

**10-144 C.M.R. Chapter 101, MaineCare Benefits Manual  
Chapter III, Section 67, Principles of Reimbursement for Nursing Facilities**

**Summary of Public Comments and the Department's Responses  
And List of Changes Made to the Final Rule**

The Department of Health and Human Services (Department) provided a public hearing on June 14, 2022. Written and verbal comments were accepted from June 13, 2023 through July 24, 2023.

Comments were received from the following people:

**Table of Commenters**

1. Angela Westhoff, CEO, Maine Health Care Association
2. Wanda Pelkey, CFO, First Atlantic Healthcare

**Summary of Comments and Responses**

1. **Comment:** Regarding Section 13.2.1. Regarding the change from 50% to 100% of the amount owed that a nursing facility must pay when the as-filed cost report indicates funds are owed to the Department, Commenter 1 suggested that a similar level of responsiveness be reciprocated when it comes to the percent that the Department owes to a nursing facility, specifically recommending that 75% of the funds owed to the facility be paid within 90 days of the filing of the cost report.

**Response:** The Department thanks the commenter for this suggestion. This was also in Resolves 2021, ch. 121. The Department is adding the change to the final rule.

2. **Comment:** Regarding Section 13.2.6. Commenter 1 asked why the additional items to be submitted as supporting documentation with cost reports will be relevant under the new rate structure being developed. The commenter further asked, for those providers that own multiple facilities that are under one parent company, how will the Department expect that reconciliation of financial statements to cost reports be done on a facility-by-facility basis.

**Response:** This change is a clarification to the rule as the additional items are already required as supporting documentation with cost reports. Those providers that own multiple facilities under one parent company already submit documentation as part of their financial statements include a supplementary schedule that breaks down on a facility-by-facility basis. No changes were made to the rule based on this comment.

- 2a. **Comment:** Regarding Section 13.4, Commenter 1 commented: "Proposed rule changes outlined on page 16 indicate that the Department will no longer be performing desk audits but will review each cost report submitted for acceptance."

**Response:** The Department will continue to perform audits to determine allowability of costs and conduct a final settlement. This process is no longer called a "uniform desk review"; it is called an "audit." Additionally, the Department has deleted the requirement that such audits be

completed within three hundred and sixty five (365) days after receipt of an acceptable cost report filing. The Department has added language to Section 13.4.2 to clarify this.

3. **Comment:** Regarding Section 13.4.1.3. Commenter 1 asked what criteria will be used when analyzing cost reports to determine the adequacy and completeness of support documentation.

**Response:** There will be no change to the existing process. The Department examines the completeness of a cost report and verifies that no schedules have been altered and that all supporting documentation has been submitted. No changes were made to the rule based on this comment.

4. **Comment:** Regarding Section 16.1.7. Commenter 1 asked how “cost-effective” will be defined for the addition of health savings accounts (HAS) and flexible spending accounts (FSA) in the list of direct cost components. Commenter 1 also asked if HSA and FSA costs specifically allocable to routine wages will now be allowable. Finally, Commenter 1 also recommended that health insurance be treated as a fixed cost.

**Response:** The provider must document that the accounts chosen are less costly than competing options. HSA and FSA costs will be allowed under Routine Cost Components. Those have been added to the final rule based on this comment. The Department thanks the commenter for the recommendation that health insurance be treated as a fixed cost, but that goes beyond the scope of this rulemaking. No changes were made to the rule based on this comment.

5. **Comment:** Regarding Section 17.4.1. Commenter 1 commented that software costs are currently treated as fixed costs, so the proposed change is not an improvement for nursing facilities and will adversely impact reimbursement. Commenter 1 commented that these expenses are necessary, are related to the quality of care for residents, and are a long-term investment and should be a fixed cost.

**Response:** Not all software costs are currently treated as fixed costs. No changes were made to the final rule based on this comment.

6. **Comment:** Regarding Section 17.4.2.6. Commenter 1 objected to the addition of Purchased Central Office Services as it would adversely affect vendor relationships and questioned the authority by which the Department can impose contract limitations for services provided by a third-party vendor if rates are reasonable and services are necessary. Commenter 1 also asked how the change would impact existing allocation methods for facilities and their arrangements.

Commenter 2 commented that the change is unnecessary or appropriate. Commenter 2 stated that the basic provisions ensure only proper allowable costs for any type of goods and services are reimbursed. Commenter 2 asked the Department to explain the problem being solved or the justification for singling out “purchased central office services” by “providers who provide central office services for its own facilities.”

**Response:** The Department thanks the commenters. The Department is not imposing contract limitations for nursing facilities purchasing services, rather, the Department is adopting a rule that provides what reimbursement it will pay nursing facilities for central office services that the nursing facility purchases from another provider. As a result of the comments, the Department clarified the language to state that central office services will be limited to the actual costs of the service and will be treated as a service performed by a related party. The Department also

clarified that any nursing facility providing this service to another nursing facility will not be reimbursed by MaineCare for providing this service.

7. **Comment:** Regarding Section 17.4.2.11. Commenter 1 noted that in addition to the cost of operation for just one (1) motor vehicle the proposed change will now pertain to an entire campus if there is a multi-level facility co-located and raised the concern that one wheelchair van would be inadequate if a facility has 100 nursing home residents and 50 PNMI residents. Commenter 1 suggested allowing up to two vehicles for a cost allowance and any beyond that be subject to Department's prior approval.

