuant to Resolves 2017, ch. 33. This emergency legislation was approved by Governor LePage and took effect on March 7, 2018. The October 1, 2017 Emergency Major Substantive Rule will expire upon the effective date of this rule – May 13, 2018.

In addition to the rate increases required by the Act, the Department has also increased the rate for a 17th procedure code: T2017QC (Home Support-Remote Support-Monitor Only). Increasing the rate for the procedure code that was "left out" creates consistency with the other codes, in line with the Section 29 service and reimbursement scheme.

These increased rates will be retroactive to July 1, 2017. The Department has determined that increases retroactive to the beginning of the state fiscal year ("SFY") are appropriate, since the appropriation in the Act is intended for the entire fiscal year. The retroactive application also comports with 22 MRS §42(8).

The Legislature did not appropriate additional funding for these rate increases beyond June 30, 2018; therefore, rates will revert to their current levels (pre-July 1, 2017) on July 1, 2018.

In addition, the Department has added two procedure codes for Shared Living services (S5140 and S5140 UN). The Department has adopted changes to Chapter II, Section 29, effective on an emergency basis on October 1, 2017, and finally on December 28, 2017, to add this benefit to available covered services for members. The Department is seeking and anticipates approval from the Centers for Medicare and Medicaid Services for this change. The

Shared Living rates added to Section 29 are consistent with rates for these same services under Section 21 to ensure parity. Because the Legislature has appropriated funds to increase the rates for Shared Living services under Section 21 for SFY ending July 1, 2018, the Department is implementing these higher rates of reimbursement for Shared Living services under Section 29 for the same period. *See* P.L. 2017, ch. 284, Part MMMMMMM, Sec. MMMMMMM-2(1).

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

The adopted rule makes the following changes:

- In Section 1400:
  - Shared Living is added to the list of services being reimbursed at a standard rate.
- In Section 1810, the group rates for Work Support have been increased for SFY 2018:
  - 2 Members in Group: rate increased to $3.83 per quarter hour
  - 3 Members in Group: rate increased to $2.54 per quarter hour
  - 4 Members in Group: rate increased to $1.91 per quarter hour
  - 5 Members in Group: rate increased to $1.53 per quarter hour
  - 6 Members in Group: rate increased to $1.27 per quarter hour
- In Appendix I, reimbursement rates for services have been increased for SFY 2018:
  - S5140 Shared Living (Foster Care, adult) has been added at $140.89 per diem
  - S5140 UN Shared Living (Foster Care, adult)-Shared Living Model-Two members has been added at $70.46 per diem
  - T2017 Home Support-Quarter Hour has been increased to $7.00 per quarter hour
  - T2017 GT Home Support-Remote Support-Interactive Support has been increased to $7.00 per quarter hour
  - T2017 QC Home Support-Remote Support-Monitor only has been increased to $1.80 per quarter hour
  - T2021 Community Support (Day Habilitation) has been increased to $5.89 per quarter hour
  - T2021 SC Community Support (Day Habilitation) with Medical Add-On has been increased to $7.27 per quarter hour
  - T2019 Employment Specialist Services (Habilitation, Supported Employment waiver) has been increased to $8.21 per quarter hour
  - T2019 SC Employment Specialist Services (Habilitation, Supported Employment waiver) with Medical Add-On has been increased to $9.49 per quarter hour
  - H2023Work Support (Supported Employment)-Individual has been increased to $7.64 per quarter hour
  - H2023 SC Work Support (Supported Employment)-Individual with Medical Add-On has been increased to $8.94 per quarter hour
  - H2023 UN Work Support (Supported Employment)-Group 2 members served has been increased to $3.83 per quarter hour
  - H2023 UP Work Support (Supported Employment)-Group 3 members served has been increased to $2.54 per quarter hour
  - H2023 UQ Work Support (Supported Employment)-Group 4 members served has been increased to $1.91 per quarter hour
  - H2023 UR Work Support (Supported Employment)-Group 5 members served has been increased to $1.53 per quarter hour
  - H2023 US Work Support (Supported Employment)-Group 6 members served has been increased to $1.27 per quarter hour

- T2015 Career Planning (Habilitation, prevocational) has been increased to $30.97 per hour
- S5150 Respite Services-1/4 hour has been increased to $2.99 per quarter hour
- S5151 Respite Services-Per Diem has been increased to $99.54 per diem

Fiscal impact of rule:

The Department anticipates that this rulemaking, to increase the cap in Section 29, will cost approximately $19,770,210 in SFY18, which includes $5,861,867 in state dollars and $12,722,130 in federal dollars, and $26,360,280 in SFY19, which includes $7,818,459 in state dollars and $16,960,204 in federal dollars.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; PL 2017 ch. 284 §MMMMMMM-2
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 21**, Allowances for Home and Community Benefits for Adults with Intellectual Disabilities or Autism Spectrum Disorder
Filing number:	**2018-071**
Effective date:	6/1/2018
Type of rule:	Major Substantive
Emergency rule:	No

Principal reason or purpose for rule:

The rule implements the rate increases enacted by the Legislature in PL 2017 ch. 284 §MMMMMMM-2.

Basis statement:

The Department is finally adopting this major substantive rule in accordance with PL 2017 ch. 284 §MMMMMMM-2. PL 2017 ch. 284 provides funding to increase reimbursement rates for 23 procedure codes in Ch. III Section 21. The legislation directed the Department to increase the rates for the specific procedure codes in equal proportion to the funding provided for that purpose.

On September 29, 2017, the Department adopted an emergency major substantive rule which increased reimbursement rates with a retroactive application date of July 1, 2017. The Department then engaged in proposed rulemaking for Ch. III Section 21, pursuant to 5 MRS §8072(1). On January 12, 2018 the Department provisionally adopted the rule. Subsequently, the Department submitted the provisionally adopted rule to the Maine State Legislature for its review, in accordance with 5 MRS §8072.

The Maine State Legislature authorized final adoption of the January 12, 2018 provisionally adopted rule "only if in Section 2000 of the rule, relating to audit of services provided, the documentation requirement for staffing schedules per member is removed and replaced with a requirement that the documentation show the hours and the name of the direct care staff scheduled to work at the facility." Resolves 2017, ch. 35, was approved by Governor LePage on March 26, 2018.

The final adopted rule makes the following changes to rates for the period July 1, 2017 to June 30, 2018:

- In Section 1910, the group rates for Work Support have been increased for SFY 2018 only:
  - 2 Members in Group: rate increased to $3.83 per quarter hour
  - 3 Members in Group: rate increased to $2.54 per quarter hour
  - 4 Members in Group: rate increased to $1.91 per quarter hour
  - 5 Members in Group: rate increased to $1.53 per quarter hour
  - 6 Members in Group: rate increased to $1.27 per quarter hour
- In Appendix I, reimbursement rates for services have been increased for SFY 2018 only:
  - T2017 home support has been increased to $7.00 per quarter hour
  - T2017 SC home support with medical add-on has been increased to $8.37 per quarter hour
  - T2017 GT home support – remote support has been increased to $7.00 per quarter hour
  - T2017 QC home support – remote support-monitor only has been increased to $1.80 per quarter hour, to ensure that all the T2017 home support rates were increased.

- T2016 agency home support has been increased to $25.04
- T2016 agency home support over 168 hours has been increased to $21.81
- T2016 SC agency home support with medical add-on has been increased to $30.32
- S5140 shared living foster care, adult, one member has been increased to $140.89 per diem
- S5140 TG shared living foster care, adult, one member, increased level of support has been increased to $204.91 per diem
- S5140 UN shared living foster care, adult, 2 members has been increased to $70.46 per diem
- S5140 UN TG shared living foster care, adult, 2 members, increased level of support has been increased to $134.46 per diem
- T2021 community support has been increased to $5.89 per quarter hour
- T2021 SC community support with medical add-on has been increased to $7.27 per quarter hour
- T2015 career planning has been increased to $30.97 per hour
- T2019 employment specialist services has been increased to $8.21 per quarter hour
- T2019 SC employment specialist services with medical add-on has been increased to $9.49 per quarter hour
- H2023 work support, individual has been increased to $7.64 per quarter hour
- H2023 SC work support with medical add-on has been increased to $8.94 per quarter hour
- H2023 UN work support, group, 2 members has been increased to $3.83 per quarter hour
- H2023 UP work support, group, 3 members has been increased to $2.54 per quarter hour
- H2023 UQ work support, group, 4 members has been increased to $1.91 per quarter hour
- H2023 UR work support, group, 5 members has been increased to $1.53 per quarter hour
- H2023 US work support, group, 6 members has been increased to $1.27 per quarter hour
- T2034 crisis intervention services has been increased to $7.02 per quarter hour

This rulemaking also increased the rate for a 24th procedure code – T2017 QC (Home Support, Habilitation, residential, waiver – Remote Support – Monitor only). Increasing the rate for this procedure code creates consistency with the other codes, in line with the Section 21 service and reimbursement structure.

The Legislature did not appropriate additional funding for these rate increases beyond June 30, 2018 (P.L. 2017, ch. 284, § ZZZZZZ-9); therefore, all the increased rates (including the T2017 QC code) will revert to their pre-July 1, 2017 rate levels on July 1, 2018, as adopted and approved by the Legislature in this major substantive rulemaking.

The final adopted major substantive rule makes the permanent change to Section 2000 as required by the Legislature.

Fiscal impact of rule:

This rulemaking is estimated to cost approximately $33,422,308 in SFY 18, which includes $9,909,714 in state dollars and $21,507,255 in federal dollars.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; 42 CFR §440.70; 42 USC §1396b
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 60**, Medical Supplies and Durable Medical Equipment
Filing number:	**2018-106**
Effective date:	6/13/2018
Type of rule:	Routine Technical
Emergency rule:	No

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

Basis statement:
The Department is adopting changes in this rule, as set forth below. The changes include the following:

a) The Department updates the definition of Durable Medical Equipment (DME) to align with 42 CFR §440.70 (b)(3)(ii).
b) The Department adds a storefront exclusion and reimbursement methodology for manufacturers of specialty modified low protein foods and formulas. The purpose of adding the storefront exclusion is to allow these manufacturers to bill the Department as the supplier of prescription metabolic foods as there are no current suppliers within the state.
c) The Department removes language implying absolute exclusions of DME items as this is no longer allowable per 42 CFR §440.70.
d) The Department also adds repair/replacement language for APAP, CPAP and BiPAP devices greater than or equal to five (5) years old to clarify when a repair or replacement of these types of devices is needed, in addition to the steps required to determine whether a repair or replacement is more appropriate.
e) The Department also removes the list of items considered to be MaineCare-covered for members residing within a Nursing Facility (NF) or Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF-IID). The purpose of removing the list is to eliminate confusion surrounding covered and non-covered items for members residing within a NF or ICF-IID;
f) The Department further defines limitations for orthopedic shoes and other supportive devices for members twenty-one (21) years of age and older to provide clarity of covered services and to better align with current correct coding guidelines.
g) The Department also updates documentation requirements, effective January 1, 2019, for disposable non-sterile gloves when supplied in conjunction with incontinence supplies to cost-effectively manage this covered service and ensure members are appropriately receiving these items. The implementation date of January 1, 2019 is to allow ordering providers necessary time to acclimate to the documentation requirements.
h) The department increases the allowance of supplies per dispense to ninety-days (90) for items MaineCare considers to be disposable DME to more closely align with other payors.
i) The Department also updates reimbursement methodology to align with Medicare for Medicare covered DME impacted by the *21st Century Cures Act*, and further clarify the methodology by which other rates are set, including non-Medicare covered codes,

Medicare covered codes not impacted by the *21st Century Cures Act*, specialty modified low protein foods and incontinence supplies.

j) Following public comments on this rule, the Department is electing to add language surrounding guidelines, requirements and quality measures for incontinence supplies provided to MaineCare members.
k) The Department is removing parenteral solutions from section 60.05-13 due to occurring access issues as a result of the solutions being inclusive in the rate of reimbursement. The Department aims to expeditiously ameliorate any additional issues.
l) The Department updates the ">" symbol in sections 60.12(Y)(1)(e)(vi) and 60.12(Y)(2)(f)(vi) to "<" to accurately reflect the guidelines for hgbA1c levels to obtain tighter glucose control when related to hypoglycemia.
m) Corrects and/or deletes outdated references and website addresses and,
n) Edits, minor language and punctuation updates for clarification purposes.

