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2004

Bureau of Corporations, Elections and Commissions

Department of the Secretary of State

Matthew Dunlap
Secretary of State

Julie L. Flynn
Deputy Secretary of State

January 28, 2005

Honorable Elizabeth M. Schneider, Senate Chair
Honorable Christopher R. Barstow, House Chair
Members of the Joint Standing Committee on State and Local Government
2 State House Station
Augusta, Maine 04333-0002

Dear Senator Schneider, Representative Barstow and Members of the Joint Standing Committee on State and Local Government:

Pursuant to 5 M.R.S.A. Section 8056-A, the Secretary of State is hereby submitting its report on the progress of the Maine Administrative Procedure Act.

During the year 2004, there were 340 proposed rule notices and 607 adopted rules. This represents an increase of 35 proposed rules and an increase of 118 adopted rules from 2003. There were 17 major-substantive rules submitted to the Legislature during 2004. This is the same number as 2003. Additionally, during 2004, the cost of publishing the rule-making notices was $383,367.03. This was an increase of $38,283.46 from 2003. This amount was spread among the rule-making agencies *pro rata*. At the end of 2004, there were 1,891 current rule chapters on file with the Secretary of State. This is an increase of 22 from the rule chapters in effect at the end of 2003.

The Secretary of State solicited comments on the progress of the Maine Administrative Procedure Act by publishing a notice in five daily Maine newspapers and on the Internet. We received written comments from Sandra L. Parker, Esq., Vice President and General Council of the Maine Hospital Association, and Catherine A. Valcourt, Esq., Legal Counsel, Maine Long-term Care Ombudsman Program. Copies of these comments are attached.

Direct access to the full texts of Maine's rule chapters and regulatory agendas may be found on the Department's website at: www.maine.gov/sos/cec/rules.

If you have any questions regarding the Administrative Procedure Act, please contact Julie Flynn, Deputy Secretary of State at 624-7650.

Sincerely yours,

Matthew Dunlap
Secretary of State

MHA

Maine Hospital Association

Representing community hospitals, healthcare organizations and the patients they serve.

January 12, 2005

Mr. Don Wismer, APA Coordinator
Department of Secretary of State, Bureau of Corporations, Elections and Commissions
101 State House Station
Augusta, ME 04333

RE: Proposed Rule Number 2004-P326

Dear Mr. Wismer:

Thank you for the opportunity to provide recommendations to improve the state's rule-making process. These recommendations are offered by the Maine Hospital Association, which represents all of Maine's 39 community hospitals, as well as all of their affiliated organizations. Health care is one of the largest industries in the state and is heavily regulated by multiple state agencies. Accordingly, our membership is well-situated to provide the regulated entity's perspective on the state's rule-making process.

We offer four recommendations to improve Maine's rule making process. First and foremost, we strongly suggest issuing whatever clarification is necessary to continue permitting rules be tied to other references. Countless examples could be provided of this current practice, but in the interest of brevity, the documentation for just the following four representative examples is enclosed:

- The MaineCare Benefits manual, Chapter III, Principles of Reimbursement states that calculations must be made in accordance with the Tax Equity and Fiscal Responsibility Act. This is an example of a Maine regulation that is tied to a federal statute.
- The Department of Health and Human Services, Division of Licensing and Certification Regulations for the Licensure of General and Specialty Hospitals requires that any Maine critical access hospital comply with 42 CFR § 485.641. This is an example of a Maine regulation that is tied to a federal regulation.
- The Maine State Board of Nursing is part of a 17 state compact where each state recognizes the other states' nursing licenses as authorizing a multistate licensure privilege to practice as a licensed nurse in all participating states. Not all of the participating states have the same initial licensure requirements; the compact does not prohibit participating states from independently amending their initial licensure requirements. This is an example of a Maine regulation that is tied to 17 different states' licensure regulations.

33 Fuller Road
Augusta, Maine 04330
tel 207-622-4794
fax 207-622-3073
www.themha.org

- The MaineCare Benefits manual, Chapter III, Principles of Reimbursement states that for the purposes of determining inflation, unless otherwise specified, the economic trend factor from the most recent edition of the "Health Care Cost Review" from Global Insight will be used. This is an example of a Maine regulation that is tied to a private sector publication.

As shown, the practice of incorporating another requirement by reference has a long successful history of application in Maine. There are many sound reasons for doing so, including basing state rules on federal laws assures that state regulations consistently mirror federal regulations where Maine chooses to adopt them. Also, maintaining selective consistency is not only efficient for both the state and the regulated entity, but may also be critical to be allow regulated entities to be in full compliance with all of the relevant federal and state laws.

