

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND THIRTIETH LEGISLATURE**

**SECOND SPECIAL SESSION**  
**September 29, 2021**

**SECOND REGULAR SESSION**  
**January 5, 2022 to May 9, 2022**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**DECEMBER 29, 2021**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**AUGUST 8, 2022**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH THE MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**Augusta, Maine**  
**2022**

**PROFESSIONAL AND FINANCIAL  
REGULATION, DEPARTMENT OF**

**Insurance - Bureau of 0092**

Initiative: Provides funding for one Senior Market Conduct Examiner position and related All Other costs to evaluate consumer or provider complaints concerning mental health and substance use disorder coverage for federal parity violations, to facilitate new annual mental health and substance use disorder parity reporting requirements from insurers and to conduct market conduct examinations of carriers for compliance with federal parity law.

OTHER SPECIAL REVENUE FUNDS	2021-22	2022-23
POSITIONS - LEGISLATIVE COUNT	0.000	1.000
Personal Services	\$0	\$102,269
All Other	\$0	\$10,472
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$112,741

See title page for effective date.

**CHAPTER 639**

**H.P. 1377 - L.D. 1867**

**An Act To Codify MaineCare Rate System Reform**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 5 MRSA §12004-I, sub-§36-F** is enacted to read:

**36-F.**

Human Services	MaineCare Rate Reform Expert Technical Advisory Panel	Not Authorized	22 MRSA §3173-J, sub-§5
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**Sec. 2. 22 MRSA §3173-J** is enacted to read:

**§3173-J. Rate-setting system for development and maintenance of sustainable, efficient and value-oriented MaineCare payment models and rates**

This section establishes a rate-setting system for the development and maintenance of MaineCare payment models and rates that comply with the requirement in 42 United States Code, Section 1396a that rates be consistent with efficiency, economy and quality of care; that are adequate to support MaineCare member access to services; and that are equitable and data-driven.

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Alternative payment model" means a health care payment model that uses financial incentives to promote or leverage greater value for patients, purchasers, payers or providers and that connects at least a portion of reimbursement to performance on defined quality measures.

B. "MaineCare section of policy" means a set of MaineCare-covered services, as categorized by the department through the adoption of rules that specify the parameters for coverage.

C. "Rate determination" means a process conducted by the department to establish the reimbursement rate methodology, base rate amount or payment model for a MaineCare section of policy or for a specific covered service, whether through adoption or adaptation of a benchmark rate from another payer or development through a rate study.

D. "Rate study" means an analysis conducted by the department or its contracted vendor to develop a recommended rate methodology and resulting base rate amount and payment model based on the service model and cost components for the service.

**2. Rate-setting system principles and processes.**

The department shall establish MaineCare provider reimbursement rates, including those paid through fee-for-service and alternative payment models. The rates must be established in accordance with the following principles and processes and adopted through rulemaking as described in subsection 3. The department shall:

A. Develop annually a schedule of rate determination by MaineCare section of policy in consultation with the MaineCare Rate Reform Expert Technical Advisory Panel established under subsection 5 as follows:

(1) Post the rate determination schedule on its publicly accessible website;

(2) Provide an opportunity for the public to review and comment on the rate determination schedule and make available a summary of these comments on its publicly accessible website; and

(3) Conduct off-schedule rate determinations as the department finds appropriate;

B. Conduct or contract for, every 4 years, a comprehensive benchmarking report to compare MaineCare rates for all services to those paid by Medicare, at least 5 comparison Medicaid states and any appropriate Maine commercial payers. The department shall provide public notice of the initiation of the comprehensive benchmarking process, provide an opportunity for the public to review and comment on the draft report and make available a summary of these comments alongside the final report;

C. Conduct a rate determination process for any contemplated change in reimbursement amount or model for a MaineCare section of policy or for a specific covered service, in accordance with the following procedures:

(1) Provide public notice of initiation of the rate determination for a MaineCare section of policy or for a specific covered service;

(2) Consider and, when appropriate, adopt alternative payment models that use financial incentives to promote or leverage greater value for the MaineCare program. This consideration must include a review of research on any available national models or best practices regarding payment models for the service;

(3) Determine whether a Medicare rate is available for the service and whether the Medicare rate represents the most appropriate benchmark and payment model;

(4) In the absence of a Medicare rate, determine whether a rate from a non-Medicare payer source, including, but not limited to, commercial health care rates in the State or other states' Medicaid rates, is available for the service and whether this alternate payer rate represents the most appropriate benchmark and payment model. The department shall determine an appropriate percentage of the benchmark rate for the service, taking into consideration the findings of the benchmarking report conducted in accordance with paragraph B;