Fiscal impact of rule:

The Department anticipates that this rulemaking will save approximately $411,053 in SFY 2018, which includes $146,581 in state dollars and $264,472 in federal dollars, and $762,106 in SFY 2019, which includes $270,196 in state dollars and $491,910 in federal dollars.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; 5 MRS §8054; Resolves 2017 ch. 41
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 45**, Hospital Services
Filing number:	**2018-121**
Effective date:	7/10/2018
Type of rule:	Routine Technical
Emergency rule:	Yes

Principal reason or purpose for rule:

The Maine 128th Legislature passed legislation, Resolves 2017 ch. 41, *Resolve, Regarding Medicaid Reimbursement for Rehabilitation Hospitals,* directing the Department of Health and Human Services to amend Ch. 101, *MaineCare Benefits Manual*, Section 45, Ch. III, to increase the Medicaid per discharge reimbursement rate provided to rehabilitation hospitals to fifteen-thousand, one-hundred, sixty-one dollars and forty-three cents ($15,161.43), and reduce the hospital supplemental pool by four-hundred thousand dollars ($400,000).

Basis statement:

The Department adopts this emergency rule pursuant to Resolves 2017 ch. 41, *Resolve, Regarding Medicaid Reimbursement for Rehabilitation Hospitals,* directing the Department of Health and Human Services to amend Ch. 101, *MaineCare Benefits Manual*, Section 45, Ch. III, to increase the Medicaid per discharge reimbursement rate provided to rehabilitation hospitals and reduce the total hospital supplement pool by four-hundred thousand dollars ($400,000).

The Legislature adjudged that immediate adoption is necessary for the preservation of the public peace, health, and safety under 5 MRS §8054. As such, no additional findings by the Department are required in support of this emergency rulemaking.

The rule amends Section 45.06, to increase the Medicaid per discharge reimbursement rate provided to rehabilitation hospitals to fifteen-thousand, one-hundred, sixty-one dollars and forty-three cents ($15,161.43) and reduces the total hospital supplemental pool as described in Section 45.07, by four-hundred thousand dollars ($400,000). The existing resources already allocated to providers remains the same; they are just being distributed differently. The changes are therefore cost neutral.

The Department shall seek and anticipates receiving approval from the Centers for Medicare and Medicaid Services (“CMS”) for these changes. Pending approval of the State Plan Amendment (“SPA”), these changes will be effective.

Fiscal impact of rule:

The Department anticipates that this rulemaking will be cost neutral.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §42(1) & (8), §3173; 5 MRS §§ 8054, 8073; PL 2017 ch. 459 part A
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 21**, Allowances for Home and Community Benefits for Adults with Intellectual Disabilities or Autism Spectrum Disorder
Filing number:	**2018-183**
Effective date:	9/11/2018
Type of rule:	Major Substantive
Emergency rule:	Yes

Principal reason or purpose for rule:

The emergency adopted rule implements rate increases enacted by the Legislature in PL 2017 ch. 459 part A.

Basis statement:

This emergency major substantive rule is adopted in accordance with PL 2017 ch. 459, *An Act Making Certain Supplemental Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* ("Act"). The Act gave notice that the Legislature determined that "these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety…." Pursuant to this Legislative determination, the requirements of 5 MRS §8054(1) are satisfied.

The Act provides funding to increase reimbursement rates for specific procedure codes in Ch. III Section 21. The legislation directed the Department to increase the rates by rulemaking for the specific procedure codes in equal proportion to the funding provided for that purpose.

In addition to the 33 rate increases required by PL 2017 ch. 459, the Department has also increased the rate for a 34th procedure code – T2017 QC (Home Support, Habilitation, residential, waiver – Remote Support – Monitor only). In accordance with 5 MRS §8054, the Department has determined that this rate increase needs to be done in this emergency rulemaking for it is necessary to avoid an immediate threat to public health, safety or general welfare. The Department's findings of an emergency are as follows: PL 2017 ch. 459 increased every other procedure code for Home Support: Quarter Hour and Home Support: Remote Support. Increasing the rate for the procedure code that was "left out" creates consistency with the other codes, in line with the Section 21 service and reimbursement scheme. If the rate for this code is not increased, it is likely to create pressure to move members to services with higher rates for financial reimbursement reasons, rather than member need.

These increased rates will be effective retroactive to July 1, 2018, as directed by the Act. The retroactive application of this rule comports with 22 MRS §42(8) which authorizes the Department to adopt rules with a retroactive application for a period not to exceed 8 calendar quarters and there is no adverse financial impact on any MaineCare member or provider. In addition, the Department sought, and obtained, approval by the Center for Medicare and Medicaid Services ("CMS") to be able to submit a waiver amendment that will make the rate increases for these Medicaid waiver services retroactive to July 1, 2018.

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

This emergency major substantive rule increases the following rates:

- In Section 1910, the group rates for Work Support have been increased:
  - 2 Members in Group
  - 3 Members in Group
  - 4 Members in Group
  - 5 Members in Group
  - 6 Members in Group
- In Appendix I, the following rates have been increased:
  - T2017 home support
  - T2017 SC home support with medical add-on
  - T2017 QC home support—remote support—monitor only
  - T2017 GT home support – remote support—interactive support
  - T2016 agency home support
  - T2016 agency home support over 168 hours
  - T2016 SC agency home support with medical add-on
  - S5140 shared living foster care, adult, one member
  - S5140 TG shared living foster care, adult, one member, increased level of support
  - S5140 UN shared living foster care, adult, 2 members
  - S5140 UN TG shared living foster care, adult, 2 members, increased level of support
  - T2021 community support
  - T2021 SC community support with medical add-on
  - T2015 career planning
  - T2019 employment specialist services
  - T2019 SC employment specialist services with medical add-on
  - H2023 work support, individual
  - H2023 SC work support with medical add-on
  - H2023 UN work support, group, 2 members
  - H2023 UP work support, group, 3 members
  - H2023 UQ work support, group, 4 members
  - H2023 UR work support, group, 5 members
  - H2023 US work support, group, 6 members
  - T2034 crisis intervention services
  - T2016 U5 home support, family-centered support, one member
  - T2016 TG U5 home support, family-centered support, one member, increased level of support
  - T2016 UN U5 home support, family-centered support, 2 members
  - T2016 UN TG U5 home support, family-centered support, 2 members
  - T2016 UP U5 home support, family-centered support, 3 members
  - T2016 UP TG U5 home support, family-centered support, 3 members, increased level of support
  - T2016 UQ U5 home support, family-centered support, 4 members
  - T2016 UQ TG U5 home support, family-centered support, 4 members, increased level of support
  - T2016 UR U5 home support, family-centered support, 5 or more members
  - T2016 UR TG U5 home support, family-centered support, 5 or more members, increased level of support

The Maine Legislature has designed the Ch. III Section 21 regulation as a major substantive rule. Pursuant to 5 MRS §8073, this emergency major substantive rule may be effective for up to twelve months, 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.

Fiscal impact of rule:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §42, §3173; 5 MRS §§ 8054, 8073; PL 2017 ch. 459 part A
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 29**, Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder
Filing number:	**2018-184**
Effective date:	9/12/2018
Type of rule:	Major Substantive
Emergency rule:	Yes

Principal reason or purpose for rule:

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

Basis statement:

The Department is adopting this emergency major substantive rule in accordance with PL 2017, ch. 459, *An Act Making Certain Supplemental Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government ("Act")*. This Act provides funding to increase reimbursement rates for eighteen (18) procedure codes in Ch. III Section 29. The legislation directs the Department to increase the rates for the specific procedure codes in equal proportion to the funding provided for that purpose, and to do so via major substantive rulemaking. The Act gave notice that the Legislature determined that "these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety…" Pursuant to this Legislative determination, the requirements of 5 MRS §8054(1) are satisfied.

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

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

This emergency major substantive rule makes the following changes:

- In Appendix I, the following rates have been increased:
  - S5140 Shared Living (Foster Care, adult)-Shared Living Model-One member served
  - S5140 UN Shared Living (Foster Care, adult)-Shared Living Model-Two members served
  - T2017 Home Support-Quarter Hour
  - T2017 GT Home Support-Remote Support-Interactive Support
  - T2021 Community Support (Day Habilitation)
  - T2021 SC Community Support (Day Habilitation) with Medical Add-On
  - T2019 Employment Specialist Services (Habilitation, Supported Employment waiver)
  - T2019 SC Employment Specialist Services (Habilitation, Supported Employment waiver) with Medical Add-On
  - H2023 Work Support (Supported Employment)-Individual

  - H2023 SC Work Support (Supported Employment)-Individual with Medical Add-On
  - H2023 UN Work Support (Supported Employment)-Group 2 members served
  - H2023 UP Work Support (Supported Employment)-Group 3 members served
  - H2023 UQ Work Support (Supported Employment)-Group 4 members served
  - H2023 UR Work Support (Supported Employment)-Group 5 members served
  - H2023 US Work Support (Supported Employment)-Group 6 members served
  - T2015 Career Planning (Habilitation, prevocational)
  - S5150 Respite Services-1/4 hour
  - S5151 Respite Services-Per Diem
- In Section 1400, the maximum amount that can be billed in a single day for Respite has been increased (to reflect the rate increases made in Appendix I).
- In Section 1810, the group rates for Work Support have been increased (to reflect the rate increases made in Appendix I).

Pursuant to 5 M.R.S. §8073, this emergency major substantive rule may be effective for up to 12 months, 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.

Fiscal impact of rule:

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

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. I Section 1**, General Administrative Policies and Procedures
Filing number:	**2018-185**
Effective date:	9/17/2018
Type of rule:	Routine Technical
Emergency rule:	No

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

Basis statement:
The Department of Health and Human Services ("the Department") adopts this rule pursuant to P.L. 2017, ch. 442, *An Act To Clarify Liability Pertaining to the Collection of Debts of MaineCare Providers by the Department of Health and Human Services*.

This rulemaking removes the following language from Section 1.12-2:

> *The liability for debts owed to the Department by the Provider is enforceable against the Provider, including any person who has an ownership or control interest in the Provider, and against any officer, director, or member of the Provider who, in that capacity, is responsible for any control or any management of the funds or finances of the provider. Personal liability against an officer, director, or member of the Provider described in this section shall be limited to debts owed to the Department occurring or arising during that person's employment or affiliation with the Provider or to any debts which become known to such a person and not voluntarily disclosed by that person to the Department. Individuals or entities with an ownership or control interest in the provider include: 1) Those with an ownership interest, meaning those in possession of equity in the capital, the stock, or the profits of the provider. 2) Those with an indirect interest, meaning those with an ownership interest in an entity that has an ownership interest in the provider.*

The Department has determined to not adopt the proposed change of adding an Appendix #3 ("Duplication Table") to this rule. Concerns and questions about this Duplication Table were raised in written comments to the rulemaking, as well as from the Office of the Attorney General during its review of the rule.

Fiscal impact of rule:
A fiscal impact count not be determined at this time.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; 5 MRS §8054; Resolves 2017 ch. 41
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 45**, Principles of Reimbursement for Hospital Services
Filing number:	**2018-212**
Effective date:	10/1/2018
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The Maine 128th Legislature passed legislation, Resolves 2017 ch. 41, *Resolve, Regarding Medicaid Reimbursement for Rehabilitation Hospitals,* directing the Department of Health and Human Services to amend Ch. 101, *MaineCare Benefits Manual*, CH. III Section 45, to increase the Medicaid per discharge reimbursement rate provided to rehabilitation hospitals to fifteen-thousand, one-hundred, sixty-one dollars and forty-three cents ($15,161.43), and reduce the hospital supplemental pool by four-hundred thousand dollars ($400,000).

Basis statement:

The Department adopts this rule pursuant to Resolves 2017 ch. 41, *Resolve, Regarding Medicaid Reimbursement for Rehabilitation Hospitals,* directing the Department of Health and Human Services to amend Ch. 101, *MaineCare Benefits Manual*, Ch. III Section 45, to increase the Medicaid per discharge reimbursement rate provided to rehabilitation hospitals and reduce the total hospital supplemental pool by four-hundred thousand dollars ($400,000).

The rule amends Section 45.06 to increase the Medicaid per discharge reimbursement rate provided to rehabilitation hospitals to fifteen-thousand, one-hundred, sixty-one dollars and forty-three cents ($15,161.43) and reduces the total hospital supplemental pool as described in Section 45.07, by four-hundred thousand dollars ($400,000). The existing resources already allocated to providers remains the same; they are just being distributed differently. The changes are therefore cost neutral.

This rule also amends Section 45.13-2, Additional Eligibility Requirements for Acute Care Hospitals, reverting to the use of Interim Cost Reports, rather than Final Cost Reports, for purposes of determining whether a hospital is a Disproportionate Share Hospital in a payment year.

The changes to Sections 45.06 and 45.13-2, described herein, were implemented via emergency rulemaking, effective July 10, 2018. These finally adopted rule changes shall become effective prior to the expiration of the 90-day emergency rule changes, pursuant to 5 MRS §§ 8052(6) and 8054(3). The Department shall seek and anticipates receiving approval from the Centers for Medicare and Medicaid Services ("CMS") for each of these changes, effective July 10, 2018. Pending approval of the State Plan Amendment ("SPA"), these changes will be effective.