However, the Maine Health Data Organization (MHDO) recently proposed a hospital clinical quality data collection rule (Chapter 270: Uniform Reporting System for Quality Data Sets). By design, the data to be collected mirrored the data currently being sent to the Centers for Medicare and Medicaid Services (CMS) as required by federal law. When we asked the MHDO to incorporate the frequently updated CMS definitions by reference to assure consistency, the assistant attorney general advising the MHDO stated that it was not possible to reference anything in state regulation that might be changed by a third party because the current APA process requires that any such change be subject to a public hearing prior to its adoption in Maine. We respectfully disagree with that interpretation because clearly stating the reference point provides adequate notice and facilitates ongoing compliance with all relevant laws. Unless federal law governs, Maine has the option of rejecting outside standards, but in the situations where the state chooses to incorporate an outside reference, we believe it should be permitted to continue to do so. Given our recent experience, we strongly urge the Secretary of State to modify the APA rules as necessary to permit this historically successful practice, or at a minimum, issue permissive clarification to ensure consistent application of the APA process by the Attorney General's office.

Second, we recommend that all proposed rules be posted on a state web site on the day that the notice is published in the newspapers. Some agencies already do this, however it is not a universal practice. For example, please see the enclosed copy of the January 12, 2005 electronically posted rule-making notices. The Bureau of Medical Services' notice includes a link to the proposed rule; the Department of Labor notice does not have a link to the proposed rule, nor could the proposed rule be found on the Department of Labor web site. If the proposed rule is not available through the internet, an affected party must call and request that a hard copy be sent out for their review, which is not providing the most cost-effective or timely access to the proposed changes.

Third, we recommend that all proposed rules use the standard conventions to indicate <u>new</u> (underlined) or ~~deleted~~ (strikethrough) language. Again, some agencies already do this, but it is not a universal practice. Also, we recommend that a mechanism be adopted to indicate when language is moved, but not changed. Under current practices, when existing language is moved to another section of the rule, it is struck-through in the old section and underlined when it appears in the new location, giving the appearance of substantive change. For clarity, we suggest

that unchanged language that is moved to another section be italicized in both places, with a footnote indicating its old and new location.

Finally, we recommend that an agency's written response to comments be posted on the web site. Currently, this is a rare practice. For example, please see the enclosed copy of the Bureau of Elder Services page that provides the final certificate of need policy with a link to the Bureau's written response to comments. While our comment letters always include a request for the written response to comments when available, it is rarely sent. When the final rule is published, we must call and request that a copy of the response to comments be sent to us so that we understand why the agency accepted or rejected specific suggestions. Reading through the agency's responses to comments provides greater understanding of the rule, which facilitates a regulated entity's compliance.

Again, thank you for the opportunity to provide these comments. We would be happy to answer any questions. As soon as it is completed, please send a copy of your department's response to all submitted comments to me at the address below. Thank you.

Sincerely,

Sandra L. Parker

Sandra L. Parker, Esq.
Vice President and General Counsel

January 13, 2005

To: Don Wismer, APA Coordinator
Department of the Secretary of State, 101 State House Station, Augusta ME 04333

Fr: Catherine Valcourt on behalf of the MaineCare Advisory Committee.

Re: Comments on the Maine Administrative Procedure Act

In response to your request for recommendations for improvements to the rule-making process, we offer the following.

1. The MaineCare Advisory Committee [MAC] is mandated by federal law to advise the Department of Health and Human Services [DHHS] on MaineCare issues, including the development of program rules, regulations, policies and standards. At monthly meetings, MAC reviews the status of Department rulemaking for MaineCare programs.

2. The Committee would like to meet with you to discuss the APA process. We are unable to make any specific recommendations because we need more information. We want to avoid submitting recommendations that may have unintended consequences that are adverse to the MaineCare consumer. We hope to meet with you in the near future. We are specifically interested in the following.

    - **Contracts.** We are concerned about the relationship between the APA process and DHHS contracting process. In particular, we are concerned that the contracting process when accomplished in advance of, or in lieu of the rulemaking process, effectively negates the public input required by the APA process by binding the Department to a set of policies absent rulemaking. For example, the Department's statewide Medical Eligibility Determination Assessments Program is contract driven, yet it has a major impact on the standards by which people receive or are denied care.

    - **Rule? Or Policy?** When is a policy? What is a rule? When is a policy actually a 'rule change'? Within what parameters of specific rules can the Department develop policies? We have concerns about timely notice to consumers and providers when the Department changes a policy or practice. We have concerns about the lack of public comments when a policy is changed.

    - **Audit protocols: rule? or policy?** Currently some audit protocols change without notice to the program provider. For example, one year a procedure is acceptable and the next year it is not. This kind of change in the audit procedure seems to occur at times without notice to the entity being audited.

45.03 **ACUTE CARE NON-CRITICAL ACCESS HOSPITALS** (cont)

Eff 12/04/04 settled report as issued by DHHS Division of Audit, inflated to the current State fiscal year.

D. **MaineCare Member Days Awaiting Placement (DAP) at a Nursing Facility (NF)**

Reimbursement will be made prospectively at the estimated statewide average rate per member day for NF services. The Department shall adopt the prospective statewide average rates per member day for NF services that are specified in the Principles of Reimbursement for Nursing Facilities, MaineCare Benefits Manual Chapter III, Section 67. The average statewide rate per member day shall be computed based on the simple average of the NF rate per member day for the applicable State fiscal year(s) and prorated for a hospital's fiscal year.

