

Notice of Agency Rule-making Adoption

AGENCY: Department of Health and Human Services, Office of Child and Family Services

CHAPTER NUMBER AND TITLE: 10-148 Chapter 21: Rules for the Provision of Payments for Residential Programs Serving Children

ADOPTED RULE NUMBER:

(LEAVE BLANK - ASSIGNED BY SECRETARY OF STATE)

CONCISE SUMMARY

This emergency major substantive rule establishes a new, increased rate of \$81.00 per occupied bed day that the Department pays to children's PNMs governed by Appendix D of 10-144 C.M.R. Ch. 101 (the MaineCare Benefits Manual) Chs. II and III, Section 97 as a result of providers' increased costs associated with the COVID-19 coronavirus pandemic, particularly in light of the surge of COVID-19 infections, hospitalizations, and death Maine is currently experiencing. The Department will pay the new \$81.00 per occupied bed day rate effective January 1, 2021 until March 31, 2021.

EFFECTIVE DATE:

(TO BE FILLED IN BY SECRETARY OF STATE)

AGENCY CONTACT PERSON: Debra White

AGENCY NAME: Department of Health and Human Services, Office of Child and Family Services

ADDRESS: 2 Anthony Avenue, Augusta, ME 04330

TELEPHONE: (207) 624-7968

Please approve bottom portion of this form and
assign appropriate AdvantageME number.

APPROVED FOR PAYMENT


Authorized signature

DATE: 1-4-2021

Payment Code: 010-10A-5404-07-CV19 (Dept Obj)-100%

Rule-Making Fact Sheet

(5 MRS §8057-A)

AGENCY: Department of Health and Human Services, Office of Child and Family Services

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Debra White
Office of Child and Family Services
Hearings & Appeals Unit
11 State House Station
2 Anthony Avenue
Augusta, ME 04330-0011

CHAPTER NUMBER AND RULE TITLE:

10-148 Chapter 21: Rules for the Provision of Payments for Residential Programs Serving Children

STATUTORY AUTHORITY: 22 M.R.S. §§ 42(8), 3174-Z, and 4062; 5 M.R.S. § 8073

DATE AND PLACE OF PUBLIC HEARING: Emergency Rule

COMMENT DEADLINE: Emergency Rule

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE:

Pursuant to 5 M.R.S. § 8073, the Department finds that emergency rulemaking is necessary to implement this change as soon as possible to ensure that Maine's PNMI's have sufficient resources to meet the challenges stemming from the current surge of the ongoing COVID-19 coronavirus, and to continue to provide services for hundreds of children in Maine. Without this rate increase, Maine's children's residential PNMI providers may soon lack the financial resources to sustain operations, putting Maine children at risk. Emergency procedures are needed to establish this rate immediately because children's residential PNMI providers are already facing extreme, unanticipated financial threats to their continued operation.

ANALYSIS AND EXPECTED OPERATION OF THE RULE:

The Department currently pays all Appendix D PNMI's at a Standard Room and Board Rate of \$54.45 per occupied bed day. This emergency rule temporarily increases the Standard Room and Board Rate by \$26.55 to \$81.00 per occupied bed day, beginning January 1, 2021 and ending March 31, 2021. The Department is exercising its discretion to establish this rate change pursuant to 22 M.R.S. § 4062. Given the urgency, and because this change benefits providers, the Department is making the rate increase retroactive to January 1, 2021 as authorized by 22 M.R.S. § 42(8).

FISCAL IMPACT OF THE RULE:

\$720,000

FOR RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:

The Department estimates a fiscal impact of \$1.1 million by increasing the room and board rate to \$81/day/child for all children placed with instate children's residential providers.

INDIVIDUALS OR GROUPS AFFECTED AND HOW THEY WILL BE AFFECTED:

Children's residential providers will receive an increased room and board rate.

BENEFITS OF THE RULE:

Children's residential providers will receive an increased room and board rate which will allow them to continue to provide services to children during the COVID-19 pandemic.

Note: If necessary, additional pages may be used.

EMERGENCY MAJOR SUBSTANTIVE BASIS STATEMENT

10-148 C.M.R. CH. 21

RULES FOR THE PROVISION OF ROOM AND BOARD PAYMENTS FOR RESIDENTIAL PROGRAMS SERVING CHILDREN

EMERGENCY MAJOR SUBSTANTIVE RULE

Coronaviruses are a large family of viruses that are common in people and many different species of animals, including camels, cattle, cats, and bats. Rarely, animal coronaviruses can infect people and then spread between people. Late in 2019, a new such virus appeared, initially on the Chinese mainland, but rapidly spreading elsewhere. This virus, typically referred to as “Novel Coronavirus,” but officially named “SARS-CoV-2,” has led to the development in humans of a new disease, “coronavirus disease 2019,” typically referred to as “COVID-19.” On March 11, 2020, the World Health Organization declared COVID-19 a worldwide pandemic.

Although Governor Janet Mills declared a state of civil emergency by proclamation pursuant to 37-B M.R.S. § 742(1)(A) as early as March 15, 2020, and has continually renewed that declaration ever since, over the past month, Maine’s Centers for Disease Control and Prevention (CDC) has reported rates of COVID-19 infection as well as resulting hospitalizations and deaths resulting from COVID-19 at levels many times higher than at any other point during the civil emergency. This surge affects communities across the state.