The Department made two additional changes to the rule from what was proposed: first, it made a technical change to remove reference to the definition of "payment window rule" in the table of contents (because there was never such a definition); and second, the Department altered Section 45.13-2 to refer to Interim (not Final) Cost Reports for purposes of determining whether a hospital is a Disproportionate Share Hospital. CMS rejected the Department's request to utilize Final Cost Reports for this purpose, and thus the Department finds that it must update its rule immediately to comport with federal Medicaid law.

Fiscal impact of rule:

The Department anticipates that this rulemaking will be cost neutral.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; 5 MRS §8054
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 107**, Psychiatric Residential Treatment Facilities Services
Filing number:	**2018-220**
Effective date:	10/3/2018
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This rulemaking intends to create a new section of policy describing Psychiatric Residential Treatment Facilities (PRTF). The rule addresses the PRTFs' covered services, policy and procedures, standards, and reimbursement methodology. This service is intended to address a current gap in Maine's offering of behavioral health services to youth under the age of 21. The PRTF is being created to specifically address a high need to support Maine's most vulnerable youth, including: youth in out of state placement, youth stranded in psychiatric hospitalization with no safe discharge option, youth stranded in emergency rooms with no safe placement, and incarcerated youth in need of mental health treatment. PRTFs are federally regulated facilities by the Centers for Medicare and Medicaid Services (CMS) via 42 CFR 441 Subpart D and 42 CFR 483 Subpart G.

Basis statement:

This rulemaking adopts a new section of policy describing Psychiatric Residential Treatment Facilities (PRTF) services and reimbursement for such services. PRTFs are Medicaid services authorized and governed under: 42 USC §1396d(a)(16) and (h) and 42 CFR 441 Subpart D and 42 CFR483 Subpart G. The services are offered only to members under the age of 21.

NOTE: The Department will seek approval from CMS for the PRTF service. The service will not be offered, and this rule will not become effective, until CMS has approved. Upon CMS approval, the Department will issue notice to the Secretary of State and Interested Parties informing of CMS approval pursuant to Title 5 §8052(6).

The rule describes the PRTFs' covered services, policies and procedures, standards, and reimbursement methodology. This service is intended to address a current gap in Maine's offering of behavioral health services to youth under the age of 21. The PRTF is being created to specifically support Maine's most vulnerable youth, including: youth in out of state placement, youth stranded in psychiatric hospitalization with no safe discharge option, youth stranded in emergency rooms with no safe placement, and incarcerated youth in need of mental health treatment. This rule was developed by a multidisciplinary team including members from the Office of Child and Family Services, the Department of Education, the Department of Corrections, Maine Centers for Disease Control and Prevention, and the Office of MaineCare services. The development of this policy included stakeholder input. A public hearing was held on May 21, 2018, and, in addition, public comments were received.

This service will be reimbursed using a statewide per diem rate for medical, clinical and direct care costs (direct care services) and using a facility-specific rate for routine and fixed costs (room and board costs). The routine and fixed costs facility rate is informed by annual cost reporting performed by providers using a state-developed cost report form. The

medical, clinical and direct care per diem rate is not cost settled. The routine and fixed cost rate is cost settled by the Department based on allowable fixed and routine costs.

The Department has issued notice to the Legislature prior to rulemaking adoption and complies with 34-B MRS §15002 (Children's Mental Health Services).

As a result of public comments and review by the Office of the Attorney General, the Department has deleted the utilization of chemical restraints in this service. The Department added language for Medication Pro Re Nata (PRN), which clarifies that PRN medication may not be utilized as a chemical restraint.

The Department added language to clarify that this rulemaking complies with the following regulations: the *Rights of Recipients of Mental Health Services who are Children in Need of Treatment* by a *Provider*, 14-172 CMR ch. 1, and also the *Rights of Recipients of Mental Health Services,* 14-193 CMR ch. 1. These changes were adapted to ensure compliance with all state and federal regulation and to ensure members are afforded the highest level of protections.

At the same time it is adopting this rulemaking, the Department is also adopting new licensing rules, which will govern the licensing of PRTFs. Those rules are the Children's Residential Care Facilities Licensing Rule, 10-144 CMR ch. 36.

Fiscal impact of rule:

The fiscal impact is unable to be determined at this time due to the complexity of the rule and inability to accurately determine how many members will seek to access PRTF programs from incarceration, hospitalization, and out of state placement.

The Department does not anticipate any additional costs (to small businesses).

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; 5 MRS §8054; PL 2017 ch. 459
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 19**, Home and Community Benefits for the Elderly and Adults with Disabilities
Filing number:	**2018-225**
Effective date:	10/9/2018
Type of rule:	Routine Technical
Emergency rule:	Yes

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

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

The Act gave notice that the Legislature determined that "these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety…" Pursuant to this Legislative determination, the requirements of 5 MRS §8054(1) are satisfied.

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

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

Pursuant to 5 MRS §8054(3), this emergency rule will be effective for 90 days. The Department will be pursuing routine technical rulemaking for Chapter II, Section 19 to avoid any lapse.

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

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; 5 MRS §8054; PL 2017 ch. 459 part B
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 19**, Home and Community Benefits for the Elderly and Adults with Disabilities
Filing number:	**2018-226**
Effective date:	10/9/2018
Type of rule:	Routine Technical
Emergency rule:	Yes

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

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

The Act gave notice that the Legislature determined that "these facts create an emergency within the meaning of the Constitution of Maine, and require the following legislation as immediately necessary for the preservation of the public peace, health and safety…" Pursuant to this Legislative determination, the requirements of 5 MRS § 8054(1) are satisfied.

The emergency rule increases the following rates:

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

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

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

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

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

- T1005 U7 (0669) Respite Care, in the home by CNA/Home Health Aide
- T1005 U7 UN (0669) Respite Care, in the home by CNA/Home Health Aide-2 members served
- T1005 U7 UP (0669) Respite Care, in the home by CNA/Home Health Aide-3 members served
- G0299 U7 (0551) Skilled Nursing Visit (R.N.) (Non-Medicare Certified Home Health Agency)-Home Health Services

- G0299 U7 UN (0551) Skilled Nursing Visit (R.N.) (Non-Medicare Certified Home Health Agency)-Home Health Services-2 members served
- G0299 U7 UP (0551) Skilled Nursing Visit (R.N.) (Non-Medicare Certified Home Health Agency)-Home Health Services-3 member served
- G0300 U7 (0559) Nursing Visit (LPN) (Non-Medicare Certified Home Health Agency)-Home Health Services
- G0300 U7 UN (0559) Nursing Visit (LPN) (Non-Medicare Certified Home Health Agency)-Home Health Services-2 members served
- G0300 U7 UP (0559) Nursing Visit (LPN) (Non-Medicare Certified Home Health Agency)-Home Health Services-3 members served

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

- G0156 (0571) Home Health Aide- Home Health Services
- G0156 (0571) Home Health Aide- Home Health Services-2 members served
- G0156 (0571) Home Health Aide- Home Health Services-3 members served

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

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

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

Pursuant to 5 MRS §8054 (3), this emergency rule may be effective for up to ninety (90) days. The Department intends to proceed with routine technical rulemaking to permanently adopt this rule.

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

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

Fiscal impact of rule:

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

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; 5 MRS §8054; PL 2017 ch. 460 Part D
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 23**, Developmental and Behavioral Evaluation Clinic Services
Filing number:	**2018-231**
Effective date:	11/6/2018
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 pursuant to PL 2017 ch. 460, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government*. Part D-1 requires the Department increase the rates of reimbursement for Section 23, *Development and Behavioral Clinic Services*, to ensure a net increase in funding from fiscal year 2008-2009 to fiscal year 2018-2019 of two (2) % as long as no rates for a service is lower than the rate reimbursed as of January 1, 2018.

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

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

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

Pursuant to the Legislative determination regarding the urgent need for these reimbursement increases, the requirements of 5 MRS §8054(1) are satisfied and emergency rulemaking is appropriate. Similarly, an August 1, 2018 retroactive effective date is necessary to implement these changes as soon as possible. The retroactive application comports with 22 MRS §42(8), which authorizes the Department to adopt rules with a retroactive application

(where there is no adverse impact on providers or members) for a period not to exceed (8) calendar quarters.

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

Fiscal impact of rule:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; 5 MRS §8054; PL 2017 ch. 460
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 2**, Adult Family Care Services
Filing number:	**2018-232**
Effective date:	11/6/2018
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 pursuant to PL 2017 ch. 460, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (the "Act"), Part B-2. The Act requires the Department to amend its rules to increase reimbursement rates for adult family services, adult day services, and homemaker services for the fiscal year ending June 30, 2019, by ten percent (10%); and directs that MaineCare payment rates for state fiscal year ending June 30, 2020 be increased by an inflation adjustment cost-of-living percentage in accordance with the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care services index from the prior December for professional services, nursing home and adult day care services. These cost of living increases shall continue annually until the Department has completed a rate study for adult family care services and the rates in the rate study have been implemented.

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

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

Because the Act involves MaineCare reimbursement, these rule changes are also governed by federal Medicaid law. 42 CFR §447.205(d) requires that public notice of changes in reimbursement for state plan services must "be published **before** the proposed effective date of the change." (emphasis added). The Department published its notice of reimbursement methodology change for the Section 2 rates on July 31, 2018. Upon the advice of the Office of the Attorney General, the increased rates will be effective August 1, 2018, which effective date comports with the federal law requirement. Pending approval of the proposed changes to the

Section 2 state plan amendment that were submitted to the Centers for Medicare and Medicaid Services, the increased rates will be implemented with an August 1, 2018 effective date.

Pursuant to the Legislative determination regarding the urgent need for these reimbursement increases, the requirements of 5 MRS §8054(1) are satisfied and emergency rulemaking is appropriate. Similarly, an August 1, 2018 retroactive effective date is necessary to implement these changes as soon as possible. The retroactive application comports with 22 MRS §42(8), which authorizes the Department to adopt rules with a retroactive application (where there is no adverse impact on providers or members) for a period not to exceed (8) calendar quarters.

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

Fiscal impact of rule:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173; 5 MRS §8054; PL 2017 ch. 459 parts A, B
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 29**, Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder
Filing number:	**2018-238**
Effective date:	11/7/2018
Type of rule:	Routine Technical
Emergency rule:	Yes

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

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

The Act gave notice that the Legislature determined that "these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety…" Pursuant to this Legislative determination, the requirements of 5 MRS §8054(1) are satisfied.

On September 12, 2018, the Department adopted an emergency major substantive rule for Section 29 Ch. III, as directed in the Act, to increase reimbursement rates for eighteen (18) procedure codes, with a retroactive effective date of July 1, 2018. In accordance with Part B of the Act, therefore, this Ch. II rulemaking raises the caps to reflect those rate increases.

The emergency rule adopts the following changes:

- Raises the combined limit for members who receive Home Support (Remote or ¼ hour), Community Support, or Shared Living to $58,168.50;
- Raises the annual limit on Respite Services to $1,224.60;
- Raises the per diem limit for quarter hour (1/4) billing for Respite to $110.21.

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

Pursuant to 5 MRS §8054(3), this emergency rule will be effective for 90 days. The Department will pursue routine technical rulemaking for Ch. II Section 29 to avoid any lapse.

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

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42(8), 3173; 5 MRS §§ 8054, 8073; PL 2017 ch. 460 parts C, D
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 28**, Allowances for Rehabilitative and Community Support Services for Children with Cognitive Impairments and Functional Limitations
Filing number:	**2018-241**
Effective date:	11/8/2018
Type of rule:	Major Substantive
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 major substantive emergency rule to increase the rates of reimbursement for rehabilitative and community support services pursuant to PL 2017 ch. 460, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (the "Act").

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

- Part C of the Act directs the Department to amend the rates of reimbursement to providers of Section 28 services to reflect the final rates modeled in the April 24, 2017 report: "Rate Study for Behavioral Health and Targeted Case Management Services: Final Proposed Rates for Formal Rulemaking" prepared for the Department by Burns & Associates, Inc. Those rate changes were made.
- Part D of the Act directs the Department to increase the rate of reimbursement for all services by two percent. Sec. D-1 and D-2 specifically require the increase in reimbursement to be applied to the wages and benefits of employees providing direct services. The two percent rate increase was made to the rates as changed by the Burns study.

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

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

Plan Amendment that were submitted to the Centers for Medicare and Medicaid Services, the increased rates will be implemented with an August 1, 2018 effective date.

Pursuant to the Legislative determination regarding the urgent need for these reimbursement increases, the requirements of 5 MRS §8054(1) are satisfied and emergency rulemaking is appropriate. Similarly, an August 1, 2018 retroactive effective date is necessary to implement these changes as soon as possible. The retroactive application comports with 22 MRS §42(8), which authorizes the Department to adopt rules with a retroactive application (where there is no adverse impact on providers or members) for a period not to exceed eight calendar quarters.

