

MAINE STATE LEGISLATURE

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L.D. 1951

DATE: 3/31/06

(Filing No. H-933)

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HEALTH AND HUMAN SERVICES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
122ND LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1368, L.D. 1951, Bill, "An Act To Establish Guidelines and Criteria for Audits Conducted by the Department of Health and Human Services"

Amend the bill by striking out everything after the title and before the summary and inserting in its place the following:

Emergency preamble. Whereas, acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Department of Health and Human Services' auditing practices affect the dollar amount returned to the State by providers of health care and other community services; and

Whereas, this legislation must take effect before the expiration of the 90-day period so that its benefits are realized as soon as possible; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 5 MRSA §1660-I, sub-§2, ¶A, as enacted by PL 1995, c. 402, Pt. C, §2, is amended to read:

COMMITTEE AMENDMENT

M

2 A. Adopt rules consistent with the provisions of Title 22,
3 section 41-B establishing accounting and auditing practices
4 for community agencies, including, but not limited to,
5 agreement reporting as part of the annual entitywide
6 financial statement presentation; standards of
7 accountability for community agencies; and audit
8 requirements and standards for the department;

9
10 **Sec. 2. 22 MRS §41-B is enacted to read:**

11 **§41-B. Auditing and adjusting of health care and community**
12 **service provider costs**

13 This section governs the rules of the department and the
14 practices of its auditors in interpreting and applying those
15 rules with respect to payments for providers under the MaineCare
16 program and payments by the department under grants and
17 agreements audited pursuant to the Maine Uniform Accounting and
18 Auditing Practices Act for Community Agencies.

19
20 **1. Revised audit interpretations to be applied**
21 **prospectively. Whenever the department's auditors revise an**
22 **interpretation of a rule, agreement, circular or guideline in a**
23 **manner that would result in a negative adjustment of a provider's**
24 **or agency's allowable costs, the revised interpretation may be**
25 **applied only to provider or agency fiscal years beginning after**
26 **the date of the examination report, audit report or other written**
27 **notification in which the provider or agency receives direct**
28 **notice of the revised interpretation. For the fiscal year to**
29 **which the report containing the revised interpretation applies,**
30 **and any subsequent fiscal year ending prior to the issuance of**
31 **the revised interpretation, the cost that is the subject of the**
32 **revised interpretation must be considered allowable to the extent**
33 **that it was allowable under the interpretation previously applied**
34 **by the Office of Audit for MaineCare and Social Services,**
35 **referred to in this section as "the office of audit." This**
36 **subsection does not prohibit the office of audit from applying an**
37 **adjustment to a fiscal year solely because that cost was not**
38 **disallowed in a prior year.**

39
40 **2. Determination of "ordinary," "necessary" and**
41 **"reasonable" costs. In making findings concerning whether a cost**
42 **is "ordinary," "necessary" and "reasonable," the office of audit**
43 **shall consider the following criteria in conjunction with**
44 **applicable state and federal rules, regulations, guidelines and**
45 **agreements:**

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47 **A. Whether a substantial number of providers of health care**
48 **or community services in the State incur costs of similar**

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magnitude, frequency, quantity or price level to the costs under review;

B. Whether the expenditure is reasonably incurred to produce, accomplish, facilitate or compensate persons for providing an item or service related to the purpose of a program or activity for which the State has contracted or for which the State otherwise provides payment;

C. Whether the expenditure is comparable to an expenditure made by a department or agency of the State responsible for services or programs similar to those to which the finding applies; and

D. Whether the expenditure is consistent with meeting special needs of the population served through innovative or specialized services offered by a particular provider.

3. Employee compensation and benefit costs. In evaluating whether employee wages, salaries and benefits are reasonable and allowable, the department may not disallow the costs of any employee benefits, wages or salaries if the total of those costs is reasonable under the criteria set forth in subsection 2.

4. Other expenses. The department shall modify its rules governing MaineCare reimbursement and other reimbursements pursuant to grants, contracts or agreements for health care providers and other agencies providing community services to allow, to the extent permitted by applicable federal law, the costs of employee information publications, health or first-aid clinics or infirmaries, recreational activities, employee counseling services and any other expenses incurred in accordance with the health care provider or other agency's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale and employee performance.

Sec. 3. 22 MRSA §42, sub-§7, ¶A, as enacted by PL 2001, c. 666, Pt. C, §1, is amended to read:

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.

2 **Sec. 4. 22 MRSA §42, sub-§7, ¶F**, as enacted by PL 2003, c. 419,
§2, is amended to read:

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6 F. By July 1, 2004 the department shall make available on
its publicly accessible ~~site-on-the-Internet~~ website the
8 decisions in all MaineCare provider appeals beginning
January 1, 2004, including the recommendations of the
10 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.

22 (1) The ~~site~~ website must include a search feature
24 allowing users to obtain information on specific issues
of interest.

26 (2) The ~~site~~ website must protect information that is
28 personal or confidential.

