

§42. Rules and regulations

1. General. The department shall issue rules and regulations considered necessary and proper for the protection of life, health and welfare, and the successful operation of the health and welfare laws. The rules and regulations shall be adopted pursuant to the requirements of the Maine Administrative Procedure Act.

[PL 1977, c. 694, §331 (AMD).]

1-A. Administration of medication. The administration of medication in boarding care facilities, drug treatment centers, day care facilities, children's homes and nursery schools and group home intermediate care facilities for persons with intellectual disabilities must be in accordance with rules established by the department. In other facilities licensed or approved by the department, excluding those facilities licensed under section 1811, other than group home intermediate care facilities for persons with intellectual disabilities, the department may establish rules for the administration of medication as it considers necessary. In establishing rules for each type of facility, the department shall consider, among other factors, the general health of the persons likely to receive medication, the number of persons served by the facility and the number of persons employed at the facility who might be involved in the administration of medication. Any rules for the administration of medication must be established in accordance with Title 5, chapter 375.

[PL 2011, c. 542, Pt. A, §24 (AMD).]

2. Department records. The department shall make and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files and communications of the department, and especially those which pertain to the granting of public assistance. The use of such records, papers, files and communications by any other agency or department of government to which they may be furnished shall be limited to the purposes for which they are furnished and by the law under which they may be furnished. It shall be unlawful for any person, except for purposes directly connected with the administration of the public assistance and in accordance with the rules and regulations of the department, to solicit, disclose, receive, make use of or authorize, knowingly permit, participate in or acquiesce in the use of, any list of or names of, or any information concerning, persons applying for or receiving such assistance, directly or indirectly, derived from the records, papers, files or communications of the State or subdivisions or agencies thereof, or acquired in the course of the performance of official duties. Any person violating any provision of this subsection shall be punished by a fine of not more than \$500 or by imprisonment for not more than 11 months, or by both.

[PL 1973, c. 521, §1 (RPR).]

3. Subsurface sewage disposal. The department shall adopt minimum rules relating to subsurface sewage disposal systems. All rules, including installation and inspection rules, must be consistent with Title 30-A, chapter 185, subchapter III and Title 32, chapter 49, but this does not preempt the authority of municipalities under Title 30-A, section 3001 to adopt more restrictive ordinances. These rules may regulate the location of water supply wells to provide minimum separation distances from subsurface sewage disposal systems. The department may require a deed covenant or deed restriction when determined necessary.

Any person who violates the rules adopted under this subsection, or who violates a municipal ordinance adopted pursuant to Title 30-A, sections 4201 and 4211 or uses a subsurface waste water disposal system not in compliance with rules applicable at the time of installation or modification must be penalized in accordance with Title 30-A, section 4452. Enforcement of the rules is the responsibility of the municipalities rather than the department. The department or a municipality may seek to enjoin violations of the rules or municipal ordinances. In the prosecution of a violation by a municipality, the court shall award reasonable attorney's fees to a municipality if that municipality is the prevailing party, unless the court finds that special circumstances make the award of these fees unjust.

[PL 1997, c. 727, Pt. C, §4 (AMD).]

3-A. Licensing of persons to evaluate soils for subsurface wastewater disposal systems. The department shall adopt rules providing for professional qualification and competence, ethical standards, licensing and relicensing and revocation of licenses of persons to evaluate soils for the purpose of designing subsurface wastewater disposal systems. The hearings provided for in subsection 3 must include consideration of the adoption or change of those rules.

The department shall investigate or cause to be investigated all cases or complaints of noncompliance with or violations of this section and the rules adopted pursuant to this section. The department has the authority to grant or amend, modify or refuse to issue or renew a license in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter 5. The District Court has the exclusive jurisdiction to suspend or revoke the license of any person who is found guilty of noncompliance with or violation of the rules adopted pursuant to this subsection or subsection 3.

The department may charge applicants no more than \$100 for examination to become a licensed site evaluator. The department shall by rule charge a biennial site evaluator license fee of not more than \$150. A licensed site evaluator who is employed by the department to administer this section and does not practice for the public is exempt from the license fee requirement. Appropriate rules must be adopted by the department defining the appropriate financial procedure. The fees are paid to the Treasurer of State to be maintained as a permanent fund and used by the department for carrying out its plumbing and subsurface wastewater disposal rules and site evaluation program.