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

PL 2017 ch. 460 part C sec. C-1 directed that rulemaking authorized by the sec. C-1 law would be a “major substantive” rule. Sec. C-1 provided for certain rate increases, and rulemaking, for Section 28 services. Therefore, for purposes of this November 8, 2018 rulemaking only, the rule is major substantive. Thereafter, unless otherwise directed by the Legislature, the rule will revert back to routine technical rulemaking status.

Fiscal impact of rule:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42(8); 3173; 5 MRS §8054; PL 2017 ch. 459 Part B
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 12**, Allowances for Consumer-Directed Attendant Services
Filing number:	**2018-245**
Effective date:	11/13/2018
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 the rates of reimbursement for personal care and related services pursuant to PL 2017 ch. 459 part B, *An Act Making Certain Supplemental Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (the "Act").

The Act requires the Department to amend its rules for reimbursement rates for personal care and related services provided under the provisions of 10-144 CMR ch. 101, *MaineCare Benefits Manual*, ch. III Section 12, "Allowances for Consumer-Directed Attendant Services" ("Section 12"), to reflect the final rates modeled in the February 1, 2016 report: "Rate Review for Personal Care and Related Services: Final Rate Models" prepared for the Department by Burns & Associates, Inc.

These rule changes increase the following rates in Section 12:

* S5125, Attendant Care Services
* S5125 U2 UN, Attendant Care Services - 2 person
* S5125 U2 UP, Attendant Care Services - 3 person

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

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

There are four separate proposed rate changes pending before CMS, one submitted in September 2015 (effective 10/1/15 to 7/28/16), one submitted in July 2016 (effective 7/29/16 to 2/21/17), one submitted in August 2017 (effective 7/1/17 to 6/30/18 and 7/1/18 to 7/31/18), and one submitted in July 2018 (effective 8/1/18-6/30/19); thus, there are four retroactive effective dates applicable for these rates included in Ch. III.

Pursuant to the Legislative determination regarding the urgent need for these reimbursement increases, the requirements of 5 MRS §8054(1) are satisfied and emergency rulemaking is appropriate. Similarly, an August 1, 2018 retroactive effective date is necessary to implement these changes as soon as possible. The retroactive application comports with 22 MRS §42(8), which authorizes the Department to adopt rules with a retroactive application (where there is no adverse impact on providers or members) for a period not to exceed eight calendar quarters.

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

Fiscal impact of rule:

The Department expects this rulemaking will cost the Department approximately $608,879 in SFY 2019, which includes $216,274 in state dollars and $392,605 in federal dollars. This rulemaking is estimated to cost the Department $608,879 in SFY 2020, which includes $216,030 in state dollars and $$392,605 in federal dollars.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42(8); 3173; 5 MRS §8054; PL 2017 ch. 460 Parts D, E, I
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 65**, Behavioral Health Services
Filing number:	**2018-246**
Effective date:	11/13/2018
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 these emergency rule changes in 10-144 CMR Ch. 101, *MaineCare Benefits Manual*, Ch. II and III Section 65, "Behavioral Health Services" to: (a) ensure broader access to crisis services for adults with intellectual disabilities; and (b) increase the rates of reimbursement for services pursuant to PL 2017 ch. 460, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (the "Act"), Parts D, E and I.

Specific changes are as follows:

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

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

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

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

Pursuant to the Legislative determination regarding the urgent need for these reimbursement increases, the requirements of 5 MRS §8054(1) are satisfied and emergency rulemaking is appropriate. Similarly, an August 1, 2018 retroactive effective date is necessary to implement these changes as soon as possible. The retroactive application comports with 22 MRS §42(8), which authorizes the Department to adopt rules with a retroactive application (where there is no adverse impact on providers or members) for a period not to exceed eight calendar quarters.

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

Additionally, the Department finds that emergency rule changes are required to add certain diagnoses to Crisis Services in Ch. II. The crisis services system for adult developmental services is stressed, as the agency that previously contracted for state funded beds has declined to renew their contract with the Department. The state offers a small amount of crisis beds, but the demand outweighs the supply. Current policy language does not support serving individuals with developmental disabilities. The Department finds that it must broaden the language in Ch. II Sections 65.06-1, 65.06-2, to extend eligibility to members with developmental disabilities. Without emergency rulemaking, the health, safety, and well-being of these members may be compromised. These rule changes allow any willing and qualified provider of crisis services under Section 65 to offer crisis beds to adult members with developmental disabilities. Additionally, the Department finds that it must add allowable staff (Direct Support Professionals) to treat this population, as those currently available under Section 65 (MHRT) do not have the education or expertise to effectively treat this population.

Fiscal impact of rule:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42; 3173; 5 MRS §8054; PL 2017 ch. 459 Part B
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 96**, Private Duty Nursing and Personal Care Services
Filing number:	**2018-247**
Effective date:	11/13/2018
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 these emergency rules to increase the rates of reimbursement and level of care limits on personal care and other related services pursuant to PL 2017 ch. 459, *An Act Making Certain Supplemental Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (the "Act"), Part B.

The Act requires the Department to amend its rules for reimbursement rates for personal care and related services provided under the provisions of 10-144 CMR ch. 101, *MaineCare Benefits Manual*, Ch. II & III Section 96, *Private Duty Nursing and Personal Care Services* ("Section 96"), to reflect the final rates modeled in the February 1, 2016 report: "Rate Review for Personal Care and Related Services: Final Rate Models" prepared for the Department by Burns & Associates, Inc. Further, Part B-3 directs the Department to ensure that caps and limitations are increased to reflect the increases in reimbursement rates such that a recipient of services may not experience a reduction in hours solely as a result of the increased reimbursement rates authorized by the Act.

This Ch. III emergency rule increases the following rates:

G0299 TD (0551)-RN Services
G0299 TD UN (0551)-RN Services–multiple patients (2)
G0299 TD UP (0551)-RN Services-multiple patients (3)
G0300 TE (0559)-LPN Services
G0300 TE UN (0559)-LPN Services–multiple patients (2)
G0300 TE UP (0559)-LPN Services–multiple patients (3)
T1000 TD-Independent RN
T1000 TD UN-Independent RN-multiple patients (2)
T1000 TD UP-Independent RN–multiple patients (3)
T1004 (0571)-Home Health Aide/Certified Nursing Assistant Services
T1004 UN (0571)-Home Health Aide/Certified Nursing Assistant Services-multiple patients (2)
T1004 UP (0571)-Home Health Aide/Certified Nursing Assistant Services–multiple patients (3)
T1019 (0589)-Personal Support Services
T1019-Personal Support Services (PCA Agencies only)
T1019 UN-Personal Support Services (PCA Agencies only) multiple patients (2)
T1019 UP-Personal Support Services (PCA Agencies only) multiple patients (3)
S5125 TF (0589)-PCA Supervisit
S5125 TF UN (0589)-PCA Supervisit-multiple patients (2)

S5125 TF UP (0589)-PCA Supervisit–multiple patients (3)
S5125 TF-PCA Supervisit (PCA Agencies only)
S5125 TF UN-PCA Supervist (PCA Agencies only) multiple patients (2)
S5125 TF UP-PCA Supervisit (PCA Agencies only) multiple patients (3)

This Ch. II emergency rule increases the following level of care limits:

Level I
Level II
Level III
Level IV
Level V
Level VIII
Level IX

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

Because the Act involves MaineCare reimbursement, these rule changes are also governed by federal Medicaid law. 42 CFR §447.205(d) requires that public notice of changes in reimbursement for State Plan services must "be published **before** the proposed effective date of the change." The Department published its notice of reimbursement methodology change for the Section 96 rates on July 31, 2018. Upon the advice of the Office of the Attorney General, the increased rates will be effective August 1, 2018, which effective date comports with the federal law requirement. Pending approval of the proposed changes to the Section 96 State Plan Amendment that were submitted to the Centers for Medicare and Medicaid Services, the increased rates will be implemented with an August 1, 2018 effective date. There are four separate proposed rate changes and increased level of care limits pending before CMS, one submitted in September 2015 (effective July 1, 2015), one submitted in September 2016 (effective July 29, 2016), one submitted in September 2017 (effective September 6, 2017), and one submitted in July 2018 (effective August 1, 2018); thus, there are four retroactive effective dates applicable for these rates included in Ch. III.

Pursuant to the Legislative determination regarding the urgent need for these reimbursement increases, the requirements of 5 MRS §8054(1) are satisfied and emergency rulemaking is appropriate. Similarly, an August 1, 2018 retroactive effective date is necessary to implement these changes as soon as possible. The retroactive application comports with 22 MRS §42(8), this authorizes the Department to adopt rules with a retroactive application (where there is no adverse impact on providers or members) for a period not to exceed eight calendar quarters.

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

Pursuant to 5 MRS §8054, these emergency rules may be effective for up to ninety (90) days. The Department intends to proceed with routine technical rulemaking to permanently adopt these rules.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Fiscal impact of rule:

The Department expects these rulemakings will cost approximately $3,239,154 in SFY 2019, which includes $1,150,548 in state dollars and $2,088,606 in federal dollars. The Department expects these rulemakings will cost approximately $3,239,154 in SFY 2020, which includes $1,149,252 in state dollars and $2,089,902 in federal dollars.

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42(8), 3173, 5 MRS §8054; PL 2017 ch. 460 Part D
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 13**, Allowances for Targeted Case Management
Filing number:	**2018-248**
Effective date:	11/16/2018
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 the rates of reimbursement for targeted case management services pursuant to PL 2017 ch. 460, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (the "Act"), Part D.

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

Specific changes are as follows:

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

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

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

Pursuant to the Legislative determination regarding the urgent need for these reimbursement increases, the requirements of 5 MRS §8054(1) are satisfied and emergency rulemaking is appropriate. Similarly, an August 1, 2018 retroactive effective date is necessary to implement these changes as soon as possible. The retroactive application comports with 22 MRS §42(8), which authorizes the Department to adopt rules with a retroactive application (where there is no adverse impact on providers or members) for a period not to exceed eight calendar quarters.

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

Pursuant to 5 MRS §8054, this emergency rule may be effective for up to ninety (90) days. The Department shall proceed with routine technical rulemaking to permanently adopt these rule changes.

Fiscal impact of rule:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42(8), 3173, 5 MRS §8054; PL 2017 ch. 460 Part D
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 17**, Allowances for Community Support Services
Filing number:	**2018-249**
Effective date:	11/16/2018
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 the rates of reimbursement for Community Support Services pursuant to PL 2017 ch. 460, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (the "Act"), Part D.

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

Specific changes are as follows:

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

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

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

Pursuant to the Legislative determination regarding the urgent need for these reimbursement increases, the requirements of 5 MRS §8054(1) are satisfied and emergency rulemaking is appropriate. Similarly, an August 1, 2018 retroactive effective date is necessary to implement these changes as soon as possible. The retroactive application comports with 22 MRS §42(8), which authorizes the Department to adopt rules with a retroactive application (where there is no adverse impact on providers or members) for a period not to exceed eight calendar quarters.

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

Pursuant to 5 MRS §8054, this emergency rule may be effective for up to ninety (90) days. The Department shall proceed with routine technical rulemaking to permanently adopt these rule changes.

Fiscal impact of rule:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3173, 5 MRS §8054; PL 2017 ch. 460 Part B-2
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 26**, Day Health Services
Filing number:	**2018-250**
Effective date:	11/19/2018
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 pursuant to PL 2017 ch. 460 part B-2, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government.* Part B-2 requires the Department to amend its rules to increase reimbursement rates for adult family services, adult day services, and homemaker services for the fiscal year ending June 30, 2019, by ten percent (10%). Part B-2 further requires that effective July 1, 2019, payment rats attributable to wages and salaries for personal care and related services will be increased annually by an inflation adjustment cost-of-living percentage in accordance with the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index, Medical care services (professional services, nursing home and adult day care services) from the prior December. These cost of living increases shall continue annually until the Department has completed a rate study for adult family care services, adult day services or homemaker services and the rates in the rate study have been implemented.

This emergency rule increases the rate for S5100 HC, Day Care Services.

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

Because the Act involves MaineCare reimbursement, these rule changes are also governed by federal Medicaid law. 42 CFR §447.205(d) requires that public notice of changes in reimbursement for state plan services must "be published **before** the proposed effective date of the change." (emphasis added). The Department published its notice of reimbursement methodology change for the Section 26 rates on July 31, 2018. Upon the advice of the Office of the Attorney General, the increased rates will be effective August 1, 2018, which effective date comports with the federal law requirement. Pending approval of the proposed changes to the Section 26 state plan amendment that were submitted to the Centers for Medicare and Medicaid Services, the increased rates will be implemented with an August 1, 2018 effective date.