Eff 12/04/04

45.03-2 **Interim Volume Adjustment**

Eff 12/04/04 The Department may initiate a comparison of MaineCare claims data submitted in the first 150 days of the payment year to the projected number of discharges used in calculating the PIP. If there is a difference of at least 5% between the actual MaineCare inpatient volume and prospectively estimated MaineCare inpatient volume, an adjustment may, be made to the PIP

Eff 12/04/04 using actual discharge data. The Department is under no obligation to adjust a PIP as a result of this comparison. An adjustment to the MaineCare outpatient component may be made at the same time using current outpatient cost to charge ratios.

Eff 12/04/04 45.03-3 **Interim Settlement**

The Department of Health and Human Services' interim settlement with a hospital is calculated using the same methodology as is used when calculating the PIP, except that the data source used for inpatient calculations is discharges and charges included in MaineCare paid claims history for the year for which settlement is being performed, as measured by the Department. Other calculations are based on the hospital's as-filed cost report and MaineCare paid claims history for the year for which interim settlement is being performed. No cap imposed on a PIP will limit or otherwise affect the determination of settlement amounts

45.03-4 **Final Settlement**

Eff 12/04/04 The Department of Health and Human Services' final settlement with a hospital is calculated using the same methodology as is used when calculating the PIP, except that the data source used for inpatient calculations will be discharges and charges included in MaineCare paid claims history as measured by the Department. Other components will be based on the hospital's final cost report from the Medicare fiscal intermediary and MaineCare paid claims history for the year for which interim settlement is being performed. No cap imposed on a PIP will limit or otherwise affect the determination of settlement amounts

45.04 **ACUTE CARE CRITICAL ACCESS HOSPITALS**

All calculations made in relation to acute care critical access hospitals must be made in accordance with the Tax Equity and Fiscal Responsibility Act (TEFRA), except as stated below, plus a DSH adjustment payment for eligible hospitals.

1. The Critical Access Hospital must follow the Federal Conditions of Participation, 42 CFR §485.618, Emergency Services, of these Regulations.

2. Critical Access Hospitals shall comply with Chapter XIX., Emergency Department, of the Regulations for the Licensure of General and Specialty Hospitals.

3. Critical Access Hospitals must follow the Federal Conditions of Participation, 42 CFR §489.20 and 42 CFR §489.24, Emergency Medical Treatment and Active Labor Act.

XXVII.N. Social Work

The Critical Access Hospital must comply with Chapter XX., Social Work Department, of the Regulations for the Licensure of General and Specialty Hospitals.

XXVII.O. Quality Improvement

1. The Critical Access Hospital must comply with the Federal Condition of Participation, 42 CFR §485.641, Periodic Evaluation and Quality Assurance Review.

2. The Critical Access Hospital must comply with the following:

   a) The governing body shall require the establishment and maintenance of a written coordinated quality improvement program which integrates the review activities of all Critical Access Hospital services to enhance the quality of patient care.

      (1) The governing body shall require at least quarterly quality assurance reports to be submitted to the governing body.

      (2) The quality assurance program may be developed and implemented for all services in accordance with the ongoing quality assurance program of the affiliated full services hospital.

   b) When a Critical Access Hospital is a member of a rural health network and there is a network-wide quality assurance program and/or health information system, the Critical Access Hospital shall coordinate its assessment and improvement activities with such program or system.

   c) The Critical Access Hospital's quality improvement program shall support a care delivery continuum and may utilize a performance

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Maine State Board of Nursing

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License Status Verification for Compact States

To change your primary state of residence or verify a license in a compact state, contact the appropriate individual from the list below.

State	Contact	Email Address	Phone
Arizona			(602) 331-8111
Arkansas	Margie Brauer	mbrauer@arsbn.org	(501) 686-2708
Delaware	Scott McConnell	scott.mcconnell@state.de.us	(302) 739-4522 x 216
Idaho			(208) 334-3110
Iowa	Lois Churchill	lchurch@bon.state.ia.us	(515) 281-4827
Maine	Grace Doyon	grace.doyon@state.me.us	(207) 287-1133 x 3
Maryland	Ele Polovoy	lkirkmbn@erols.com	(410) 585-1923
Mississippi	Marcia Rachel	marcia.rachel@msbn.state.ms.us	(601) 987-4188 x 101