[PL 2015, c. 494, Pt. A, §14 (AMD).]

3-B. Inspection of plumbing and subsurface wastewater disposal systems and temporary portable toilets. The department shall adopt rules providing for the inspection of plumbing and subsurface wastewater disposal systems. The department may adopt routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A providing for the inspection of temporary portable toilets, except for temporary portable toilets allowed pursuant to Title 30-A, section 4211, subsection 3-A. In municipalities, the municipal officers shall provide for the appointment of one or more plumbing inspectors. In plantations, the assessors shall appoint plumbing inspectors in accordance with Title 30-A, section 4221. In the unorganized areas of the State, the department shall appoint plumbing inspectors or act in the capacity of a plumbing inspector until a person is appointed. For purposes of this subsection, "temporary portable toilet" means a prefabricated toilet designed for temporary use.

[PL 2023, c. 614, §1 (AMD).]

4. Industrial employees.

[PL 1977, c. 83, §2 (RP).]

5. Confidentiality of records containing certain medical information. Department records that contain personally identifying medical information that are created or obtained in connection with the department's public health activities or programs are confidential. These records include, but are not limited to, information on genetic, communicable, occupational or environmental disease entities, and information gathered from public health nurse activities, or any program for which the department collects personally identifying medical information.

The department's confidential records may not be open to public inspection, are not public records for purposes of Title 1, chapter 13, subchapter 1 and may not be examined in any judicial, executive, legislative or other proceeding as to the existence or content of any individual's records obtained by the department.

Exceptions to this subsection include release of medical and epidemiologic information in such a manner that an individual cannot be identified; disclosures that are necessary to carry out the provisions of chapter 250; disclosures made upon written authorization by the subject of the record, except as otherwise provided in this section; disclosures that are specifically required for purposes of reporting data to the Maine Health Data Organization as provided for by statute or by rules adopted by the Maine Health Data Organization; and disclosures that are specifically provided for by statute or by

departmental rule. The department may participate in a regional or national tracking system as provided in sections 1533 and 8824.

Nothing in this subsection precludes the department, during the data collection phase of an epidemiologic investigation, from refusing to allow the inspection or copying of any record or survey instrument, including any redacted record or survey instrument, containing information pertaining to an identifiable individual that has been collected in the course of that investigation. The department's refusal is not reviewable.

[PL 2021, c. 423, Pt. A, §2 (AMD).]

6. Preadministrative hearing settlement process. The department may adopt rules to establish a preadministrative hearing settlement process. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter II-A.

[PL 1997, c. 218, §1 (NEW).]

7. Appeal process. The department shall amend the rules governing appeals of informal review decisions of MaineCare payment and cost report audit and review issues filed by MaineCare providers of goods and services or initiated by the department and any other informal review decisions that seek to impose repayment, recovery or recoupment obligations or sanctions or fines on providers as provided in this subsection.

A. The department shall allow a provider 60 days after the provider's receipt of an audit report, examination report or other audit determination to seek informal review of that determination. The department shall give to the provider involved in an informal review decision written notice of the informal review decision and of the appeal process and the time period for filing a notice of appeal. The department shall allow an additional 60 days for a provider to request an appeal hearing for review of the department's informal review decision. [PL 2005, c. 588, §3 (AMD).]

B. [PL 2003, c. 419, §2 (RP).]

C. Compensation under any contract into which the department enters for hearing officer services may reflect the number of appeals on which recommendations are made by the hearing officer and may not reflect the substance of the recommendations made by the hearing officer. [PL 2003, c. 419, §2 (AMD).]

D. The hearing officer shall conduct a hearing de novo on issues raised in the notice of appeal filed by the provider and shall in a timely manner render a written recommendation based on the record and in accordance with applicable state and federal law, rule and regulation. The hearing officer shall provide a copy of the recommendation to the department and to the provider along with notice of the opportunity to submit written comments to the commissioner. [PL 2001, c. 666, Pt. C, §1 (NEW).]