Pursuant to the Legislative determination regarding the urgent need for these reimbursement increases, the requirements of 5 MRS §8054(1) are satisfied and emergency rulemaking is appropriate. Similarly, an August 1, 2018 retroactive effective date is necessary to implement these changes as soon as possible. The retroactive application comports with 22 MRS §42(8), which authorizes the Department to adopt rules with a retroactive application

(where there is no adverse impact on providers or members) for a period not to exceed (8) calendar quarters.

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

Fiscal impact of rule:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42(8), 3173, 7863; 5 MRS §§ 8054, 8072; PL 2017 ch. 304, 460
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 97**, Private Non-Medical Institution Services (PNMI)
Filing number:	**2018-251**
Effective date:	11/20/2018
Type of rule:	Major Substantive
Emergency rule:	Yes

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

Basis statement:
The Department of Health and Human Services ("Department") adopts these emergency major substantive rules to implement the requirements of two recently enacted laws: (1) PL 2017 ch. 304, *An Act to Amend Principles of Reimbursement for Residential Care Facilities* ("The First Act")*;* and (2) PL 2017 ch. 460, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* ("The Second Act"). The First Act defines the process by which an eligible Private Non-Medical Institution (PNMI) Services provider may request an Extraordinary Circumstances Allowance (ECA) and allows for certain regulatory compliance costs incurred by PNMI providers to be considered reasonable and necessary; these changes are implemented in Appendices C and F. The Second Act increases reimbursement for Appendices B, C, and E PNMIs. The Department also adopts various other changes to the Section 97 rules, including Appendix D, as described more specifically in the third section, below.

Pursuant to 5 MRS §8073, these emergency major substantive rule changes will remain in effect for up to one (1) year or until the Legislature reviews the provisionally adopted rules, followed by the Department's final adoption of the major substantive rule changes.

I. The First Act

The First Act requires Extraordinary Circumstance Allowance (ECA), regulatory compliance cost, and other changes in Ch. III Section 97 (the "Main Rule"), and Appendices C, D and F. The Department finds that these changes must be implemented immediately through emergency major substantive rulemaking. Separately, the Department is implementing changes required by the First Act in 10-144 CMR ch. 115, "Residential Care Facilities – Room and Board Costs" (the "State Rule"); those changes are routine technical. Pursuant to 5 MRS §8072, "regular" major substantive rule changes are not legally effective until they are approved by the Legislature and finally adopted by an agency, which can take over a year; as such, because the Department seeks to implement the Section 97 changes simultaneously with the State Rule changes (in order to treat similar providers equitably), it must do so through emergency major substantive rulemaking. These changes will improve the financial condition of Section 97 providers, and s protect against a threat to public health and safety posed by instances of providers closing. The changes are a benefit to PNMI providers, and otherwise have no adverse impact on either MaineCare providers or members.

The emergency adoption under 5 MRS §8074 will enable the rule changes required by the First Act to take effect immediately, and pursuant to 22 MRS §42(8), retroactively. The Change in Reimbursement Methodology Notice required by 42 CFR §447.205 relating to the ECA and regulatory compliance costs was published on October 19, 2017. The Department is

seeking, and anticipates receiving, approval from the federal Centers for Medicare and Medicaid Services (CMS) for these changes. Pending approval, the ECA and regulatory compliance cost changes in the Main Rule, Appendices C, and F, will be effective retroactive to November 1, 2017.

II. The Second Act

The Second Act, Section B-4, requires the Department to amend the main rule and Appendix C to provide a special supplemental allowance (as more specifically set forth in the rules) for the fiscal year ending June 30, 2019. This allowance must be provided for increases in wages and wage-related benefits for direct care and personal care services cost components. The Second Act also directs that, for fiscal year ending June 30, 2020 and thereafter, the Appendix C MaineCare payment rates attributable to wages and salaries in each cost component must be increased by an inflation factor in accordance with the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care services index from the prior December for professional services, nursing home and adult day care services. In addition, the Department added a provision to Appendix C, Sec. 2400.3 to make it clear that the increases in reimbursement required by the Second Act shall not be included in the PNMI facility's personal care services costs cap.

The Second Act, Part D, requires the Department to amend the main rule, and Appendices B and E, to increase reimbursement rates to ensure a net increase in funding of two percent (as specifically set forth in the rules), which reimbursement must be applied to wages and benefits for employees who provide direct services and not to administrators or managers. The Second Act further requires that Section 97 providers must demonstrate to the Department that the increase in wages and benefits has been granted to direct care workers; as stated in the rules, providers must retain documents reflecting compliance with this requirement in their financial records and provide such documentation to the Department upon request.

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

Because the Second Act involves MaineCare reimbursement, these rule changes are also governed by federal Medicaid law. 42 CFR §447.205(d) requires that public notice of changes in reimbursement for state plan services must "be published **before** the proposed effective date of the change." The Department published its notice of reimbursement methodology change for the Section 97 rates on July 31, 2018. Upon the advice of the Office of the Attorney General, the increased rates in Appendices B, C, and E will be effective August 1, 2018, which effective date comports with the federal law requirement. Pending approval of the proposed changes to the Section 97 State Plan Amendment that were submitted to the Centers for Medicare and Medicaid Services, the increased rates in Appendices B, C, and E will be implemented with an August 1, 2018 effective date.

Pursuant to the Legislative determination regarding the urgent need for these reimbursement increases in Appendices B, C, and E, the requirements of 5 MRS §§ 8073 and 8054(1) are satisfied and emergency major substantive rulemaking is appropriate. Similarly, an August 1, 2018 retroactive effective date is necessary to implement these changes as soon as possible. The retroactive application comports with 22 MRS §42(8), which authorizes the Department to adopt rules with a retroactive application (where there is no adverse impact on providers or members) for a period not to exceed eight calendar quarters.

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

III. Other Changes

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

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

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost the Department approximately $8,595,617 in SFY 2019, which includes $3,053,163 in state dollars and $5,542,454 in federal dollars, and $8,595,617 in SFY 2020, which includes $3,049,725 in state dollars and $5,545,892 in federal dollars.

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3104; 5 MRS §8054; PL 2017 ch. 460 part G
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. II & III Section 93**, Opioid Health Home Services
Filing number:	**2018-260**
Effective date:	11/27/2018
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 ("Department") adopts changes to Ch. II and III Section 93, "Opioid Health Home Services" of the *MaineCare Benefits Manual* on an emergency basis pursuant to PL 2017 ch. 460 part G, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* (emergency, effective July 9, 2018) (the "Act") and pursuant to the Department's emergency rulemaking authority under 5 MRS §8054.

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

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

The Department believes this current service-delivery OHH model largely abides by the hub-and-spoke model envisioned under the Act. Many current OHH providers function as hubs or spokes by providing treatment to individuals, some of whom carry multiple diagnoses, and by referring individuals to different levels of care depending on clinical need. However, to

more closely align with the Legislature's directive, the Department is implementing the following emergency rule changes: adding a definition of Integrated Medication Assisted Treatment (IMAT) to describe OHH service expectations; adding urine drug screening as an integral part of IMAT services; establishing levels of care (intensive, intermediate/stabilization, and maintenance) that correspond to the member's needs; and creating a tiered reimbursement rate structure corresponding to these levels of care. Given the emergency nature of the Act, the Department does not need to make additional emergency findings to support these portions of the emergency rulemaking.

In conjunction with these changes, the Department believes additional changes are needed on an emergency basis pursuant to 5 MRS §8054 to improve the Section 93 rules by making it easier for current and new providers to deliver IMAT services through the OHH model. In turn, this will increase accessibility to services for all individuals with opioid use disorder as envisioned under the Act. The State is currently in the midst of an opioid epidemic which claimed approximately one life per day in 2017. Funding and service-delivery requirements supporting IMAT are critical to providing MaineCare members and uninsured individuals high-quality treatment options. The Department is therefore making emergency changes to Section 93 that: alter the current staffing requirements and add a new patient navigator to the OHH team to ensure flexibility for provider organizations and expertise to meet members' needs; create an allowance for members who meet eligibility for *MaineCare Benefits Manual*, Section 92, "Behavioral Health Home Services", Section 91, "Health Home Services", certain Section 13, "Targeted Case Management Services", or Section 17, "Community Support Services" to receive these services in coordination with OHH services; ease requirements regarding the Electronic Health Record to allow provider flexibility in meeting OHH program requirements; provide clarification to covered services; and make minor and technical changes to the operation of OHH. These emergency changes are the result of Departmental review and stakeholder feedback. Both providers and members alike will benefit from these changes.

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

Additionally, in order to continue to ensure that all individuals with opioid use disorder have access to OHH services, the Department will make the majority of the appropriation included in Part G of the Act available to providers through contracts to deliver these services to uninsured individuals. The Department will align both current and new contracts, when possible, with the Section 93 rules to maintain service expectations regardless of funding source and to avoid any administrative burden that would arise from operating two different models of service delivery.

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

These emergency rule changes will take effect upon adoption and will be in effect for ninety days. 5 MRS §8054. To prevent a lapse in the Section 93 rules and these services

following the expiration of the emergency period, the Department is concurrently engaging in the routine technical rulemaking process for Section 93.

Fiscal impact of rule:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42(8), 3173; 22 MRS §1708(3); 5 MRS §8054; PL 2017 ch. 460 sec. B-1, B-3; PL 2013 ch. 594 sec. 3
Chapter number/title:	**Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 67**, Principles of Reimbursement for Nursing Facilities
Filing number:	**2018-264**
Effective date:	12/4/2018
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 (Department) adopts these emergency rule changes to Ch. III Section 67, "Principles of Reimbursement for Nursing Facility Services", pursuant to PL 2017 ch. 460, LD 925, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* ("the Act"), Section B-1 and B-3.

This rulemaking makes a number of changes to the reimbursement methodology for Nursing Facilities pursuant to "the Act". These changes include a change in the Occupancy Adjustment to allow for reduced occupancy percentages, an increase in the utilization payment, and the adoption of a special supplemental allowance to account for wage increases. The Legislature further required that, for state fiscal year beginning July 1, 2018, the base year for each facility is its fiscal year that ended in calendar year 2016; for state fiscal years beginning on or after July 1, 2019, subsequent rebasing must be based on the most recent cost report filings available. Further, for the state fiscal year beginning July 1, 2018, the rates for each rebasing year must include an inflation adjustment for a cost-of-living percentage change in nursing facility reimbursement each year in accordance with the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index – medical care services index from the prior December for professional services, nursing home, and adult day care services. Finally, the Department added an aggregate hold harmless provision to reflect that the revised method of rebasing a nursing facility's base year may not result in a rate of reimbursement for direct and routine costs that is lower than the rate in effect June 30, 2018.

Because the Act involves MaineCare reimbursement, these rule changes are also governed by federal Medicaid law. 42 CFR §447.205(d) requires that public notice of changes in reimbursement for state plan services must "be published **before** the proposed effective date of the change." The Department published its notice of reimbursement methodology change for the Section 67 rates on August 1, 2018. Upon the advice of the Office of the Attorney General, the changes in reimbursement methodology will be effective August 2, 2018, this effective date comports with the federal law requirement. Pending approval of the proposed changes to the Section 67 State Plan Amendment that were submitted to the Centers for Medicare and Medicaid Services, the reimbursement methodology changes will be implemented with an August 2, 2018 effective date.

Pursuant to the Legislative determination regarding the urgent need for these reimbursement methodology changes, the requirements of 5 MRS §8054(1) are satisfied and emergency rulemaking is appropriate. Similarly, an August 2, 2018 retroactive effective date is necessary to implement these changes as soon as possible. The retroactive application

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

Fiscal impact of rule:

The Department estimates this rulemaking will cost the Department approximately $18,467,741 in SFY 2019, which includes $6,559,742 in state dollars and $11,907,999 in federal dollars and $18,467,741 in SFY 2020 which includes $6,552,355 in state dollars and $11,915,386 in federal dollars.

The Department does not anticipate that this rulemaking will create any additional cost to municipalities, counties, or small businesses. The Department does not anticipate that this rulemaking will create any additional cost to other offices or departments.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 2017 ch. 304; PL 2017 ch. 460
Chapter number/title:	**Ch. 115**, Principles of Reimbursement for Residential Care Facilities – Room and Board Costs
Filing number:	**2018-252**
Effective date:	11/20/2018
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 these emergency rule changes in 10-144 CMR ch. 115, *Principles of Reimbursement for Residential Care Facilities – Room and Board Costs* to comply with (1) Public Law 2017 ch. 304 ("The First Act"); and (2) Public Law 2017 ch. 460, *An Act To Amend Principles of Reimbursement for Residential Care Facilities and An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government* ("The Second Act").

The First Act requires the following changes:

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

These changes shall have a retroactive effective date of November 1, 2017.