Nebraska	Verneda Kelly	verneda.kelly@hhss.state.ne.us	(402) 471-4376
New Mexico			(505) 841-8340
North Carolina	Barbara Nelson (Please copy Mike Coleman)	bnelson@ncbon.com mike@ncbon.com	(919) 782-3211
North Dakota	Sally Bohmbach	bohmbach@ndbon.org	(701) 328-9788
South Dakota	Carey Duffy	Carey.Duffy@state.sd.us	(605) 362-2772
Tennesee		tennessee.gov/health	1-888-310-4650
Texas - RN	Mark Majek	mark.majek@bne.state.tx.us	(512) 305-6801
Texas - VN	Pat O'Quinn	pat.oquin@bvne.state.tx.us	(512) 305-7669
Utah	Laura Poe	lpoe@br.state.ut.us	(801) 530-6628
Wisconsin	Cathy Pond (Please copy Kimberly Nania)	cathy.pond@drl.state.wi.us kimberly.nania@drl.state.wi.us	(608) 266-0145

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02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

380 BOARD OF NURSING

Chapter 11: REGULATIONS RELATING TO THE NURSE LICENSURE COMPACT

The Nurse Licensure Compact is hereby enacted into rule effective July 1, 2001 and entered into by this State with all other jurisdictions legally joining therein, in the form substantially as set forth in this Rule.

PART I - NURSE LICENSURE COMPACT

ARTICLE I
Findings and Declaration of Purpose

A. The Maine State Board of Nursing and the party states find that:

1. the health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;

2. violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;

3. the expanded mobility of nurses and the use of advanced communication technologies as part of our nation's healthcare delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;

4. new practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex;

5. the current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant to both nurses and states.

B. The general purposes of this Compact are to:

1. facilitate the states' responsibility to protect the public's health and safety;

2. ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;

3. facilitate the exchange of information between party states in the areas of nurse regulation, investigation and adverse actions;

4. promote compliance with the laws governing the practice of nursing in each jurisdiction;

5. invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses.

ARTICLE II
Definitions

As used in this Compact:

A. "Adverse Action" means a home or remote state action.

B. "Alternative program" means a voluntary, non-disciplinary monitoring program approved by a nurse licensing board.

C. "Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws, which is administered by a non-profit organization composed of and controlled by state nurse licensing boards.

D. "Current significant investigative information" means:

1. investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

2. investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

E. "Home state" means the party state which is the nurse's primary state of residence.

F. "Home state action" means any administrative, civil, equitable or criminal action permitted by the home state's laws which are imposed on a nurse by the home state's licensing board or other authority including actions against an individual's license such as: revocation, suspension, probation or any other action which affects a nurse's authorization to practice.

G. "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses.

H. "Multistate licensure privilege" means current, official authority from a remote state permitting the practice of nursing as either a registered nurse or a licensed practical/vocational nurse in such party state. All party states have the authority, in accordance with existing state due process law, to take actions against the nurse's privilege such as: revocation, suspension, probation or any other action which affects a nurse's authorization to practice.

I. "Nurse" means a registered nurse or licensed practical/vocational nurse, as those terms are defined by each party's state practice laws.

J. "Party state" means any state that has adopted this Compact.

K. "Remote state" means a party state, other than the home state,

1. where the patient is located at the time nursing care is provided, or,

2. in the case of the practice of nursing not involving a patient, in such party state where the recipient of nursing practice is located.

L. "Remote state action" means

1. any administrative, civil, equitable or criminal action permitted by a remote state's laws which are imposed on a nurse by the remote state's licensing board or other authority including actions against an individual's multistate licensure privilege to practice in the remote state, and

2. cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards thereof.

M. "State" means a state, territory, or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

N. "State practice laws" means those individual party's state laws and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. "State practice laws" does not include the initial qualifications for licensure or requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

ARTICLE III
General Provisions and Jurisdiction

A. A license to practice registered nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a registered nurse in such party state. A license to practice licensed practical/vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a licensed practical/vocational nurse in such party state. In order to obtain or retain a license, an applicant must meet the home state's qualifications for licensure and license renewal as well as all other applicable state laws.

B. Party states may, in accordance with state due process laws, limit or revoke the multistate licensure privilege of any nurse to practice in their state and may take any other actions under their applicable state laws necessary to protect the health and safety of their citizens. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

C. Every nurse practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time care is rendered. In addition, the practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of a party state. The practice of nursing will subject a nurse to the jurisdiction of the nurse licensing board and the courts, as well as the laws, in that party state.

D. This Compact does not affect additional requirements imposed by states for advanced practice registered nursing. However, a multistate licensure privilege to practice registered nursing granted by a party state shall be recognized by other party states as a license to practice registered nursing if one is required by state law as a precondition for qualifying for advanced practice registered nurse authorization.

E. Individuals not residing in a party state shall continue to be able to apply for nurse licensure as provided for under the laws of each party state. However, the license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state unless explicitly agreed to by that party state.

ARTICLE IV
Applications for Licensure in a Party State

A. Upon application for a license, the licensing board in a party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any restrictions on the multistate licensure privilege, and whether any other adverse action by any state has been taken against the license.

B. A nurse in a party state shall hold licensure in only one party state at a time, issued by the home state.

C. A nurse who intends to change primary state of residence may apply for licensure in the new home state in advance of such change. However, new licenses will not be issued by a party state until after a nurse provides evidence of change in primary state of residence satisfactory to the new home state's licensing board.

