

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-EIGHTH LEGISLATURE

FIRST REGULAR SESSION
December 7, 2016 to August 2, 2017

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IN ACCORDANCE WITH THE MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Augusta, Maine
2017

CHAPTER 15
H.P. 841 - L.D. 1205

**Resolve, Regarding Legislative
Review of Portions of Chapter
101: MaineCare Benefits
Manual, Chapter III, Section
21, Allowances for Home and
Community Services for Adults
with Intellectual Disabilities or
Autism Spectrum Disorder, a
Late-filed Major Substantive
Rule of the Department of
Health and Human Services**

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

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, the above-named major substantive rule has been submitted to the Legislature outside the legislative rule acceptance period; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; 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

Sec. 1. Adoption. Resolved: That final adoption of portions of Chapter 101: MaineCare Benefits Manual, Chapter III, Section 21, Allowances for Home and Community Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder, a provisionally adopted major substantive rule of the Department of Health and Human Services that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A outside the legislative rule acceptance period, is authorized only if:

1. In Section 1050 of the rule, the definition of "per diem" is changed to:

A. Remove the proposed requirement that a provider bill only for days on which a member is receiving per diem home support at 11:59 p.m.;

B. Clarify that there is no requirement that a provider bill only for days on which a member is physically present in the home at 11:59 p.m.; and

C. Clarify that on days when a member is transitioning between providers of home support, only the provider providing home support services at 11:59 p.m. may bill for home support; and

2. In Section 2000 of the rule, relating to audit of services provided, the proposed change in the documentation requirement for staffing schedules is removed so that the documentation requirement remains as it is in current rules, which require documentation showing the hours and the name of the direct staff scheduled to work at the facility.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective June 8, 2017.

CHAPTER 16
H.P. 940 - L.D. 1363

**Resolve, Regarding Legislative
Review of Portions of Chapter
11: Rules Governing the
Controlled Substances
Prescription Monitoring
Program and Prescription of
Opioid Medications, a
Late-filed Major Substantive
Rule of the Department of
Health and Human Services**

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

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, the above-named major substantive rule has been submitted to the Legislature outside the legislative rule acceptance period; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; 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

Sec. 1. Adoption. Resolved: That final adoption of portions of Chapter 11: Rules Governing the Controlled Substances Prescription Monitoring

Program and Prescription of Opioid Medications, a provisionally adopted major substantive rule of the Department of Health and Human Services that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A outside the legislative rule acceptance period, is authorized only if:

1. Cancer aftercare. In Section 4, subsection A, paragraph 4, subparagraph b, division (i) in the portion of the rule that is a routine technical rule, Exemption Code A for active and aftercare cancer treatment must be amended to remove the 6-month limit for aftercare cancer treatment post remission;

2. Second prescriptions for opioids. In Section 4, subsection A, paragraph 4, subparagraph b, division (i) in the portion of the rule that is a routine technical rule, Exemption Code H is amended to provide that if an individual is prescribed a 2nd opioid after proving unable to tolerate a first opioid, the individual is not required to return the initial prescription to a pharmacy for collection prior to dispensation of the 2nd prescription. The department shall recommend to dispensers that a patient be provided with guidance on proper disposal of the first opioid prescription;

3. Early refills. In Section 4, subsection B of the rule, a new paragraph 3 is added to allow for dispensers to provide an early refill of a prescription to an individual before the refill date if, in the judgment of the dispenser, the early refill does not represent a pattern of early refill requests by the individual;

4. Verification by dispensers. In Section 4, subsection B of the rule, a new paragraph 4 is added to allow for dispensers to contact prescribers by telephone to verify and document information about prescriptions;

5. Out-of-state prescriptions. In Section 4, subsection B of the rule, a new paragraph 5 is added to establish a process for a dispenser who receives a prescription for an opioid medication from an out-of-state prescriber that does not comply with department rules. The dispenser may fill the prescription if the dispenser records an oral confirmation with the validity of the prescription from the out-of-state prescriber and documents any missing information such as diagnosis code, exemption code and acute or chronic pain notation and the dispenser makes a reasonable effort to determine that the oral confirmation came from the prescriber or prescriber's agent, which may include a telephone call to the prescriber's telephone number listed in a telephone directory or other directory; and

6. Delayed implementation of ICD-10 codes. In Section 5, subsection C, paragraph 1, subparagraph n of the rule, the requirement for dispensers to provide information to the Prescription Monitoring Program on the exemption code and ICD-10 code is delayed until July 1, 2018 and a provision is added to authorize a

waiver after that date from the department for dispensers who are unable with good cause to comply with the requirement.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective June 19, 2017.

CHAPTER 17

H.P. 941 - L.D. 1364

Resolve, Regarding Legislative Review of Portions of Chapter 101: MaineCare Benefits Manual, Chapter III, Section 97: Private Non-Medical Institution Services, a Major Substantive Rule of the Department of Health and Human Services

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

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, the above-named major substantive rule has been submitted to the Legislature for review; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; 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

Sec. 1. Adoption. Resolved: That final adoption of portions of Chapter 101: MaineCare Benefits Manual, Chapter III, Section 97: Private Non-Medical Institution Services, a provisionally adopted major substantive rule of the Department of Health and Human Services that was submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A on June 6, 2016, is not authorized.