The Second Act requires the following changes:

- For the state fiscal year ending June 30, 2020 and each year thereafter, the MaineCare payment rates attributable to wages and salaries in routine services costs for Section 97, Private Non-Medical Institution Appendix C providers must be increased by an inflation factor in accordance with the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index – medical care services index from the prior December for professional services, nursing home, and adult day care services.
- Effective August 1, 2018, for the state fiscal year ending June 30, 2019, a special supplemental allowance must be made to Appendix C PNMIs to provide for increases in wages and wage-related benefits in the routine cost component. An amount equal to ten percent (10%) of wages and associated benefits and taxes in the routine cost component as reported on each facility's as-filed cost report for its fiscal year ending in calendar year 2016 must be added to the cost per resident day in calculating each facility's prospective rate, notwithstanding any otherwise applicable caps or limits on reimbursement. This supplemental allowance must also be allowed and paid at final audit to the full extent that it does not cause

reimbursement to exceed the facility's allowable cost per day in the routine cost component in that fiscal year.

These changes shall have a retroactive effective date of August 1, 2018.

The First and Second Acts require ECA, regulatory compliance costs, inflation factor, and special wage allowance changes for Residential Care Facilities and MaineCare Section 97, "Private Non-Medical Institution (PNMI) Services" - Appendix C providers. The Department finds that these changes must be implemented immediately through emergency rulemaking. Separately, the Department is implementing changes required in the First and Second Acts in 10-144 CMR ch. 101, *MaineCare Benefits Manual*, Ch. III Section 97, and those changes are major substantive. Pursuant to 5 MRS §8072 "regular" major substantive rule changes are not legally effective until they are approved by the Legislature and finally adopted by an agency, which can take over a year. As such, because the Department seeks to implement the Section 97 changes simultaneously with these State Rule changes (in order to treat providers equitably), it must do so through emergency rulemaking. These changes will improve the financial condition of Residential Care Facility providers, and protect against a threat to public health and safety posed by instances of providers closing. The changes are a benefit to providers and otherwise have no adverse impact on either MaineCare providers or members. The emergency adoption under 5 MRS §8054 will enable the rule changes to take effect immediately, and pursuant to 22 MRS §42(8), retroactively.

Fiscal impact of rule:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Maine Center for Disease Control and Prevention**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS ch. 423
Chapter number/title:	**Ch. 130** *(New)*, Epinephrine Auto-Injector Training and Certification Rule
Filing number:	**2018-001**
Effective date:	1/10/2018
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This rulemaking establishes the classes of licensed healthcare professionals approved by the Department to conduct training specific to the use of epinephrine auto-injectors and asserts the minimum training requirements to certify individuals trained.

Basis statement:

The Department of Health and Human Services, Maine Center for Disease Control and Prevention adopted the Epinephrine Auto-Injector Training and Certification rule to comply with 22 MRS ch. 423 in order to expand public access to epinephrine auto-injectors. This rule is intended to ensure the safety and wellness of a person experiencing anaphylaxis.

This rule prescribes training requirements for entities, organizations and businesses; establishes which healthcare professionals may train nonprofessionals in the use of epinephrine autoinjectors; and specifies the training certification requirements for nonprofessionals to use epinephrine auto-injectors in the treatment of anaphylaxis.

Anaphylaxis can develop and progress quickly, and children and adolescents are among the most at risk. Auto-injectors are for the emergency treatment of anaphylaxis as a first-line treatment. This rule permits entities, organizations and businesses (other than schools) to stock epinephrine auto-injectors and authorizes physicians, advanced registered nurse practitioners, physician assistants, registered nurses, emergency medical technicians, paramedics, and pharmacists to train nonprofessionals in the use and administration of epinephrine auto-injectors to people they believe in good faith to be experiencing anaphylaxis.

Fiscal impact of rule:

None anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 §§ 2496, 1551-A; 32 MRS §§ 1242, 4251, 4313, 4326
Chapter number/title:	**Ch. 201**, Administration and Enforcement of Establishments Regulated by the Health Inspection Program
Filing number:	**2018-223**
Effective date:	10/10/2018
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

Several areas of the rule need updating and clarification, to ensure clearer guidance for license applicants and licensees. The Department is proposing a number of changes necessary to continue to effectively and efficiently operate the Health Inspection Program.

Basis statement:

The Department of Health and Human Services, (Department) advertised rulemaking changes to partially amend its *Rules Relating to the Administration and Enforcement of Establishments Regulated by the Health Inspection Program* on May 2, 2018. A public hearing was held on the amended rule, (renamed *Administration and Enforcement of Establishments Regulated by the Health Inspection Program*), on May 22, 2018. The Department accepted written comments through June 1, 2018.

The Department added and clarified specific application and licensing requirements for all licensees under this rule, so that applicants and licensees would more clearly understand how to become and stay licensed in good standing.

The Department added a guest body artist license fee category, to accommodate body artists from another state who practice their art in Maine for a limited time or single event. By offering the guest body artist license, this artist may participate in such events without having to pay for a full Maine body artist license required for those who reside and practice in the State of Maine.

Additionally, public pool and spa license categories were added, to comply with Maine statute, which required the Department to license public pools and spas in 2011. (See 22 MRS §§ 2492(G) and (H)). Although the Department was already performing regular inspections of public pools and spas, this rule change will enable the Department to meet its legal requirement to also license them.

The event camping license type and corresponding requirements replaced the temporary campground license, to comply with the *Resolve to Exempt Certain Businesses from Being Considered Campgrounds*, passed on June 15, 2013. This Resolve directed the Department to review the regulation of camping on premises where the owner is hosting an event and offers camping to participants and spectators of the event. The January 29, 2014 report to the Joint Standing Committee on Health and Human Services recommended event camping as a new camping license for this type of camping, as a less rigorous licensing option than the full campground license, but with more oversight than no licensure at all.

The Department's changes to this rule added a requirement for eating establishment applicants to submit proof of a certified food protection manager (CFPM) certificate to the Department at the time of their application. This change assures that food workers demonstrate an adequate level of food safety knowledge at the start of licensure, rather than the current 90-day window.

The Department also adopted changes to clarify requirements for delegated municipalities, to reflect recent updates to the Memorandum of Understanding between the Department and its delegated municipalities that conduct food, lodging and public pool and spa inspections. These delegated municipalities include Portland, South Portland, Lewiston and Auburn.

Although Maine's menu labeling law at 22 MRS §2500-A authorizes Health Inspection Program inspectors to ensure that chain restaurants post caloric information on items such as food display menus or menu boards, any reference to enforcing menu labeling requirements for chain restaurants has been removed because the FDA has promulgated regulations that address these issues."

Enforcement processes were changed to streamline and simplify the Department's response to any licensee failing to comply with regulatory standards. In place of past penalty schedules that proved confusing, the Department adopted a simpler, more straightforward penalty schedule that complies with statutory caps but deters licensees from continuing to violate laws and rules.

Fiscal impact of rule:

The Department should receive $35,000 in additional revenue from the new public pool and spa licenses required by 22 MRS §2492(G) and (H), due to the estimated 700 public pools and spas in the State of Maine.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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 §§ 6352-6359
Chapter number/title:	**Ch. 261**, Immunization Requirements for School Children
Filing number:	**2018-059**
Effective date:	5/10/2018
Type of rule:	Major Substantive
Emergency rule:	No

Principal reason or purpose for rule:

The addition of a Meningococcal vaccine to the required school entry for children entering 7th grade is intended to protect Maine students from Meningococcal disease. Meningitis is more commonly spread amongst adolescents and young adults in a community setting. Adding one dose of Meningococcal vaccine will align with the U.S. Centers for Disease Control and Prevention and the Advisory Committee on Immunization Practices recommendation of receiving the vaccine between the ages of 11 to 12 years.

Basis statement:

This joint rule is 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 to receive the required vaccines recommended by the federal Centers for Disease Control (CDC) and the Advisory Committee on Immunization Practices (ACIP). Changes to this joint rule include the addition of meningococcal meningitis to diseases for which immunization is required for Maine's school children and prescribed dosage for quadrivalent meningococcal conjugate vaccines (MCV4). These changes are subject to major substantive rulemaking, pursuant to 20-A MRS §6358. The Legislature has reviewed the provisionally adopted joint rule and has authorized the Department of Health and Human Services and Department of Education to adopt the final joint rule pursuant to Resolves 2017 ch. 32, meaning the new immunization requirement will be in place prior to the start of the 2018 school year.

In recent years, new vaccines against meningitis have been introduced to the routine immunization schedule for adolescents and young adults, recommended for youths aged 11 to 12 years, with a booster dose for older adolescents, due to evidence of waning immunity. Meningococcal disease is spread from person to person through the exchange of respiratory and throat secretions, saliva, spit or kissing, for example. Young adults are at a greater risk of acquiring meningitis, due to close contact during sports and the large group setting of a school house environment. Meningitis is a viral or bacterial infection of the fluid surrounding the brain and spinal cord. Viral meningitis is not as severe as bacterial meningitis and is usually resolved without specific treatment. Bacterial meningitis, a serious illness caused by meningococcal disease, may be contained through antibiotics or prevented through immunization. According to the federal CDC, 1,000 to 2,600 people contract meningococcal disease each year in the United States. One in 10 of these cases results in death. Bacterial meningitis infections may also cause serious health problems in 11 to 19 percent of survivors, such as loss of limbs, deafness, nervous system problems, mental retardation, seizures and strokes. The majority of states have adopted a meningococcal vaccine requirement, based on the severity of the disease.

The DHHS Maine CDC's Immunization Program currently supplies meningococcal vaccines to all adolescents in the State of Maine free of charge through pediatricians, family practice physicians and school-based health centers. Additionally, health education currently focuses on this availability of free vaccines, to increase immunization rates for this adolescent

demographic. This Program provides education through a variety of avenues, including printed materials, regional trainings and site visits to offices receiving State-supplied vaccines. States with a mandatory MCV4 school entry requirement experience much higher vaccine rates amongst their adolescent population.

Changes to this joint rule include updating the definition of "Disease" to include meningococcal meningitis, updating the list of medical contraindications to MCV 4 that can serve as a medical exemption, and updating the vaccine dosage requirements to include one dose of quadrivalent meningococcal conjugate vaccine for entry into 7th grade and, if the first dose is not administered on or after the 16th birthday, a second dose prior to entry into grade 12. These changes will align with the CDC and ACIP current recommendations.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	**Department of Health and Human Services** *(jointly with* Department of Environmental Protection (DEP)*)*
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §567
Chapter number/title:	**Ch. 263,** Maine Comprehensive and Limited Environmental Laboratory Accreditation Rule
Filing number:	**2018-265**
Effective date:	12/19/2018
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The *Maine Comprehensive and Limited Environmental Laboratory Accreditation Rule* repeals and replaces the current lab certification rule. This rule establishes revised standards for the accreditation of the operations, performance and administration of laboratories, including industrial, commercial, academic and governmental, that analyze samples under specific DHHS and/or DEP programs. This rule is necessary in order to administer the most recent updates to the 40 CFR Parts 136, 141 and 261 related to methods test categories. The rule adds “provisional” as a status for laboratory accreditation, establishes an adjusted fee schedule, amends terms and definitions, and establishes an all-encompassing quality system to provide a straightforward reference for laboratory personnel.

Basis statement:

Maine Comprehensive and Limited Environmental Laboratory Accreditation Rule repeals and replaces the existing laboratory certification rules, Ch. 263. The purpose of this rule is to establish quality guidelines for laboratory data received by the Department of Health and Human Services (DHHS or Department) and the Department of Environmental Protection (DEP). The rule establishes procedures for accrediting laboratories for drinking water, non-potable water, air, and solid and chemical materials, including tissues and septage, to ensure that laboratories analyzing samples for the following regulations: *Safe Drinking Water Act*; *Clean Water Act*; *Resource Conservation and Recovery Act*; and Leaking Underground Storage Tanks (LUST) Program, produce legally defensible data by meeting quality control and quality assurance objectives.

This rule is necessary in order to administer the updates to the 40 CFR Parts 136, 141 and 261 and to allow laboratories to use updated methods contained in the 22°d Edition of *Standard Methods*. This rule describes an all-encompassing quality systems section for easy reference; provides for "provisional status" as an additional accreditation option; and specifies reporting requirements for laboratories when samples, including private well samples, are not analyzed according to accredited methods. This rule uses the term "accreditation" in place of "certification," keeping with national and international standards and nomenclature. Additionally, this rule establishes a fee structure that is consistent with adjusted charges that were implemented by program policy change in 2012.