D. When a nurse changes primary state of residence by:

1. moving between two party states, and obtains a license from the new home state, the license from the former home state is no longer valid;

2. moving from a non-party state to a party state, and obtains a license from the new home state, the individual state license issued by the non-party state is not affected and will remain in full force if so provided by the laws of the non-party state;

3. moving from a party state to a non-party state, the license issued by the prior home state converts to an individual state license, valid only in the former home state, without the multistate licensure privilege to practice in other party states.

ARTICLE V
Adverse Actions

In addition to the General Provisions described in Article III, the following provisions apply:

A. The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system any remote state actions including the factual and legal basis for such action, if known. The licensing board of a remote state shall also promptly report any significant current investigative information yet to result in a remote state action. The administrator of the coordinated licensure information system shall promptly notify the home state of any such reports.

B. The licensing board of a party state shall have the authority to complete any pending investigations for a nurse who changes primary state of residence during the course of such investigations. It shall also have the authority to take appropriate action(s), and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

C. A remote state may take adverse action affecting the multistate licensure privilege to practice within that party state. However, only the home state shall have the power to impose adverse action against the license issued by the home state.

D. For purposes of imposing adverse action, the licensing board of the home state shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, it shall apply its own state laws to determine appropriate action.

E. The home state may take adverse action based on the factual findings of the remote state, so long as each state follows its own procedures for imposing such adverse action.

F. Nothing in this Compact shall override a party state's decision that participation in an alternative program may be used in lieu of licensure action and that such participation shall remain non-public if required by the party state's laws. Party states must require nurses who enter any alternative programs to agree not to practice in any other party state during the term of the alternative program without prior authorization from such other party state.

ARTICLE VI
Additional Authorities Invested in Party State Nurse Licensing Boards

Notwithstanding any other powers, party state nurse licensing boards shall have the authority to:

A. if otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse;

B. issue subpoenas for both hearings and investigations which require the attendance and testimony of witnesses, and the production of evidence. Subpoenas issued by a nurse licensing board in a party state for the attendance and testimony of witnesses, and/or the production of evidence from another party state, shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state where the witnesses and/or evidence are located.

C. issue cease and desist orders to limit or revoke a nurse's authority to practice in their state;

D. promulgate uniform rules and regulations as provided for in Article VIII(c).

ARTICLE VII
Coordinated Licensure Information System

A. All party states shall participate in a cooperative effort to create a coordinated data base of all licensed registered nurses and licensed practical/vocational nurses. This system will include information on the licensure and disciplinary history of each nurse, as contributed by party states, to assist in the coordination of nurse licensure and enforcement efforts.

B. Notwithstanding any other provision of law, all party states' licensing boards shall promptly report adverse actions, actions against multistate licensure privileges, any current significant investigative information yet to result in adverse action, denials of applications, and the reasons for such denials, to the coordinated licensure information system.

C. Current significant investigative information shall be transmitted through the coordinated licensure information system only to party state licensing boards.

D. Notwithstanding any other provision of law, all party state's licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with non-party states or disclosed to other entities or individuals without the express permission of the contributing state.

E. Any personally identifiable information obtained by a party states' licensing board from the coordinated licensure information system may not be shared with non-party states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

F. Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information, shall also be expunged from the coordinated licensure information system.

G. The Compact administrators, acting jointly with each other and in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection and exchange of information under this Compact.

ARTICLE VIII
Compact Administration and Interchange of Information

A. The head of the nurse licensing board, or his/her designee, of each party state shall be the administrator of this Compact for his/her state.

B. The Compact administrator of each party state shall furnish to the Compact administrator of each other party state any information and documents including, but not limited to, a uniform data set of investigations, identifying information, licensure data, and disclosable alternative program participation information to facilitate the administration of this Compact.

C. Compact administrators shall have the authority to develop uniform rules to facilitate and coordinate implementation of this Compact. These uniform rules shall be adopted by party states, under the authority invested under Article VI (d).

ARTICLE IX
Immunity

No party state or the officers or employees or agents of a party state's nurse licensing board who acts in accordance with the provisions of this Compact shall be liable on account of any act or omission in good faith while engaged in the performance of their duties under this Compact. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

ARTICLE X
Entry into Force, Withdrawal and Amendment

A. This Compact shall enter into force and become effective as to any state when it has been enacted into the laws of that state. Any party state may withdraw from this Compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six months after the withdrawing state has given notice of the withdrawal to the executive heads of all other party states.

B. No withdrawal shall affect the validity or applicability by the licensing boards of states remaining party to the Compact of any report of adverse action occurring prior to the withdrawal.

C. Nothing contained in this Compact shall be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a non-party state that is made in accordance with the other provisions of this Compact.

