

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

SECOND REGULAR SESSION-2006

Legislative Document

No. 1951

H.P. 1368

House of Representatives, January 9, 2006

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

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Health and Human Services suggested and ordered printed.

Millicent M. MacFarland

MILLICENT M. MacFARLAND

Clerk

Presented by Representative TARDY of Newport.

Cosponsored by Representatives: LERMAN of Augusta, LEWIN of Eliot, McCORMICK of West Gardiner, SHIELDS of Auburn, Senators: ROSEN of Hancock, STRIMLING of Cumberland.

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

Sec. 1. 22 MRSA §41-B is enacted to read:

§41-B. Auditing and adjusting of health and community service provider costs

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

1. Revised audit interpretations to be applied prospectively. Whenever the department's auditors revise an interpretation of a rule, agreement, circular or guideline in a manner that results in a negative adjustment of a provider's or agency's allowable costs, the revised interpretation may be applied only to provider or agency fiscal years beginning after the date of the examination report or audit report in which the provider or agency receives notice of the revised interpretation. For the fiscal year to which the report containing the revised interpretation applies, and any subsequent fiscal year ending prior to the issuance of the revised interpretation, the Office of Audit for MaineCare and Social Services, referred to in this section as "the office of audit," may not make any negative adjustment to allowable costs that reflects the revised interpretation. For purposes of this subsection, "revised interpretation" includes an interpretation supporting an adjustment that was not made in the prior year, when facts existed on which a substantially similar adjustment could have been made in the prior year if the same interpretation had been applied, even if reports in prior years were silent with respect to any such adjustment.

2. Timing of audits. Unless otherwise agreed to by the organization subject to audit, the department shall complete its audit and issue an examination report or audit report no later than 12 months following the filing of any cost report, financial statement or other schedule that is subject to audit.

3. Appeal time frames. 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 allow 60 days after its receipt of a final informal review decision for a provider to request an appeal hearing for review of that decision.

2 **4. Determination of "ordinary," "necessary" or "reasonable"**
3 **costs.** In making findings concerning whether costs are
4 "ordinary," "necessary" or "reasonable," the office of audit
5 shall consider any practice, type, quantity, frequency or price
6 level of an expenditure to be reasonable, ordinary and necessary
7 if the expenditure meets any of the following standards.

8 A. A substantial number of providers of health care or
9 community services in Maine incur costs of similar
10 magnitude, frequency, quantity or price level to the costs
11 under review.

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

17 C. The expenditure is comparable to one incurred by a
18 department or agency of the State responsible for services
19 or programs similar to those to which the finding applies.

20 D. The expenditure, when considered in combination with all
21 amounts expended for the program under review, results in an
22 overall cost that is reasonable relative to other providers
23 of the same or similar items or services, taking into
24 account any special needs of the population served and any
25 innovative or specialized services offered by a particular
26 provider.

27 **5. Employee compensation and benefit costs.** In evaluating
28 the reasonableness and allowability of employee wages, salaries
29 and benefits, the department shall apply the following criteria.

30 A. The department may not disallow any employee benefits,
31 wages or salaries, or any expenditures as described in
32 paragraph B, if the total of employee salaries, wages,
33 benefits and expenses described in paragraph B is less than
34 or equal to the total cost of wages, salaries, benefits and
35 expenses described in paragraph B for employees of the State
36 performing similar functions. This paragraph may not be
37 construed to require disallowance of greater compensation
38 costs that are otherwise reasonable under applicable facts
39 and circumstances.

40 B. The department shall modify its rules governing
41 MaineCare reimbursement and reimbursement pursuant to
42 grants, contracts or otherwise for health care providers and
43 other agencies providing community services. The office of
44 audit shall interpret any existing provisions of the

2 department's rules to allow the costs of employee
3 information publications, health or first-aid clinics or
4 infirmaries, recreational activities, employee counseling
5 services and any other expenses incurred in accordance with
6 the organization's established practice or custom for the
7 improvement of working conditions, employer-employee
8 relations, employee morale and employee performance,
9 including without limitation any incidental gifts, awards or
10 rewards given to employees as incentives for recognition of
11 performance or to encourage or foster cooperation or
12 productivity.