Fiscal impact of rule:

Under the rule, laboratories will be required to pay charges that are consistent with the programs’ interim adjusted fee schedule implemented by the program in 2012. The proposed fee schedule will result in the Department collecting an estimated 60% of the total operating costs and will require funding from other sources, including General Funds, to support the program. The program anticipates an increase in costs due to recent legislation that requires the Department to expand lab certification rules to include the certification and monitoring of

an additional testing laboratory service. The program, currently at 1.25 FTEs, is projected to continue as underfunded by an estimated 40% based on the adjusted fee schedule, notwithstanding any increase in the number of businesses or in testing methods. The modified fee collection proposed in rule is anticipated to create a shortfall that is estimated to be $57,000 and projected to increase annually.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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:	12 MRS §§ 1532, 1533
Chapter number/title:	**Ch. 283,** Newborn Bloodspot Screening Rule
Filing number:	**2018-236**
Effective date:	1/14/2018
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The adopted rule implements 22 MRS §1532 and updates requirements related to newborn bloodspot screening for certain congenital genetic disorders which can cause intellectual and developmental disability, serious illness or death, if left untreated. The proposed changes include: (1) additional conditions for specimen screening; (2) revised protocols for timely bloodspot specimen collection; (3) protocols for reporting out-of-range-test results; (4) specimen storage requirements; and (5) revisions regarding the release of samples for research purposes. Changes are in conformity with the U.S. DHHS recommendations for newborn screening. The rule includes additional terms and definitions and a revised construction for improved readability and consistency in rule formatting.

Basis statement:

Pursuant to 22 MRS §1532, the DHHS *Newborn Bloodspot Screening Rule* implements requirements for hospitals, birthing centers, physician, midwives or other health care providers, and principal birthing attendants responsible for newborn bloodspot specimen screening relating to testing and reporting for certain congenital genetic disorders which, if left untreated, can cause intellectual and developmental disability, serious illness or death. This rule contains updated requirements consistent with U.S. DHHS recommendations to ensure better handling of samples, timely detection of birth defects and conditions, and the most appropriate screenings and testing methods. Four conditions which have been recommended by the U.S. DHHS, but not yet fully reviewed by the Maine CDC's Joint Advisory Committee for the Maine Newborn Screening Program are not included in this rulemaking.

Early detection and timely diagnosis of certain congenital genetic disorders impact health outcomes for newborns. Improper storage or usage of the residual filter paper specimens could impact test results, causing a delay in the diagnosis of conditions, or potentially cause inaccurate testing or missing information which may lead to delayed treatments and poorer newborn health outcomes.

Beginning July 1, 2001, Maine began mandatory newborn testing to include nine disorders and, because of the importance of screening, early detection and treatment, and coordination of services for long-term care, the Maine Center for Disease Control and Prevention Newborn Bloodspot Screening Program (NBSP) has since expanded the panel of disorders and revised requirements for screenings for certain conditions. This rule includes new and revised definitions; additions to the list of conditions to screen; revised protocols for timely bloodspot specimen collection and reporting out-of-range-test results; and updated requirements regarding filter paper storage and usage, and sample release. Additionally, this rule provides the protocol for hospitals and healthcare providers regarding parental/guardian refusal; and specifies that the fee for the filter paper used for each newborn tested applies to healthcare providers, including midwives, and hospitals, and that parents may be responsible for additional tests not required by rule.

Fiscal impact of rule:

The Department does not anticipate additional fiscal impact on regulators, medical communities, or small businesses.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3104; 5 MRS §8054; 7 CFR §273.9(d)
Chapter number/title:	**Ch. 301**, Food Supplement Program, **FS Rule #205E**: COLA SUA FFY 2019: **FS-000-1**, Basis of Issuance; **FS 555-5**, Income and Deductions
Filing number:	**2018-221**
Effective date:	10/1/2018
Type of rule:	Routine Technical
Emergency rule:	Yes

Principal reason or purpose for rule:

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

Basis statement:

Federal rule 7 CFR §273.9 requires that income allowances, standard and excess shelter deductions, minimum and maximum benefit limits, standard heating/cooling, non-heat, and phone allowances be updated each year, effective October 1st. USDA Food and Nutrition Services (FNS) provides updated income allowances, standard and excess shelter deductions, minimum and maximum benefit standards to states and territories, annually. FNS annually approves utility allowances calculated by states. The calculations are based on the change in the Consumer Price Index for fuel and utilities, between June 2017 and June 2018.

The final income allowance, standard and excess shelter deductions, minimum and maximum benefit levels were not distributed by FNS until July 30th, 2018. The final values for Maine's Standard/heating cooling, non-heat and phone allowances were not approved by the USDA Food and Nutrition Service until August 3, 2018. Theses approvals did not allow the Department to comply with the non-emergency rulemaking process and implement the changes by the required date of October 1, 2018.

This emergency rulemaking is necessary for the health, safety, and general welfare in order to ensure that Food Supplement benefits are issued appropriately and accurately.

Fiscal impact of rule:

None. Because they are federally funded benefits, changes to benefit levels – which will be minor – will not impact the Department.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42(1), 3104
Chapter number/title:	**Ch. 301**, Food Supplement Program, **FS Rule #204A**: **FS-777**, Administrative Procedures (EBT Card Replacement)
Filing number:	**2018-242**
Effective date:	11/14/2018
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The purpose of this rule is to set a threshold of card replacements in a twelve-month period that better ensures recipient integrity while still meeting the definition of excessive. This rule will reduce the potential for fraud and trafficking by noticing and educating recipients earlier in the process and holding them accountable for excessive card replacements.

Basis statement:

The purpose of this rule is to set a threshold of card replacements in a twelve-month period that better ensures recipient integrity while still meeting the definition of excessive. This rule will reduce the potential for fraud and trafficking by noticing and educating recipients earlier in the process and holding them accountable for excessive card replacements.

The current rule requires a recipient household to contact OFI upon their 5th Electronic Benefit Transfer (EBT) card replacement within twelve months to provide an explanation for the excessive replacements. This rule lowers that number, requiring the recipient household to contact OFI to receive their third EBT card replacement over a twelve-month period. This rule also clarifies the card replacement process and removes outdated wording including processes regarding paper coupons.

Fiscal impact of rule:

Undetermined. Benefits recouped due to trafficking cases and convictions will be tracked.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42, 3104; 5 MRS §8054; 7 CFR §273.9(d)
Chapter number/title:	**Ch. 301**, Food Supplement Program, **FS Rule #205A** (COLA SUA FFY 2019): **FS-000-1**, Basis of Issuance; **FS 555-5**, Income and Deductions
Filing number:	**2018-263**
Effective date:	12/12/2018
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

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

Basis statement:

Federal rule 7 CFR §273.9 requires that income allowances, the maximum shelter deduction, minimum and maximum benefit amounts, standard heating/cooling, non-heat, and phone allowances be updated each federal fiscal year, effective October 1st. USDA Food and Nutrition Services (FNS) provides the updated income allowances, the maximum shelter deduction and the minimum and maximum benefit amounts to states and territories, annually. FNS annually approves utility allowances calculated by the states. Maine's utility allowance calculations are based on the change in the Consumer Price Index for fuel and utilities, between June 2017 and June 2018.

The final income allowances, maximum shelter deduction and minimum and maximum benefit amounts were not distributed by FNS until July 30th, 2018. The final values for Maine's standard/heating cooling, non-heat and phone allowances were not approved by the USDA Food and Nutrition Service until August 3, 2018. Theses approvals did not allow the Department to comply with the non-emergency rulemaking process and implement the changes by the required date of October 1, 2018.

Fiscal impact of rule:

None. Because they are federally funded benefits, changes to benefit levels – which will be minor – will not impact the Department.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §42(1)
Chapter number/title:	**Ch. 323**, Maine General Assistance Manual, **Rule #20A**
Filing number:	**2018-187**
Effective date:	9/13/2018
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The purpose of this rule is to update the manual and to align it with statute, and reorganize it to make it more usable for DHHS representatives, Municipal Administrators and General Assistance clients.

Basis statement:

The purpose of rule #20A is to update the *General Assistance Manual* and align it with statute, as well as to reorganize it to make it more usable for DHHS representatives, Municipal Administrators and General Assistance clients. The majority of the content is the same, with changes primarily to its structure and organization as well as the removal of provisions that had no legal effect, such as training examples and certain rules and definitions that were duplicative of statute.

Legislation not previously incorporated into rule (but already applied in practice by the Department and Municipal Administrators) is also included in the adopted rule. Specifically: The penalties for false representation were amended as per LD 722, and they have been updated in this rule. Additionally, effective July 1, 2015 the General Assistance reimbursement rate was changed in statute to 70% of direct costs. Previous rates were tied to a spending threshold based on the valuation of the municipality. All policy related to previous rates and valuation was removed. The reimbursement reporting schedule had been tied to the valuation threshold. The rule now requires a municipality to receive approval from the Department to change their reporting schedule.

The revised manual clarifies several pieces of policy that had previously been, or potentially could be, misinterpreted. Specifically: "Presumptive eligibility" was clarified to allow shelters to provide (only) one night of stay prior to a client applying for General Assistance; the manual makes more clear that administrative costs are not reimbursable; and the manual defines a "new applicant" as one that has not applied for assistance in the last 12 months. The definition of "new applicant" now matches the Maine Municipal Association (MMA) Model Ordinance.

Rule #20A also made a policy change designed to improve the administration of the program and to ensure program integrity. Specifically, it updates the section regarding Department-imposed penalties on municipalities to align with statute and provide a clear road map and set of guidelines for the Department to follow in determining whether and in what amount to impose statutory penalties for municipal non-compliance with GA statute or regulation.

Finally, the rule makes changes to fill in gaps or address issues that had arisen from the previous version of the manual. Specifically: Court-ordered alimony was added as an allowable expense; the manual now clarifies the difference between and defines "available" and "potential" resources; and the manual added MaineCare copays as an acceptable expenditure if deemed necessary by the municipal General Assistance Administrator.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42(1), 3769-C
Chapter number/title:	**Ch. 331**, Maine Public Assistance Manual, **TANF #111E**: Annual Increase to the TANF Maximum Benefit
Filing number:	**2018-222**
Effective date:	10/1/2018
Type of rule:	Routine Technical
Emergency rule:	Yes

Principal reason or purpose for rule:

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

Basis statement:

This rule is promulgated to comply with Maine statute that requires the Department to increase the TANF maximum benefit on an annual basis by the amount of the cost of living allowance as determined by the Social Security Administration, provided the funds are available.

Fiscal impact of rule:

$532,632.77 in federal TANF block grant funds.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42(1), 3769-C
Chapter number/title:	**Ch. 331**, Maine Public Assistance Manual, **TANF #111A**: Annual Increase to the TANF Maximum Benefit
Filing number:	**2018-244**
Effective date:	11/14/2018
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:
To comply with 22 MRS §3769-C(D).

Basis statement:
This rule is promulgated to comply with Maine statute that requires the Department to increase the TANF maximum benefit on an annual basis by the amount of the cost of living allowance as determined by the Social Security Administration, provided the funds are available.

Fiscal impact of rule:
$532,632.77 in federal TANF block grant funds.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §42(1); PL 2017 ch. 284 part TTTT §1
Chapter number/title:	**Ch. 332**, MaineCare Eligibility Manual, **MC Rule #288E** (Cub Care): **Part 5**, Children's Health Insurance (CHIP) Program – Cub Care, **Section 3**, Basic Eligibility Requirements
Filing number:	**2018-042**
Effective date:	3/20/2018
Type of rule:	Routine Technical
Emergency rule:	Yes

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

Basis statement:
This emergency rule change aligns the *MaineCare Eligibility Manual* with the adopted State budget for fiscal year 2018. The budget went into effect on July 1, 2017, and provides the Department with statutory authority to proceed with this emergency rulemaking. Children of State employees are now eligible to apply for Cub Care, where they were previously excluded from eligibility. This rule was delayed due to the need to submit a state plan amendment to CMS.

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §42
Chapter number/title:	**Ch. 332**, MaineCare Eligibility Manual, **MC Rule #288A**: **Part 5**, Children's Health Insurance (CHIP) Program – Cub Care
Filing number:	**2018-110**
Effective date:	6/25/2018
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This rule change aligns the *MaineCare Eligibility Manual* with the adopted State budget for fiscal year 2018. Children of State employees are now eligible to apply for Cub Care, where they were previously excluded from eligibility. There are also grammar and format changes throughout Part 5 to improve clarity in this proposed rule, but not in the emergency rule. This rule was delayed due to the need to submit a state plan amendment to CMS.

Basis statement:

This rule change aligns with an emergency rule change to the MaineCare Eligibility Manual, which is due to the adopted State budget for fiscal year 2018. The budget went into effect on July 1, 2017, and provides the Department with statutory authority to proceed with an emergency rulemaking. Children of State employees are now eligible to apply for Cub Care, where they were previously excluded from eligibility. This rule change aligns with that eligibility change. There are also several formatting and grammatical changes throughout the entirety of the rule.