E. The recommendation of the hearing officer must be forwarded to the commissioner for a final decision, based on the record, which must include any written comment submitted in a timely manner by the provider and the department. The commissioner may adopt, adopt with modification or reject the recommendation of the hearing officer. The commissioner shall issue a final decision in writing, which must include the reasons for any departure from the recommendation of the hearing officer and notice of the process for appeal pursuant to Title 5, chapter 375, subchapter 7. If the commissioner deviates from a prior decision cited in the course of a proceeding, the final decision must include an explanation of the reason that the prior decision was not followed. [PL 2003, c. 419, §2 (AMD).]

F. By July 1, 2004 the department shall make available on its publicly accessible website the decisions in all MaineCare provider appeals beginning January 1, 2004, including the recommendations of the hearing officer and the decision of the commissioner. By October 1, 2006 the department shall make available on the same website all decisions issued by the department

regarding audit findings, audit reports or examination reports, including final informal review decisions issued as well as decisions on appeal pursuant to the Maine Uniform Accounting and Auditing Practices Act for Community Agencies. The Office of Audit for MaineCare and Social Services also shall include on the website a summary of key interpretations and findings in recent audits that, in the opinion of the office, are to be considered generally by providers in their operations and cost reporting.

- (1) The website must include a search feature allowing users to obtain information on specific issues of interest.
- (2) The website must protect information that is personal or confidential. [PL 2005, c. 588, §4 (AMD).]

G. In lieu of the appeal procedure provided in this subsection, the parties may choose arbitration by a qualified arbitrator or panel of arbitrators as provided in this paragraph. By January 1, 2004, the department shall adopt rules to implement this paragraph that are consistent with federal law and regulation. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

- (1) The arbitrator or panel of arbitrators must be selected and compensated as agreed by the parties.
- (2) Arbitration under this paragraph is available only when the amount in controversy is \$10,000 or less and the subject matter in controversy is assessments, recovery or recoupment orders, sanctions or administrative fines.
- (3) A provider choosing arbitration under this paragraph may waive any right of appeal. [PL 2003, c. 419, §2 (NEW).]

H. In an administrative appeal of an informal review decision under this subsection, the department bears the burden of proving a violation of law or rule by a preponderance of the evidence. If the department proves that existing and available records of goods or services are defective, the department may impose a penalty or sanction, including total recoupment. Total recoupment for defective records is warranted only when the provider has failed to demonstrate by a preponderance of the evidence that the disputed goods or services were medically necessary, MaineCare-covered goods or services and were actually provided to eligible MaineCare members. [PL 2003, c. 688, Pt. C, §7 (AMD).]

The department shall provide funding for contractual services under this subsection from within existing resources.

[PL 2005, c. 588, §§3, 4 (AMD).]

8. Adoption of rules with retroactive application. The department is authorized to adopt rules that have a retroactive application for a period not to exceed 8 calendar quarters prior to the date of issuance of the rule in accordance with the provisions of this subsection.

A. The Office of MaineCare Services is authorized to adopt rules that have retroactive application when necessary to maximize available federal revenue sources, specifically regarding the federal Medicaid program, or to conform to the state Medicaid plan as filed with the Federal Government. The Bureau of Family Independence is authorized to adopt rules in the MaineCare program, Temporary Assistance for Needy Families program and Supplemental Nutrition Assistance Program that have retroactive application to comply with federal requirements or to conform to the state Medicaid plan as filed with the Federal Government. [PL 2023, c. 405, Pt. C, §9 (AMD).]

B. With respect to any services that MaineCare providers have rendered prior to the date of adoption of retroactive rules adopted pursuant to this subsection, such rules may not reduce or otherwise negatively affect the reimbursement or other payments that those providers are entitled

to receive under the previously applicable rules. The reimbursement or other payments under the amended rules must be equal to or greater than the reimbursement under the rules previously in effect. The rules may retroactively increase provider reimbursement on an emergency basis if needed to ensure that MaineCare members have access to covered medically necessary services. [PL 2005, c. 648, §1 (AMD).]

C. For any benefits or services in the MaineCare program, Temporary Assistance for Needy Families program or Supplemental Nutrition Assistance Program that beneficiaries have received prior to the date of adoption of retroactive rules adopted pursuant to this subsection, such rules may not reduce or otherwise negatively affect the reimbursement or other payments, benefits or services that those beneficiaries are entitled to have covered or paid under the previously applicable rules. The reimbursement or other payments, benefits or services under the amended rules must be equal to or greater than under the rules previously in effect. [PL 2023, c. 405, Pt. C, §10 (AMD).]