(5) Conduct a rate study for every service for which a benchmark rate or payment model in accordance with subparagraph (3) or (4) either is unavailable or is inconsistent with the goals of efficiency, economy and quality of care to support member access. Each rate study must include the following:

(a) A review of data, which must include:

(i) An assessment as to whether the delivery of service and associated requirements have changed since the previous rate study, if available, to determine if the rate methodology needs to be revised;

(ii) The collection of data on provider costs and cost-related aspects of the delivery of service and associated requirements through existing cost reports, provider surveys and other available data sources; and

(iii) Research on any available national models or best practices regarding cost-related aspects of the

delivery of service and associated requirements; and

(b) Developing or updating rates by considering the following:

(i) The appropriateness of adoption of a change in payment model consistent with the purposes of this section;

(ii) The current rate assumptions and their appropriateness given current provider costs, best practices or changes in the delivery of service and associated requirements;

(iii) The findings for related services of any comprehensive benchmarking report under paragraph B; and

(iv) The degree to which services are dependent on MaineCare reimbursement, including, but not limited to, cost factors, such as average wage, that may be reflective of restraints of MaineCare reimbursement versus costs of the broader marketplace; and

(6) Upon completion of the rate determination process, present the department's rationale and recommendations for rate methodology, resulting base rate amount and payment model for public comment prior to the rule-making process; convene a meeting of interested providers and other interested members of the public to discuss the recommendations and hear comments; and respond in writing to comments with an explanation of whether and how feedback was incorporated into the final rate determination; and

D. Ensure that base rate amounts developed under paragraph C are updated to keep pace with changes in the costs of delivering the service by:

(1) For rates benchmarked to Medicare rates according to paragraph C, subparagraph (3), referencing Medicare rates for the most current year available, updated at least annually, and reviewing the current established percentage benchmark, as appropriate, taking into consideration the findings of the most recent benchmarking report conducted in accordance with paragraph B;

(2) For rates benchmarked to an alternate payer source in accordance with paragraph C, subparagraph (4), updating rates to the most current year of data for that payer source at least once every 2 years and reviewing the current established percentage benchmark, as ap-

appropriate, taking into consideration the findings of the benchmarking report conducted in accordance with paragraph B; and

(3) For base rates determined through a rate study in accordance with paragraph C, subparagraph (5), providing an annual cost-of-living adjustment effective on a consistent date to be established by the department for each service that has not received a rate adjustment within the 12 months prior to the effective date of the cost-of-living adjustment and for which the department determines benchmarking in accordance with paragraph C, subparagraph (3) or (4) is not appropriate or advisable. In establishing cost-of-living adjustments, the department shall:

(a) Use inflation indices determined through rulemaking to reflect a reasonable cost of providing services for different categories of services; and

(b) Maximize use of a single, consistent and general cost-of-living adjustment index, consistent with the cost-of-living adjustment applied to minimum wage laws, in order to ensure that the cost-of-living adjustment reflects increases to provider costs for delivering the service rather than other factors, such as private sector price increases or cost-shifting from different payers.

**3. Rulemaking for establishment of rate methodology.** In addition to the requirements of Title 5, chapter 375, rulemaking for MaineCare provider reimbursement rate methodologies must comply with the following.

A. Establishment of a rate methodology for a new MaineCare section of policy or specific new service or changes to an existing rate methodology must be adopted through rulemaking in accordance with the Maine Administrative Procedure Act. Rulemaking is not required for the addition of new billing codes or to specify rates for specific billing codes if there is no change in the overall methodology and rates are posted in accordance with this section.

B. For services the department benchmarks to Medicare or other available payer rates for reimbursement, the department shall adopt a rule specifying the percentage, frequency of benchmark updates for alternate payer sources and other aspects of the benchmark methodology. Additional rulemaking is not required for rate changes tied to the adopted benchmark methodology, or for the addition of new billing codes, unless the department changes the benchmarking percentage or methodology.

C. No later than July 1, 2023, the department shall adopt a rule specifying the appropriate cost-of-living adjustment methodology for different types of services in accordance with subsection 2, paragraph D, subparagraph (3). Additional rulemaking is not required for rate increases tied to annual cost-of-living adjustment increases unless the department changes the cost-of-living adjustment methodology.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A unless rules to adopt MaineCare reimbursement rates are designated as major substantive rules in another section of law.