Fiscal impact of rule:

The bill includes General Fund appropriations to the State Employee Health Plan of $784,935 in fiscal year 2017-18 and $1,046,580 in fiscal year 2018-19 and Highway fund deallocations of $23,684 in fiscal year 201 7-18 and $31,578 in fiscal year 2018-19 as children of state employees who are eligible for the State Children's Health Insurance Program will no longer be part of the State Employee Health Plan, if they meet other eligibility requirements.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit:	**10-144**
Statutory authority:	22 MRS §§ 42(1), 3173
Chapter number/title:	**Ch. 332**, MaineCare Eligibility Manual, **MC Rule #287A**: FPL Based Changes
Filing number:	**2018-182**
Effective date:	9/9/2018
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The reason for removing FPL figures from the manual is to avoid the need for annual FPL rule changes, conserving the Department's resources. The changes remove references to the charts throughout the manual, and replace figures in the charts with formulas.

Basis statement:

This rulemaking removes federal-poverty-level-based charts and references from the manual and replaces figures with percentages and formulas. The rule also makes formatting changes within the charts. The reason for removing specific dollar values from the manual is to avoid the need for annual rule changes to conform with federal updates, conserving the Department's resources. The rule also removes references to the charts throughout the manual. Clients or others who are affected will not find federal poverty level amounts in the MaineCare Eligibility manual, but they are widely available online.

The rulemaking also makes three policy corrections. In Part 3 Section 2.2(C)(1) Maintenance of a Home, "and that child is also covered by Medicaid" is removed. This condition is not supported by federal law. In Part 17 Section 3.4.42 Nazi Persecution Payments, these payments are excluded as required by federal law. In Part 7 Section 3.1 Budget for SSI or State Supplement Payment, Roman numeral IX, living arrangement type "H" is corrected to "I."

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Maine Center for Disease Control and Prevention**
Umbrella-Unit:	**10-146**
Statutory authority:	22 MRS §§ 2701, 2706
Chapter number/title:	**Ch. 4**, Disclosure of Vital Statistics Data, Reports and Records *(formerly* Public Access to Vital Records*)* **Ch. 8**, Release of Restricted Vital Statistics Data *(Repeal; subject matter integrated into Ch. 4)*
Filing number:	**2018-209, 210**
Effective date:	10/3/2018
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The Department of Health and Human Services repeals Ch. 4 (*Public Access to Vital Records*) and Ch. 8 (*Release of Restricted Vital Statistics Data*) and replaces the two chapters with a new consolidated Ch. 4, *Disclosure of Vital Statistics Data, Reports and Vital Records*.

Changes to the Department's rule are needed to be consistent with changes to Maine statute regarding access to specific records maintained by the Department. The rule incorporates definitions and clarifies the disclosure of, and access to, public and restricted vital statistics data, reports and vital records. This rule describes what documentary evidence is needed from an individual or agency requesting vital statistics data, reports and vital records and clarifies the procedures for purchasing and receiving copies. Requirements for researchers engaged in genealogical research are adopted to clarify the registration requirements, which include obtaining a genealogical researcher identification card to request access to and inspect restricted vital statistics data, reports and vital records.

Basis statement:

This rulemaking repeals and replaces I 0-146 CMR ch. 4 and 8 with a new rule, 10-146 CMR ch. 4, to consolidate, update, and establish or clarify requirements concerning public access to and standards for the release of vital statistics data, reports and records registered with the State Registrar. This rule also conforms with multiple statutory and practices changes after the replaced rules were last amended in 1982 and 1991, respectfully. This rule implements the record disclosure limitations and requirements contained in 22 MRS §2706 and other statutes. This rule restricts parties' access to records registered with the State Registrar, as appropriate, to only those who are authorized by statute to obtain the information and limits excessive handling of paper records and indexes to protect privacy and the preservation of the integrity of original vital records and indexes. The rule is intended to better serve the public and researchers, and custodians and municipal clerks who issue vital and other records, by providing guidelines for accessing and disclosing restricted and non-restricted records and information.

Pursuant to 22 MRS §2706, custodians of certificates and records of birth, marriage and death shall permit inspection of these vital records by only those having a direct and legitimate interest in the record, protecting records from loss or damage, ensuring the proper release of vital statistics data, reports and vital records.

The Department considered input from stakeholders in the development of the proposed rule. The Department considered comments received during the comment period.

This adopted rule incorporates new definitions and clarifies procedures and standards for release, including eligibility; genealogical researcher identification card registration requirements; purchase of copies, researchers' privileged access; and fees

related to the Department's vital statistics data, reports and records. Rule updates are necessary to be consistent with changes to statute regarding access to specific records maintained by the Department.

Fiscal impact of rule:

The Department does not anticipate any fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	Department of Health and Human Services, **Office of Child and Family Services**
Umbrella-Unit:	**10-148**
Statutory authority:	22 MRS §§ 7702-B(l11), 7703(6), 7704, 7707(3), 7802(7), 8301(8), 8302-A(2), 8303-A(l)
Chapter number/title:	**Ch. 33**, Rules for the Certification of Family Childcare Providers (*repeal; replaced by10-144 Ch. 33*, Family Child Care Provider Licensing Rule, *filing 2018-105*)
Filing number:	**2018-104**
Effective date:	7/5/2018
Type of rule:	Major Substantive
Emergency rule:	No

Principal reason or purpose for rule:
(See 10-144 Ch. 33, above)

Basis statement:
(See 10-144 Ch. 33, above)

Fiscal impact of rule:
These rule changes pose no fiscal impact to counties or municipalities.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of Child and Family Services**
Umbrella-Unit: **10-148**
Chapter number/title: **Ch. 18**, Rules for the Licensure of Residential Child Care Facilities
Filing number: **2018-215**
Effective date: 10/10/2018
Repealed and Replaced by 10-144 Ch. 36, *Children's Residential Care Facilities Licensing Rule***; see above.**

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of Child and Family Services**
Umbrella-Unit: **10-148**
Chapter number/title: **Ch. 18-A**, Rules for the Licensure of Private Non-medical Institutions-Residential Child Care Facilities
Filing number: **2018-216**
Effective date: 10/10/2018
Repealed and Replaced by 10-144 Ch. 36, Children's Residential Care Facilities Licensing Rule**; see above.**

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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:	**10-148**
Statutory authority:	5 MRS §19205; 22 MRS §42
Chapter number/title:	**Ch. 101**, AIDS Case Management Program Standards
Filing number:	**2018-048**
Effective date:	4/11/2018
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This rule has not been recently updated and it has become outdated. The rule contains only the standards for the provision of services by agencies under contract. There are no enforcement mechanisms within the rule. Program requirements and deliverables are currently included in the Rider A of provider contracts. The Department has determined the rule is not necessary and is proposing that it be repealed. Services will continue in the same manner, program standards and requirements will continue to exist within the provider contracts.

Basis statement:

The Department of Health and Human Services, Maine CDC, published notice of its proposal to repeal this rule on December 20, 2017. No public hearing was held, but a comment period was held until January 19, 2018. During this comment period, the Department did not receive any comments regarding the repeal of this rule.

Fiscal impact of rule:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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)** *(in part)*
Umbrella-Unit:	**10-149**
Statutory authority:	22 MRS §§ 42, 3493; 34-B MRS §5604-A
Chapter number/title:	**Ch. 1** *(New)*, Adult Protective Services System; **Ch. 5** *(Amend),* **Policy Manual** *(deletes Sections 11, 12, 14)*
Filing numbers:	**2018-085, 086**
Effective date:	5/28/2018
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The adoption of this rule eliminates inconsistencies between two prior rules related to Adult Protective Services and creates consistency with the *Adult Protective Services Act*, 22 MRS §§ 3470 – 3493. This rule consolidates the two earlier rules' provisions and provides clarification to ensure a uniform Adult Protective Services system for all incapacitated and dependent adults. This rule addresses Adult Protective Services reporting requirements, the Central Intake (referral) process, the investigation process, Adult Protective Services casework functions, investigation findings requirements, and the related substantiation process.

Basis statement:

The Department of Health and Human Services (the "Department") is adopting these two rules, in part, to consolidate and eliminate inconsistencies between two prior rules governing investigations of abuse, neglect, and exploitation of incapacitated or dependent adults, including persons with intellectual or developmental disabilities or autism spectrum disorder ("IDD/A").

The 10-149 CMR ch. 1 rule (the "APS Rule") is an entirely new rule. 10-149 CMR ch. 5 (the "Ch. 5 rule") is amended by deleting several sections, as explained below.

The adoption of the new APS rule and the amended Ch. 5 rule corresponds with the adoption of a repealed and replaced rule codified in 14-197 CMR ch. 12 (*Reportable Events System*) (the "Ch. 12 rule'). Parts of the Ch. 12 rule are included, in whole or in part, in the APS rule.

Fiscal impact of rule:

The Department does not anticipate any General Fund impact as a result of this rulemaking. This rulemaking will not impose any costs on municipal or county governments or on small businesses employing fewer than twenty employees.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of Substance Abuse and Mental Health Services**
Umbrella-Unit: **14-118**
Chapter number/title: **Ch. 18-A**, Rules for Licensure of Residential Child Care Facilities
Filing number: **2018-217**
Effective date: 10/10/2018
Repealed and Replaced by 10-144 Ch. 36, Children's Residential Care Facilities Licensing Rule**; see above.**

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Health and Human Services, **Office of Adult Mental Health**
Umbrella-Unit: **14-193**
Chapter number/title: **Ch. 18**, Rules for Licensure of Residential Child Care Facilities
Filing number: **2018-218**
Effective date: 10/10/2018
Repealed and Replaced by 10-144 Ch. 36, Children's Residential Care Facilities Licensing Rule**; see above.**

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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)** *(in part)*
Umbrella-Unit: **14-197**
Statutory authority: 34-B MRS §5604-A
Chapter number/title: **Ch. 12,** Reportable Events System (*formerly* Critical Incident System)
Filing numbers: **2018-087**
Effective date: 5/28/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

In this rule adoption, the Department repeals 14-197 CMR ch. 12 (*Regulations Governing Reportable Events, Adult Protective Investigations and Substantiation Hearings Regarding Persons with Mental Retardation or Autism*), and replaces it with the adopted 14-197 CMR ch. 12 (*Reportable Events System*) (the "Reportable Events Rule"). The Department is adopting this rule to outline requirements for providers in reporting and responding to Reportable Events affecting the safety or welfare of adults with intellectual or developmental disabilities or Autism Spectrum Disorder ("IDD/A") or Acquired Brain Injury ("ABI") who have been determined to be eligible for and who are receiving services from a provider of services licensed, funded, or regulated in whole or in part by the Department ("Individuals Receiving Services").

Basis statement:

In this rule adoption, the Department repeals 14-197 CMR ch. 12 (*Regulations Governing Reportable Events, Adult Protective Investigations and Substantiation Hearings Regarding Persons with Mental Retardation or Autism*), and replaces it with the adopted 14-197 CMR ch. 12 (*Reportable Events System*) (the "Reportable Events Rule"). The Department is adopting this rule to outline requirements for providers in reporting and responding to Reportable Events affecting the safety or welfare of adults with intellectual or developmental disabilities or Autism Spectrum Disorder ("IDD/A") or Acquired Brain Injury ("ABI") who have been determined to be eligible for and who are receiving services from a provider of services licensed, funded, or regulated in whole or in part by the Department ("Individuals Receiving Services").

Under 34-B MRS §5604-A, the Department is required to establish and maintain a reporting system for reportable events. The reporting system is designed to ensure that appropriate parties are made aware of certain types of incidents and that necessary follow up occurs. The Department notes that reports of abuse, neglect, and exploitation of incapacitated and dependent adults, including Individuals Receiving Services, are required to be reported directly to Adult Protective Services ("APS") under a separate rule, 10-149 CMR ch. 1.

This Reportable Events Rule outlines the categories of Reportable Events that providers serving any Individual(s) Receiving Services are required to report to the Department to ensure the health and safety of members they serve and to outline the process by which providers make and follow up on such reports. The rule also outlines the Department's oversight of the Reportable Events System.

The adoption of the Reportable Events rule corresponds with the adoption of a new rule consolidating adult protective services regulations previously codified in both 10-149 CMR ch. 5, Sections 11, 12, and 14, and in 14-197 CMR ch. 12, Sections 6.04 and 6.05. The Reportable Events rule omits the provisions for investigating and substantiating abuse, neglect, and exploitation of adults with IDD/A which were in the repealed ch. 12 rule. The Reportable Events Rule is limited to outlining the reportable events system protecting this

vulnerable population and persons with ABI. Investigations of the abuse, neglect, and exploitation of adults with IDD/A and ABI will be regulated under 10-149 CMR ch. 1.

The Department made several changes to the final rule from the proposed rule, in response to comments and on the advice of the Office of the Attorney General.

Fiscal impact of rule:

The Department does not anticipate any General Fund impact as a result of this rulemaking. This rulemaking will not impose any costs on municipal or county governments or on small businesses employing fewer than twenty employees.