30 **Sec. 5. Rules; effective date.** The Department of Health and
Human Services shall amend its rules governing reimbursement,
32 contracting, grants, payments, cost reports and audits with
respect to providers of health and community services to ensure
34 that all of the requirements of this Act are applied to all
audits completed on or after the effective date of this Act.
36 Unless the law requiring the department to adopt or amend these
rules indicates otherwise, rules adopted pursuant to this section
38 are routine technical rules as defined in the Maine Revised
Statutes, Title 5, chapter 375, subchapter 2-A. The department
shall complete its rulemaking pursuant to this section no later
40 than December 15, 2006. From the effective date of this Act
until the date the rule amendments adopted pursuant to this
42 section take effect, the department shall apply the requirements
and principles established in this Act to all audits conducted
44 under its existing rules. In the event of any conflict between
those rules and this Act, the provisions of this Act supersede
46 the rules.

48 **Sec. 6. Studies and reports; timing of audits; technical assistance; cost**
reimbursement. The Department of Health and

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Human Services, Office of Audit for MaineCare and Social Services shall complete the following studies and reports.

1. **Timing of audits.** The Department of Health and Human Services, Office of Audit for MaineCare and Social Services shall review its procedures and criteria for audit activity for the purpose of identifying means of improving the timeliness of its audit determinations, with the goals of issuing an audit report or examination report within 12 months of the filing of a cost report or financial statement with supporting schedules, as the case may be, and achieving this improvement in timeliness within existing personnel and other resources.

By January 15, 2008, the department shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters on the department's findings concerning the feasibility of meeting the goals set forth in this subsection. If the department finds that these goals cannot be met, the department shall further report on the period of time within which audits can regularly be completed using existing resources and the estimated additional resources required to achieve the goal of issuing all audit or examination reports within 12 months.

2. **Training and technical assistance for providers.** The Department of Health and Human Services, Office of Audit for MaineCare and Social Services shall review, in consultation with representatives of mental health, mental retardation, substance abuse and long-term care providers, its existing programs of training for providers to determine whether those programs are sufficient to provide complete and current information, on an ongoing basis, regarding the process of auditing cost reports and agreement settlements and the substantive standards and interpretations to be applied in conducting such audits. The office shall identify, with reasonable frequency, the programmatic changes needed to ensure that sufficient training is available to all categories of care providers and to independent public accountants providing services to such providers and that a system is in place to make available to providers, on request, knowledgeable members of its staff to provide such technical assistance as providers may require in order to achieve compliance with the standards applied by the office. By January 15, 2008, the department shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters on its findings and on the dates by which the necessary programmatic changes will be implemented.

3. **Consistency in cost reimbursement.** The Department of Health and Human Services shall review its rules governing cost reimbursement of health care providers to identify the

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2 substantial inconsistencies among those rules in the definitions
of "ordinary," "necessary" and "reasonable" costs that are
4 allowable and the criteria concerning and the limitations on
reimbursement thereof, including the assignment of costs to
6 various rate components. The department shall consult with
providers and report to the joint standing committee of the
8 Legislature having jurisdiction over health and human services
matters regarding methods and procedures that the department may
10 adopt and follow to ensure that consistency among these rules is
achieved and maintained as policy changes occur. The department
shall complete its review and report by January 1, 2007.

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14 **4. Implementing legislation.** Following its receipt and
review of each report described in this section, the joint
16 standing committee of the Legislature having jurisdiction over
health and human services matters may report to the Legislature
such recommended legislation as may be necessary to accomplish
18 the objectives addressed in the reports.

20 **Emergency clause.** In view of the emergency cited in the
preamble, this Act takes effect when approved.
22

24 **SUMMARY**

26 This amendment replaces the bill and requires several
reforms and revisions of the audit practices of the Department of
28 Health and Human Services. The amendment requires revised audit
interpretations to be applied prospectively and provides new time
30 frames for informal review and appeals. It provides criteria that
the department must consider when determining the reasonableness
32 of costs, including employee compensation and benefits costs. It
requires the department to post final informal review decisions
34 and appeals decisions on its website along with key
interpretations and findings from recent audits. The amendment
36 also requires the department to complete studies and reports on
the timing of audits, training and technical assistance for
38 providers and consistency of cost reimbursement. The amendment
also directs the department to amend its rules governing
40 reimbursement, contracting, grants, payments, cost reports and
audits. It allows the joint standing committee of the Legislature
42 having jurisdiction over health and human services matters to
report out legislation as needed to accomplish the
44 recommendations of the reports. The amendment adds an emergency
preamble and an emergency clause, allowing it to take effect upon
46 approval.

FISCAL NOTE REQUIRED
(See attached)



122nd MAINE LEGISLATURE

LD 1951

LR 2882(02)

An Act To Establish Guidelines and Criteria for Audits Conducted by the Department of Health and Human Services

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Health and Human Services

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

Any additional costs to the Department of Health and Human Services resulting from this bill can be absorbed by the department utilizing existing budgeted resources.