**4. Funding.** The department may use funds from the MaineCare Stabilization Fund established in section 3174-KK in order to fund the rate adjustments made in accordance with this section when funding may be needed in addition to appropriations associated with separate initiatives.

**5. MaineCare Rate Reform Expert Technical Advisory Panel.** The MaineCare Rate Reform Expert Technical Advisory Panel, referred to in this subsection as "the panel," is established for the purpose of advising the commissioner by providing technical, nonpartisan, 3rd-party expertise to inform the department's planned schedule and actions on rate assumptions, payment models and other related technical matters. The panel may not propose rates or methodologies. The commissioner or the commissioner's designee shall serve as chair.

A. The panel includes the following members:

(1) A representative from the Maine Health Data Organization;

(2) A representative from the Department of Professional and Financial Regulation, Bureau of Insurance;

(3) A representative from the Department of Professional and Financial Regulation;

(4) A representative from the department's division of licensing and certification;

(5) A representative from the Office of Affordable Health Care;

(6) A representative from the Department of Labor; and

(7) A representative from the Department of Administrative and Financial Services.

B. The panel shall:

(1) Review annual schedules of MaineCare sections of policy scheduled for rate determinations under subsection 2, paragraph A;

(2) Review assumptions and recommendations from rate determinations under subsection 2, paragraph C;

(3) Review findings from benchmarking reports to inform the appropriateness of MaineCare rate levels across services; and

(4) Advise on other related technical matters, as appropriate.

C. The panel shall meet at least twice per year and as otherwise convened by the commissioner. Meetings of the panel are public, and the panel shall provide public notice of each meeting and an opportunity for public comment.

6. MaineCare Advisory Committee. The MaineCare Advisory Committee, required by 42 Code of Federal Regulations, Section 431.12 and further described in department rules, and referred to in this subsection as "the committee," shall participate in the department's rate-setting system in accordance with this subsection.

A. The committee must include a permanent rate system subcommittee that allows broad participation by the full spectrum of types of MaineCare providers. Participation in the rate system subcommittee may not be limited by number or type of stakeholder in order to allow for participation by any stakeholder affected by MaineCare reimbursement policy and interested in participating in the work of the subcommittee.

B. At each meeting of the committee or rate system subcommittee, if requested by the chair of the committee or rate system subcommittee, the department shall provide updates on the department's planned and completed activities under this section for discussion and advisement, including, but not limited to, the following:

(1) Schedule and status of rate determination, planned and in progress, by MaineCare section of policy;

(2) Status of and plans for comprehensive benchmarking studies; and

(3) Contemplated rulemaking to establish rate methodology resulting from rate determination processes.

C. The rate system subcommittee may formulate and present recommendations to the committee pertaining to the department's activities under this section.

7. Index of MaineCare rates by service code; publicly accessible website. The department shall maintain and annually update a centralized master index of rates by service code and post this index on its publicly accessible website. The index must contain the following:

A. The service code, including any modifiers that affect reimbursement;

B. The current year rate;

C. The source for the rate, including, but not limited to, Medicare or alternate payer benchmark, rate study or other source, and the year and the author of the review, study or report that justified the rate;

D. The year the base rate was last updated prior to the application of any subsequent cost-of-living adjustments;

E. Whether the rate is subject to cost-of-living adjustments and, if so, the identity of the benchmark index;

F. The section of MaineCare policy pursuant to which the rate was adopted; and

G. The target date for the next rate review.

In addition to the index, the department shall post on its publicly accessible website all rate studies, benchmark reports and other materials used by the department to develop the rates and payment models.

8. Notice prior to implementation. For planned rate changes that do not require rulemaking as described in subsection 3, the department shall provide notice prior to implementation, of no less than 30 calendar days for cost-of-living adjustments and no less than 7 calendar days for Medicare fee schedule changes or the addition of new service codes, to stakeholders who request to receive such notice.

See title page for effective date.

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**CHAPTER 640**

**H.P. 1406 - L.D. 1899**

**An Act To Ensure Safe Entry and Access for People Seeking Health Care and Other Constitutional Rights**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 5 MRSA §4684-B, sub-§1, ¶B-1** is enacted to read:

B-1. "Medical safety zone" means an area extending 8 feet from the center of the entrance of a building in which patients receive health services.

**Sec. 2. 5 MRSA §4684-B, sub-§2**, as enacted by PL 1995, c. 417, §3, is amended to read:

**2. ~~Violation~~ Intentional violation.** It is a violation of this ~~section~~ subsection for any person, whether or not acting under color of law, to intentionally inter-