D. This Compact may be amended by the party states. No amendment to this Compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

ARTICLE XI
Construction and Severability

A. This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state party thereto, the Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

B. In the event party states find a need for settling disputes arising under this Compact:

1. The party states may submit the issues in dispute to an arbitration panel which will be comprised of an individual appointed by the Compact administrator in the home state; an individual appointed by the Compact administrator in the remote state(s) involved; and an individual mutually agreed upon by the Compact administrators of all the party states involved in the dispute.

2. The decision of a majority of the arbitrators shall be final and binding.

PART II - NURSE LICENSURE COMPACT RULES AND REGULATIONS

Article VID and VIIIC of the Nurse Licensure Compact grant authority to the Compact Administrators to develop uniform rules to facilitate and coordinate implementation of the Compact.

1. Definition of terms in the Compact.

   For the Purpose of the Compact:

   a. "Board" means party state's regulatory body responsible for issuing more licenses.

   b. "Information system" means the coordinated licensure information system.

   c. "Primary state of residence" means the state of a person's declared fixed permanent and principal home for legal purposes; domicile.

   d. "Public" means any individual or entity other than designated staff or representatives of party state Boards or the National Council of State Boards of Nursing, Inc.

   Other terms used are to be defined as in the Interstate Compact.

2. Issuance of a license by a Compact party state.

   For the purpose of this Compact:

   a. A nurse applying for a license in a home party state shall produce evidence of the nurse's primary state of residence. Such evidence shall include a declaration signed by the licensee. Further evidence that may be requested may include but is not limited to:

      i. Driver's license with a home address;

      ii. Voter registration card displaying a home address; or

      iii. Federal income tax return declaring the primary state of residence.

      (Compact basis: Articles IIE, IVC, and IVD)

   b. A nurse changing primary state of residence, from one party state to another party state, may continue to practice under the former home state license and multi-state licensure privilege during the processing of the

nurse's license application in the new home state for a period not to exceed thirty (30) days. (Compact basis: Articles IVB, IVC, and IVD[1])

c. The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance and the thirty-(30) day period in section 2(b) shall be stayed until resolution of the pending investigation. (Compact basis: Article V[B])

d. The former home state license shall no longer be valid upon the issuance of a new home state license. (Compact basis: Article IVD[1])

e. If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within ten (10) business days and the former home state may take action in accordance with the state's laws and rules.

3. Limitations on multi-state licensure privilege.

Home state Boards shall include in all licensure disciplinary orders and/or agreements that limit practice and/or require monitoring the requirement that the licensee subject to said order and/or agreement will agree to limit the licensee's practice to the home state during the pendency of the disciplinary order and/or agreement. This requirement may, in the alternative, allow the nurse to practice in other party states with prior written authorization from both the home state and such other party state Boards.

4. Information System

a. Levels of access

i. The public shall have access to nurse licensure information limited to:

(a) the nurse's name,

(b) jurisdiction(s) of licensure,

(c) license expiration date(s),

(d) licensure classification(s) and status(es),

(e) public emergency and final disciplinary actions, as defined by contributing state authority, and

(f) the status of multi-state licensure privileges.

ii. Non-party state Boards shall have access to all Information System data except current significant investigative information and other information as limited by contributing party state authority.

iii. Party state Boards shall have access to all Information System data contributed by the party states and other information as limited by contributing non-party state authority. (Compact basis: Article VIIG)

b. The licensee may request in writing to the home state Board to review the data relating to the licensee in the Information System. In the event a licensee asserts that any data relating to him or her is inaccurate, the burden of proof shall be upon the licensee to provide evidence that substantiates such claim. The Board shall verify and within ten (10) business days correct inaccurate data to the Information System. (Compact basis: VIIG)

c. The Board shall report to the Information System within ten (10) business days

i. Disciplinary action, agreement or order requiring participation in alternative programs or which limit practice or require monitoring (except agreements and orders relating to participation in alternative programs required to remain nonpublic by contributing state authority),

ii. Dismissal of complaint, and

iii. Changes in status of disciplinary action, or licensure encumbrance. (Compact basis: VIIB)

d. Current significant investigative information shall be deleted from the Information System within ten (10) business days upon report of disciplinary action, agreement or order requiring participation in alternative programs or agreements which limit practice or require monitoring or dismissal of a complaint. (Compact basis: VIIB, VIIF)

e. Changes to licensure information in the Information System shall be completed within ten (10) business days upon notification by a Board. (Compact basis: VIIB, VIIF)

STATUTORY AUTHORITY: 10 M.R.S.A. §8003. Subsection 5F; 32 M.R.S.A. §2153-A.1

EFFECTIVE DATE:
July 1, 2001

NON-SUBSTANTIVE CORRECTION:
March 25, 2004 - punctuation in Article VII.E. only

SECTION 45 **HOSPITAL SERVICES** **1/1/85**

45.02 GENERAL PROVISIONS

45.02-1 Inflation

For purposes of determining inflation, unless otherwise specified, the economic trend factor from the most recent edition of the "Health Care Cost Review" from Global Insight is used.