D. This subsection does not give the department the authority to adopt retroactively any rule that has an adverse financial impact on any MaineCare provider or member, Temporary Assistance for Needy Families program or Supplemental Nutrition Assistance Program recipient or the beneficiary or recipient of any other program administered by the department. Specific statutory authority is required for adoption of a retroactive rule that has an adverse financial impact on any MaineCare provider or member, Temporary Assistance for Needy Families program or Supplemental Nutrition Assistance Program recipient or the beneficiary or recipient of any other program administered by the department. [PL 2023, c. 405, Pt. C, §11 (AMD).]

E. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A; except that, if the underlying statutory rule-making authority for a rule or set of rules specifies that rules adopted pursuant to that authority are major substantive rules, then the related rule or rules adopted under this subsection are major substantive rules. [PL 2003, c. 612, §1 (NEW).]

F. [PL 2005, c. 648, §2 (RP).]
[PL 2023, c. 405, Pt. C, §§9-11 (AMD).]

9. Effective date of newly adopted rules. Notwithstanding any other provision of law, when the department adopts a rule affecting a process or procedural change for licensed health care providers, the rule may not take effect for at least 30 days unless the department determines that an emergency rule is necessary pursuant to Title 5, section 8054 or unless the rule affects reimbursement rates applicable to those licensed health care providers. For the purposes of this subsection, "licensed health care provider" means a physician, clinic, hospital, health maintenance organization, home health agency, private clinical laboratory or other person who provides primary health care services and is registered or licensed by the State.
[PL 2005, c. 241, §1 (NEW).]

SECTION HISTORY

PL 1967, c. 233 (AMD). PL 1973, c. 521, §1 (RPR). PL 1975, c. 293, §4 (AMD). PL 1975, c. 760, §§3,4 (AMD). PL 1975, c. 762, §1 (AMD). PL 1977, c. 83, §2 (AMD). PL 1977, c. 286, §1 (AMD). PL 1977, c. 497, §2 (AMD). PL 1977, c. 694, §§331,332 (AMD). PL 1979, c. 244 (AMD). PL 1979, c. 390 (AMD). PL 1981, c. 38, §§1-3 (AMD). PL 1981, c. 60 (AMD). PL 1981, c. 376, §§1-3 (AMD). PL 1983, c. 284, §1 (AMD). PL 1983, c. 796, §8 (AMD). PL 1985, c. 612, §§1-3 (AMD). PL 1987, c. 737, §§C64,C106 (AMD). PL 1989, c. 6 (AMD). PL 1989, c. 9, §2 (AMD). PL 1989, c. 104, §§C4,C8,C10 (AMD). PL 1989, c. 483, §A32 (AMD). PL 1989, c. 878, §A53 (AMD). PL 1991, c. 548, §A16 (AMD). PL 1991, c. 824, §A39 (AMD). PL 1991, c. 827, §1 (AMD). PL 1991, c. 827, §2 (AFF). PL 1993, c. 295, §1 (AMD). PL 1997, c. 218, §1 (AMD). PL 1997, c. 727, §C4 (AMD). PL 1999, c. 86, §1 (AMD). PL 1999, c. 547, §B78 (AMD). PL 1999, c. 547, §B80 (AFF). PL 2001, c. 407, §1 (AMD). PL 2001, c. 666, §C1 (AMD). PL

2003, c. 419, §2 (AMD). PL 2003, c. 612, §1 (AMD). PL 2003, c. 613, §2 (AMD). PL 2003, c. 688, §C7 (AMD). PL 2005, c. 241, §1 (AMD). PL 2005, c. 588, §§3,4 (AMD). PL 2005, c. 648, §§1,2 (AMD). PL 2007, c. 508, §1 (AMD). PL 2009, c. 514, §1 (AMD). PL 2011, c. 542, Pt. A, §24 (AMD). PL 2015, c. 494, Pt. A, §14 (AMD). PL 2019, c. 343, Pt. YY, §2 (AMD). PL 2021, c. 423, Pt. A, §2 (AMD). PL 2023, c. 405, Pt. C, §§9-11 (AMD). PL 2023, c. 614, §1 (AMD).

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