Pursuant to 10-144 C.M.R. Ch. 101 (the MaineCare Benefits Manual) Chs. II and III, Section 97 (Private Non-Medical Institutions, or “PNMI”, Services), PNMI provide Medicaid services to various populations in Maine. Here, Section 97, Appendix D, govern the PNMI providing residential treatment to children statewide. However, Medicaid does not reimburse for room and board, thus the state makes payments to PNMI providers to cover some of these costs.

The current surge of COVID-19 infections has created a number of challenges for PNMI providing residential treatment to children statewide. PNMI have been deemed an essential service as they are providing care and treatment for hundreds of children across the state. In the face of these challenges, several providers have recently shut down, resulting in a loss of residential care beds for Maine children..

Specifically, challenges include:

- The need to assure adequate staffing levels for children who need to be separated from the normal milieu due to suspected or confirmed COVID-19 infection.
- The need to assure adequate staffing levels if members of a provider’s staff are absent due to suspected or confirmed COVID-19 infection.
- The cost of Personal Protective Equipment (PPE) to ensure the safety of staff and children.
- The cost to increase the frequency and intensity of cleaning within the program and ensure areas are regularly sanitized.
- The need to assure adequate staffing to complete regular screening of children and staff for COVID-19 symptoms throughout the day.
- The need to furnish adequate employee compensation necessary to hire and retain qualified staff. Other industries deemed essential during the current pandemic have increased pay for their staff to compensate for the risk of exposure to COVID-19.

- School closures and virtual schooling have resulted in increased need for staffing. Prior to the pandemic children left the residential setting to receive educational services elsewhere, allowing providers to decrease staffing during this time. Due to the pandemic most children in residential are completing school virtually and residential providers are required to maintain staff not previously required in order to supervise schooling.

This emergency rule temporarily increases the Standard Room and Board Rate under 10-148 C.M.R. Chapter 21. The current rate for providers governed by this rule is \$54.45 per occupied bed day. This rate is not in the rule. In this emergency rulemaking, the Department increases the standard Room and Board Rate by \$26.55 to \$81.00 per occupied bed day, effective January 1, 2021 and continuing until March 31, 2021. The Department is making the rate increase retroactive to January 1, 2021. This retroactive application is authorized by 22 M.R.S. § 42(8), as it provides a financial benefit to the providers.

Pursuant to 5 M.R.S. § 8073, the Department finds that emergency rulemaking is necessary to implement this change as soon as possible to ensure that Maine's PNMI's providing residential programs serving children have sufficient resources to meet the challenges stemming from the COVID-19 coronavirus, and to continue to provide services for hundreds of children in Maine. In the face of the current surge and its effect on PNMI's operations, without this rate increase, Maine's PNMI providers may soon lack the financial resources to sustain operations, putting Maine children at risk. Emergency procedures are needed to establish this rate immediately because children's PNMI providers are already facing extreme, unanticipated financial threats to their continued operation as a result of the current COVID-19 situation, detailed above.

Emergency major substantive rules are effective for up to one year, pursuant to 5 M.R.S. § 8072. Moving forward, the Office of Child and Family Services (OCFS) is collaborating with MaineCare on a rate study for children's residential care. The study is considering both the MaineCare portions of the service, as well as the room and board rate covered by this rule, 10-148 C.M.R. Chapter 21. It is anticipated that in early 2021 MaineCare's contracted provider will complete the rate study and OCFS plans to update the rate permanently through non-emergency, major substantive rulemaking pursuant to 5 M.R.S. § 8071 once the rate study is complete.

STATUTORY AUTHORITY

22 M.R.S. §§ 42(8), 3174-Z, and 4062; 5 M.R.S. § 8073

EFFECTIVE DATE

Rule-Making Cover Sheet

MAPA-1

TO: **Secretary of State**
ATTN: **Administrative Procedure Officer,**
State House Station 101, Augusta, Maine 04333.

1. **Agency:** Department of Health and Human Services, Office of Child and Family Services
2. **Agency umbrella and unit number:** 10-148
3. **Title of rule:** Rules for the Provision of Payments for Residential Programs Serving Children
4. **Chapter number assigned to the rule:** Chapter 21
(must be 3 digits or less)
5. **Date(s)/method(s) of notice:**
6. **Date(s)/place(s) of hearing(s):** No hearing held.
7. **Type:** new rule partial amendment(s) of existing rule
 suspension of existing rule repeal of rule emergency rule
 repeal and replace:
8. **Name/phone of agency contact person:** Debra White, (207) 624-7968
9. **If a major substantive rule under Title 5, c. 375, sub-CII-A, check one of the following**
 Provisional adoption **Final adoption**
(prior to Legislative review)
 emergency adoption of major-substantive rule

10. Certification Statement: I, Jeanne Lambrew, Commissioner hereby certify that the attached is a true copy of the rule(s) described above and lawfully adopted by

The Department of Health and Human Services on 1-5-21
(name of agency) (date)

I further certify that all portions of this rule are adopted in compliance with the requirements of the Maine Administrative Procedure Act.

Signature: Jeanne M. Lambrew
(original signature, personally signed by the head of agency)

Printed name & title: Jeanne Lambrew, Commissioner

11. Approved as to form and legality by the Attorney General on 1-5-21
(date)

Signature [Signature]
(original signature, personally signed by an Assistant Attorney General)

Printed Name: STANLEY ABRAHAM