Eff 12/04/04

45.02-2 Third Party Liability (TPL)

Eff 12/04/04

When a member is admitted to a hospital , it is the hospital's responsibility to identify all coverage available and perform all procedural requirements of that identified coverage to assure proper reimbursement. Additionally, the hospital must notify the Bureau of Medical Services, Third Party Liability Unit. Only if MaineCare payment is sought, the hospital must include this information on the claim form; or if the information becomes known after claim submission, the hospital must notify the Unit in writing. This allows assignment of the member's right to third-party coverage of claims or possible recovery as the result of tort action. Please see Chapter I Section 1.07 for detailed definitions applicable to Third Party Liability. Providers must adhere to the procedures outlined in that Section. Any MaineCare claim submitted by a hospital may only be withdrawn within 120 days of the date of the remittance statement.

Eff 12/04/04

45.02-3 Interim and Final Settlement

Eff 12/04/04

At interim and final settlement, the hospital will reimburse the Department for any excess payments; or the Department will reimburse the amount of any underpayment to the hospital. In either case, the lump sum payment must be made within 30 days of the date of the letter notifying the provider of the results of the year-end interim or final settlement. If more than one year's interim or final settlement is completed in the same proceeding, the net amount must be paid. If no payment is received within 30 days, the Department may offset prospective interim payments. Any caps imposed on PIPs are not applicable to the determination of settlement amounts. The final settlement will not be performed until the Department receives the final Medicare cost report.

Note: Hospitals are required to file with the DHHS, Division of Audit a year-end cost report within 5 months from their fiscal year end. The cost report filing consists of: CMS Form 2552 or its equivalent, audited financial statements, and any other related documentation as requested by the DHHS-Division of Audit. The cost report must include applicable MaineCare utilization and a calculated balance due to/from MaineCare.

Eff 12/04/04

Eff 12/04/04

45.02-4 Crossover Payments

Eff 12/04/04

MaineCare does not reimburse for Medicare crossover payments.

Department of the Secretary of State

Weekly Rulemaking Notices Contact Us Find It

January 12, 2005

as posted in 5 daily Maine newspapers

NOTICE OF STATE RULE-MAKING

Public Input for Proposed and Adopted Rules

Notices are published each Wednesday to alert the public regarding state agency rule-making. You may obtain a copy of any rule by notifying the agency contact person. You may also comment on the rule, and/or attend the public hearing. If no hearing is scheduled, you may request one -- the agency may then schedule a hearing, and must do so if 5 or more persons request it. If you are disabled or need special services to attend a hearing, please notify the agency contact person at least 7 days prior to it. Petitions: you can petition an agency to adopt, amend, or repeal any rule; the agency must provide you with petition forms, and must respond to your petition within 60 days. The agency must enter rule-making if the petition is signed by 150 or more registered voters, and may begin rule-making if there are fewer. You can also petition the Legislature to review a rule; the Executive Director of the Legislative Council (115 State House Station, Augusta, ME 04333, phone 207/287-1615) will provide you with the necessary petition forms. The appropriate legislative committee will review a rule upon receipt of a petition from 100 or more registered voters, or from "...any person who may be directly, substantially and adversely affected by the application of a rule..." (Title 5 Section 11112). World-Wide Web: Copies of the weekly notices and the full texts of adopted rule chapters may be found on the World-Wide Web at: http://www.maine.gov/sos/cec/rcn/apa/.

PROPOSALS

AGENCY: **12-170 - Department of Labor, Bureau of Labor Standards**
RULE TITLE OR SUBJECT: **Ch. 16**, Rules Governing Definitions for Executive, Administrative, and Professional Exemptions from Minimum Wage and Overtime
PROPOSED RULE NUMBER: **2005-P1**
CONCISE SUMMARY: The purpose of this Ch. is to define the "executive", "administrative" and "professional" minimum wage and overtime exemptions allowed for individuals who are paid on a salary basis pursuant to 26 MRSA §663(K).
THIS RULE WILL NOT HAVE A FISCAL IMPACT ON MUNICIPALITIES.
STATUTORY AUTHORITY: 26 MRSA §663(K)
PUBLIC HEARING): None Scheduled.
DEADLINE FOR COMMENTS: February 11, 2005
AGENCY CONTACT PERSON: William A. Peabody, Director
AGENCY NAME: Bureau of Labor Standards
ADDRESS: 45 State House Station, Augusta, ME 04333-0045
TELEPHONE: (207) 624-6406

AGENCY: **26-239 - Office of the Attorney General**
RULE TITLE OR SUBJECT: **Ch. 104**, Motor Vehicle Advertising
PROPOSED RULE NUMBER: **2004-P320** (republication)
CONCISE SUMMARY: These proposed Rules prohibit advertising practices by new and used motor vehicle dealers that are unfair and deceptive, and which can be in violation of the Maine Unfair Trade Practices Act, 5 MRSA §207.

