

# Rule-making Fact Sheet

5 M.R.S.A. § 8057-A

**AGENCY:** Department of Health and Human Services, Office of MaineCare Services  
Division of Policy

**NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:**

Rachel Thomas, Comprehensive Health Planner II  
Office of MaineCare Services  
11 State House Station  
242 State Street  
Augusta, Maine 04333-0011  
(207) 624-4001 FAX: (207) 287-1864 TDD/TTY 711 (Maine Relay)

**CHAPTER NUMBER AND RULE TITLE:** Chapter 101, MaineCare Benefits Manual, Chapter III, Section 67, Principles of Reimbursement for Nursing Facilities

**STATUTORY AUTHORITY:** 22 M.R.S.A. §§ 42, 3173, P.L. 2014, ch. 594

**DATE AND PLACE OF PUBLIC HEARING:** October 6, 2014  
400 Cross Office Building  
111 Sewell St, Augusta, ME 04330

**COMMENT DEADLINE:** October 16, 2014

**PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE:**

On August 15, 2014, the Department adopted an emergency rule, which increased MaineCare nursing facility reimbursement, as required by P.L. 2014, ch. 594 (“An Act to Implement the Recommendations of the Commission to Study Long-term Care Facilities”). The August 15, 2014 emergency rule had a retroactive application date of July 1, 2014 for the changes.

This proposed rule seeks to make permanent those changes to nursing facility reimbursement made in the August 15, 2014 emergency rule. The August 15, 2014, Emergency rule had an effective application date for the rule changes of July 1, 2014. This proposed rule also uses the same effective application date for the changes of July 1, 2014.

This rule proposes to make the following changes:

1. Establishes a new base year for nursing facilities which is the fiscal year of each nursing facility ending in calendar year 2011. The base year will be updated every two years.
2. For the routine care cost and for direct care cost, the peer group upper limit will be increased to 110% of the median.
3. Eliminates the Administration and Management Expense ceiling, although those costs are still subject to allowability standards.
4. Establishes a payment to nursing facilities that have a high MaineCare utilization rate (defined as greater than 70% MaineCare days of care). This payment is cost settled.
5. Changes the methodology for calculating each nursing facility’s specific case mix index for the base year to the following: (1) the Department calculates the nursing facility’s 2011 average direct

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care case mix adjusted rate by dividing each nursing facility's gross direct care payments received for their 2011 base year by the 2011 base year MaineCare direct care resident days; (2) the Department calculates the nursing facility's 2011 case mix index by dividing the nursing facility's 2011 average direct care case mix adjusted rate as calculated in (1) by the nursing facility's 2005 base year direct care rate.

6. Eliminates the 2009 CMS Nursing Home without Capital Market Basket Index for inflation adjustments, and substitutes : (a) the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Medical Care Services – Nursing Homes and Adult Day Care Services to adjust for inflation for the Routine Cost Component; and (b) the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index, Historical Consumer Price Index for Urban Wage Earners and Clerical Workers – Nursing Home and Adult Day service for the Direct care Component.

7. Adds a provision that the inflation adjustments will be done every year.

8. Amends the Direct Care Add-on Principle so that December 31, 2013, rather than July 1, 2008, is used for the inflation calculation, and the facility-specific average case mix index for the base year is used as the applicable case mix index for this calculation.

9. Amends of the Direct Care Hold Harmless Provision so that the differential which will be applied is the difference between each nursing facility's direct care rate for the first fiscal year to which the July 1, 2014 amendments to the rule apply, and the nursing facility's direct care rate in effect on April 1, 2014.

10. Amends the Routine Hold Harmless Provision so that the differential which will be applied is the difference between each nursing facility's routine rate for the first fiscal year to which the July 1, 2014 amendments to the rule apply, and the nursing facility's routine rate in effect on April 1, 2014.

11. Changes of the heading for Principle 81 from "Interim and Subsequent Rates" to "Interim, Subsequent, and Prospective Rates" because Principle 81 was amended to add a provision defining Prospective Rate.

12. Adds Principle 81.3 (Prospective Rate), which provides that the prospective rate, excluding fixed costs, will be calculated to be 95.12% of all the calculated Direct Care cost components and all of the Routine Care cost components. Principle 82, the Final Prospective Rate, is also defined as being no more than 95.12%.

13. Adds Principle 81.4 (Funding Adjustment), which provides that in the case of an individual nursing facility, whose rebased, adjusted direct and routine care rates totaled together are less than that nursing facility's April 1, 2014, direct and routine rates, totaled together, then the Department will make a Funding Adjustment, by adding the difference to the rebased routine rate. This language has been changed between the adoption of the emergency rule and the proposed rule in order to clarify the process used to set the rate by breaking down the steps used to calculate the rate and setting when the Funding Adjustment will be used.

14. Adds Principle 83 (August 15, 2014 Emergency Rule), to provide that for the retroactive application period of July 1, 2014 through August 15, 2015, the reimbursement to nursing facilities must be equal to or greater than the reimbursement that they had received under the rules previously in effect.

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P.L. 2014, ch. 594's requirement that the rule be amended to increase the specific resident classification group case mix weight that is attributable to a nursing home resident who is diagnosed with dementia is not directly applicable to the case mix methodology which is set forth in the rule, which is function or level-of-service based, and not based on diagnosis. The rule's case mix methodology already provides that a dementia patient whose condition worsens, and needs a higher level of care, is put in a case mix with a greater weight. The Department carefully reviewed this issue, but is not proposing to make any changes for this rulemaking.

CMS approval is needed for these changes, and the Department is seeking to amend its State Plan accordingly.

**IDENTIFICATION OF PRIMARY SOURCE OF INFORMATION:** P.L. 2014, ch. 594, ("An Act to Implement the Recommendations of the Commission to Study Long-term Care Facilities")

**ANALYSIS AND EXPECTED OPERATION OF THE RULE:** This rule proposes to permanently adopt the changes to the MaineCare nursing facility reimbursement methodology, which were adopted on an emergency basis on August, 15, 2014.

**FISCAL IMPACT OF THE RULE:** In FY 2014 this initiative will cost \$25,432,166.00. This total includes \$ 9,720,173.85 in state funds and \$15,711,992.15 in federal funds.

**ADDITIONAL COST UPON MUNICIPALITIES AND/OR COUNTIES AND ADVERSE ECONOMIC IMPACTS ON SMALL BUSINESSES (small businesses are those with 20 or fewer employees):** This rule change is not expected to cause adverse economic impacts for municipalities, counties or small businesses.

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

**ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:** This rule change will provide an extra \$25 million in funds for the nursing facility industry.

**INDIVIDUALS OR GROUPS AFFECTED AND HOW THEY WILL BE AFFECTED:** Nursing Facility providers will be receiving \$25 million more in reimbursement.

**BENEFITS OF THE RULE:** MaineCare reimbursement for nursing facilities is increased by \$25 million for FY 2014.