13 **6. Review thresholds.** The department shall, by rule,
14 establish minimum dollar amounts or other limits on the
15 significance or magnitude of adjustments that will be made during
16 an audit, in order to avoid imposing undue burdens on providers
17 by reviewing and adjusting costs with an insignificant impact on
18 overall expenses. Rules adopted pursuant to this subsection are
19 major substantive rules as defined in Title 5, chapter 375,
20 subchapter 2-A.

21 **7. Training and technical assistance for providers.** The
22 department shall ensure that the office of audit makes available
23 a regular program of training to enable providers to have
24 complete and current information regarding the process of
25 auditing cost reports and agreements and the substantive
26 standards that will be applied in conducting such audits. The
27 department shall ensure that the office of audit makes available
28 to providers, on request, knowledgeable members of its staff to
29 provide such technical assistance as providers may require in
30 order to achieve compliance with the standards applied by the
31 office of audit.

32 **Sec. 2. 22 MRSA §42, sub-§7, ¶F.** as enacted by PL 2003, c. 419,
33 §2, is amended to read:

34 F. By July 1, 2004 the department shall make available on
35 its publicly accessible site on the Internet the decisions
36 in all MaineCare provider appeals beginning January 1, 2004,
37 including the recommendations of the hearing officer and the
38 decision of the commissioner. By August 1, 2006 the
39 department shall make available on the same site all final
40 informal review decisions issued with regard to audit
41 reports or examination reports, as well as copies of any
42 decisions issued by the department or on appeal from the
43 department in any appeal filed pursuant to the Maine Uniform
44 Accounting and Auditing Practices Act for Community Agencies.
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2 (1) The site must include a search feature allowing
users to obtain information on specific issues of
interest.

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6 (2) The site must protect information that is personal
or confidential. The parties to a consent decree or
settlement agreement may provide for the
8 confidentiality of the decision.

10 **Sec. 3. 22 MRSA §42, sub-§7, ¶I** is enacted to read:

12 I. By January 1, 2007 all hearing officers to whom the
department refers appeals to the commissioner concerning
14 MaineCare payment and cost report audit and review issues
must be employed and supervised by a person or agency of
16 State Government independent of the department and not
subject to the department's supervision or discipline.

18 **Sec. 4. Rules; effective date.** The Department of Health and
20 Human Services shall amend its rules governing reimbursement,
contracting, grants, payments, cost reports and audits with
22 respect to providers of health and community services to ensure
that all of the requirements of this Act are applied to all
24 audits completed on or after the effective date of this Act.
Unless the law requiring the department to adopt or amend these
26 rules indicates otherwise, rules adopted pursuant to this section
are routine technical rules as defined in the Maine Revised
28 Statutes, Title 5, chapter 375, subchapter 2-A.

30 **SUMMARY**

32 This bill requires several reforms and revisions of the
34 practices of the Department of Health and Human Services, Office
of Audit for MaineCare and Social Services in order to ensure
36 that providers of health care and other community services,
subject to audit of their financial statements or their cost
38 reports, are treated fairly and reasonably with respect to
amounts paid to them and with respect to any changes in
40 interpretation or policy that might affect amounts to be returned
to the department retroactively. The bill requires changes in
42 interpretation to be applied prospectively, bars disallowance of
compensation costs if they are no greater in aggregate than those
44 paid to state employees with comparable responsibilities and
requires industry standards to be applied when determining
46 reasonableness of costs. To encourage consistency, all informal
review decisions, as well as appeal decisions, must be
48 published. To promote fairness, the office that hears appeals of
MaineCare payments must be made independent of the department by
50 January 1, 2007.