THIS RULE WILL NOT HAVE A FISCAL IMPACT ON MUNICIPALITIES.
STATUTORY AUTHORITY: 5 MRSA §207(2)
PUBLIC HEARING: February 2, 2005, 9:00 a.m., Burton M. Cross State Office Building, Room 600, 111 Sewall Street, Augusta, ME 04333.
DEADLINE FOR COMMENTS: February 12, 2005
AGENCY CONTACT PERSON: James A. McKenna, Assistant Attorney General
AGENCY NAME: Office of the Attorney General
ADDRESS: 6 State House Station, Augusta, ME 04333-0006
E-MAIL: Jim.mckenna@maine.gov
TELEPHONE: (207) 626-8842

AGENCY: **10-144 - Department of Health and Human Services, Bureau of Medical Services**
RULE TITLE OR SUBJECT: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & 111 Section 27**, Early Intervention Services
PROPOSED RULE NUMBER: **2005-P2**
CONCISE SUMMARY: The proposed rule in Ch. II seeks to further clarify Early Intervention Services reimbursed by MaineCare. Group developmental therapy and co-therapy are more clearly defined, as are inclusive (mainstream) and special purpose services. Language has been included to bring the rule in line with PL 2003, C. 676. It will enable children to continue services if turning age five between September 1st and October 15th of each school year when their parents wish to delay kindergarten enrollment. The proposed rule includes language allowing an itinerant developmental therapist with special education certification to provide developmental therapy to up to four members in a community based setting, or a developmental therapist to provide one-on-one instruction to a member in a community based setting. The proposed rule includes a new, tiered system for developmental services provided in Special Purpose settings. There is a fixed fee associated with the rate for each tier. These changes will make criteria and reimbursement for service provision more consistent across providers. The section of the rule incorporating eligibility for Child Development Services for certain six-year olds as mandated by PL 2003, C. 676, Sec. 8, is proposed to be retroactive to August 6, 2004. Ch. III includes new codes for developmental therapy that coincide with services outlined in Ch. II. Updated language concerning MaineCare terminology has been included throughout the proposed rule.
See http://www.maine.gov/bms/MaineCareBenefitManualRules.htm for rules and related rulemaking documents.
ESTIMATE OF ANY EXPECTED INCREASE OR DECREASE IN ANNUAL AGGREGATE EXPENDITURES: One hundred and twenty thousand dollars is the estimated combined state and federal annualized expenditure reduction related to standardized rates.
THIS RULE WILL NOT HAVE A FISCAL IMPACT ON MUNICIPALITIES.
STATUTORY AUTHORITY: 22 MRSA §42, §3173, PL 2003, C. 676
PUBLIC HEARING:
Date: February 1, 2005 at 1:00 p.m.
Location: Conference Room #1A and B, Department of Health and Human Services, 442 Civic Center Drive, Augusta, ME. Any interested party requiring special arrangements to attend the hearing must contact the agency person listed below before January 26, 2005
DEADLINE FOR COMMENTS: Comments must be received by midnight February 11, 2005.
AGENCY CONTACT PERSON: Robert E. Gross, Comprehensive Health Planner
AGENCY NAME: Bureau of Medical Services
ADDRESS: 442 Civic Center Drive, 11 State House Station, Augusta, Maine 04333-0011
TELEPHONE: (207) 287-9366
FAX: (207) 287-9369
TTY: 1 (800) 423-4331 or (207) 287-1828 (Deaf or Hard of Hearing)
A copy of the proposed changes and other materials related to this change, including written comments, can be viewed at any department of human services regional office.

AGENCY: **90-590 - Maine Health Data Organization**
RULE TITLE OR SUBJECT: **Ch. 245**, Uniform Reporting System for Non-Hospital Ambulatory Service Data Sets
PROPOSED RULE NUMBER: **2005-P3**
CONCISE SUMMARY: This rule contains provisions for the filing of ambulatory data sets for

SECTION 71. CERTIFICATE OF NEED FOR NURSING FACILITY LEVEL OF CARE PROJECTS

Certificate of Need (CON) for Nursing Facility Level of Care Projects, Section 71 of the BEAS Policy manual, has been adopted and will take effect on September 1, 2004.

The amended rule governing Certificate of Need (CON) for Nursing Facility Level of Care Projects, Section 71 of the BEAS Policy manual, has been adopted and will take effect on September 1, 2004. The rule:

- raises the dollar thresholds and includes a biennial inflation factor of 2% based on the consumer price index for projects requiring CON approval;
- exempts assisted living programs, conversions of critical access acute care beds to hospital swing beds and home health care services from CON requirements;
- removes the $25,000 ceiling on application fees;
- establishs that projects with gross square footage in excess of 500 per licensed nursing facility bed will require justification and
- clarifies the application process, public hearing and record keeping requirements.

Below is the Summary of Comments and a copy of the final rule.

Summary of Comments	Word Version	Adobe PDF Version
Adopted Policy	Word Version	Adobe PDF Version