**Response:** The Department thanks the commenter for this comment. Any provider has the option to seek prior approval for another vehicle if their needs warrant it. No change was made to the rule based on this comment.

8. **Comment:** Regarding Section 18.1. Commenter 1 objected to the strike-through of "All allowable costs not specified for inclusion in another cost category pursuant to these rules shall be included in the fixed cost component subject to the limitations set forth in these Principles."

**Response:** The Department thanks the commenter for this comment. This change reflects actual practice by the Department and no impact on providers is anticipated. No changes were made to the rule based on this comment.

9. **Comment:** Regarding Section 18.5.1. Commenter 1 asked how "for a purpose related to patient care, and..." will be defined, and asked why the change is being made. Commenter 1 offered alternative language: "for a purpose related to the operations and long-term capital investment of a nursing facility."

Commenter 2 agreed that MaineCare principles should mirror the Medicare Principles for ordering how principal payments are applied to necessary versus unnecessary borrowing. Commenter 2 asked that the Department ensure the rules follow all Chapter 2 Medicare Principle of Reimbursement provisions related to the ordering of principal borrowings and allowability of interest expense.

**Response:** The Department thanks for the commenters for these comments and notes that this regulation defines allowable costs as those costs which are essential for resident care. See Principle 1.4 (Definition of Reasonable Costs). No changes were made to the rule based on these comments.

10. **Comment:** Regarding Section 18.9. Commenter 1 asked for clarification around occupancy adjustment, requesting that the Department either continue the penalty waiver until rate reform is implemented or lower the occupancy to 60%.

**Response:** The Department thanks the commenter for this comment, but it goes beyond the scope of this rulemaking. No changes were made to the rule based on this comment.

11. **Comment:** Regarding Section 18.12. Commenter 1 welcomed the elimination of the requirement that base year direct and routine aggregate costs per day be less than the median aggregate direct and routine allowable costs for the facility's peer group.

**Response:** The Department thanks the commenter for this comment.

12. **Comment:** Regarding Section 22.3.4.3. Commenter 1 requested an opportunity for additional dialogue on the forms and data being collected and used by the Department to determine the delta between current pay rates and the 125% of minimum wage. Commenter 1 recommended that the data be collected no less than every two years and that these add-ons should be case-mix adjusted like every other labor portion of direct care costs which are adjusted.

**Response:** The current add-on rates for Part AAAA were based on data collected in July and August of 2022, with rates subsequently adjusted for cost-of-living increases, consistent with P.L. 2021, ch. 398 § AAAA-5. The add-on rates were based on current facility-specific staffing and wage levels, and the data collection requirements and methodology were developed in collaboration with the Maine Health Care Association. The Department is in the midst of a rate determination for Nursing Facility and Residential Care services and is reassessing its approach to reimbursement for direct care and other cost components. Conducting a new round of Part AAAA data collection immediately prior to the planned implementation of a new reimbursement methodology is not feasible.

The current add-on approach is consistent with the approach taken with the previous “Supplemental Wage Allowances,” in that they were not adjusted for case mix. One risk to adjusting the add-on rates for case mix would be that facilities with a lower resident acuity on average could have their Part AAAA add-on rate adjusted downward, which may then be insufficient for facilities to pay at least 125% of minimum wage to all essential workers.

No changes were made to the rule based on this comment.

13. **Comment:** Regarding Section 41.1. Commenter 1 appreciated the removal of the MaineCare utilization requirement of 95% or greater for remote island facilities and rate setting.

**Response:** The Department thanks the commenter for this comment.

14. **Comment:** Regarding Section 44 (Special Wage Allowance). Commenter 1 thanked the Department for the change but sought clarity on the date ranges provided as it seems like a six-month period is left unaccounted for and asked for the rationale behind using 2016 and 2017 as a basis for these calculations.

**Response:** The Department implemented Special Wage Allowances for all timeframes for which appropriations were allotted in accordance with P.L. 2019, ch. 533. The six-month gap was not funded by the Legislature. In addition, in accordance with that law, the Special Wage Allowance is not continued past the January 1 through June 30, 2022 period because the rebasing required under 22 M.R.S. Section 1708(3)(F) is based on 2020 or a later calendar year as a base year and the rebased rates have incorporated the costs of contract labor, wages and allowable benefits and taxes that were reported on each nursing facility’s cost report for its fiscal year ending in calendar year 2020. No changes were made to the rule based on this comment.

### **List of Changes Made to the Final Rule**

- As a result of a comment the Department added a requirement that if it is determined that the Department owes the facility money, the Department must reimburse at least seventy-five percent (75%) of the as-filed settlement pursuant to the facility’s cost reports within ninety (90) days of receipt.

- As a result of a comment, the Department added clarifying language in Section 13.4.2 that the Division of Audit will continue to review and conduct audits to determine allowability of costs and provide final settlements of all accepted cost reports.
- As result of consultation with the OAG, the Department is removing “and January 1, 2022 – June 30, 2022” from the Principle 44 heading as these wage adjustments were made pursuant to the Department’s legal authority and discretion under Principle 34 (Extraordinary Circumstance Allowance). The Department added a provision to this effect.
- Principle 22.3.4.3 (Add on to Support Essential Support workers): The Department made minor changes to clarify this provision.
- The Department made minor technical corrections to clarify portions of the rule that are still pending federal approval or have already been approved.
- The Department removed references to “as-filed cost report,” as this rule is using the term “cost report.”