MaineCare Services
An Office of the
Department of Health and Human Services
John E. Baldacci, Governor Brenda M. Harvey, Commissioner

Department of Health and Human Services
MaineCare Services
11 State House Station
Augusta, Maine 04333-0011
Tel: (207) 287-2674; Fax: (207) 287-2675
TTY: 1-800-423-4331

DATE: May 24, 2012

TO: Interested Parties

FROM: Stefanie Nadeau, Director, Office of MaineCare Services

SUBJECT: Final Adoption of Rule - MaineCare Benefits Manual, Section 50

This is a major substantive rule and will be final thirty days after it is filed. The legislature approved the rule for final adoption in 2011-Resolve chapter 161. In 2011, the Legislature amended 36 M.R.S.A. § 2872 by increasing the tax on ICF-MRs from 5.5% to 6% via P. L. 2011, ch 411. This final adopted rule permits an ICF-MR to obtain reimbursement of the full 6% tax, subject to CMS approval. The rule has a retroactive application with an effective date of January 1, 2012 (authorized under 22 MRSA § 42(8) because this rule will benefit providers by increasing their reimbursement).

A public hearing was held on January 9, 2012. The comment deadline was January 19, 2012. Additionally, the Maine State Legislature held a public hearing on April 13, 2012, and approved this final adoption in 2011-Resolve chapter 161.

Rules and related rulemaking documents may be reviewed at and printed from MaineCare Services website at http://www.maine.gov/dhhs/oms/rules/index.shtml or, for a fee, interested parties may request a paper copy of rules by calling 207-287-9368. For those who are deaf or hard of hearing and have a TTY machine, the TTY number is 1-800-606-0215.

A copy of the public comments and Department responses can be viewed at and printed from MaineCare Services website or obtained by calling 207-287-9368 or TTY: (207) 287-1828 or 1-800-606-0215.

If you have any questions regarding the policy, please contact Provider Services at 1-866-690-5585 or TTY: 711.

Notice of Agency Rule-making Adoption

AGENCY: Department of Health and Human Services, Office of MaineCare Services

CHAPTER NUMBER AND TITLE: MaineCare Benefits Manual, Chapter III, Section 50, ***Principles of Reimbursement for Intermediate Care Facilities for the Mentally Retarded (ICF-MR) Services***

ADOPTED RULE NUMBER:

CONCISE SUMMARY: This is a major substantive rule and will be final thirty days after it is filed. The legislature approved the rule for final adoption in 2011-Resolve chapter 161. In 2011, the Legislature amended 36 M.R.S.A. § 2872 by increasing the tax on ICF-MRs from 5.5% to 6% via P. L. 2011, ch 411. This provisionally adopted rule permits an ICF-MR to obtain reimbursement of the full 6% tax, subject to CMS approval. The rule has a retroactive application with an effective date of January 1, 2012 (authorized under 22 MRSA § 42(8) because this rule will benefit providers by increasing their reimbursement). This change is not expected to have an adverse economic impact on small businesses or municipalities and counties.

See http://www.maine.gov/dhhs/oms/rules/index.shtml **for rules and related rulemaking documents.**

EFFECTIVE DATE: Final Adoption June 23, 2012 (Effective Retroactive to January 1, 2012)

AGENCY CONTACT PERSON: Ginger Roberts-Scott, Health Planner
AGENCY NAME: Division of Policy
ADDRESS: 242 State Street
11 State House Station
Augusta, Maine 04333-0011
TELEPHONE: (207)-287- 9365 FAX: (207) 287-9369
TTY: 711 (Deaf/Hard of Hearing)

SECTION 50 **PRINCIPLES of REIMBURSEMENT for INTERMEDIATE CARE FACILITIES for the MENTALLY RETARDED** **ESTABLISHED 7/1/80**
LAST UPDATED 6-23-12-(EFF-1-1-12)

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SECTION 50 **PRINCIPLES of REIMBURSEMENT for INTERMEDIATE CARE FACILITIES for the MENTALLY RETARDED ESTABLISHED 7/1/80 LAST UPDATED 6-23-12-(EFF-1-1-12)**

INTRODUCTION

1000 PURPOSE

The purpose of these Principles is to comply with Section 1902(a)(13)(A) of the Social Security Act and the Rules and Regulations published thereunder (42 CFR Part 447) namely to provide for payment to Intermediate Care Facilities for the Mentally Retarded (ICFs-MR) through the use of rates that are reasonable and adequate to meet the costs incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable State and Federal laws, regulations, and quality and safety standards.

1010 AUTHORITY

The authority of the Department of Health and Human Services to accept and administer any funds that may be available from private, local, State, or Federal sources for the provision of the services set forth in these Principles of Reimbursement is established in Title 22 of the Maine Revised Statutes Annotated, §10 and §12. These regulations are issued pursuant to authority granted to the Department of Health and Human Services by Title 22 of the Maine Revised Statutes Annotated §42(l).

1020 DEFINITONS

1021 **Department** as used throughout these Principles is the State of Maine Department of Health and Human Services.

1022 **Designated Planning Agency** as used throughout these Principles is the State of Maine Department of Health and Human Services functioning as the Designated Planning Agency under Section 1122 of Public Law 92-603, the Social Security Amendments of 1972.

1023 **State Licensing and Federal Certification** as used throughout these principles are the "Regulations Governing the Licensing and Functioning of Intermediate Care Facilities for the Mentally Retarded" and the Federal Certification requirements for Intermediate Care Facilities for the Mentally Retarded that are in effect at the time the expense is incurred.

1030 REIMBURSEMENT METHOD

The Department will reimburse an ICF-MR on the basis of a prospectively determined rate on cost reporting forms provided by the Department (See Section 7000 Prospective Method of Payment for details of the Prospective Reimbursement System).

All long-term care facilities are required to submit annual cost reports as prescribed herein to the State of Maine Department of Health and Human Services, Office of Audit, 11 State House Station, Augusta, Maine 04333-0011. Such cost reports shall be based on the fiscal year of the facility.

1040 ALLOWABLITY OF COSTS

A determination of whether or not a cost is allowable and interpretations of definitions, not specifically detailed in these Principles, will be based on; first the Medicare Provider Reimbursement Manual (CMS Pub 15) guidelines and then on Internal Revenue Service guidelines in effect at the time of such determination.

1050 EFFECTIVE DATE

These Principles apply to reimbursement for all Intermediate Care Facilities for Mental Retarded. The effective date of this rule is September 1, 2007.

1055 APPLICABLE DATE

These Principles are applicable for the facility's fiscal period beginning on or after the effective date.

1060 PUBLIC HEARINGS

The State of Maine will provide for public hearings as necessary in the State Plan, according to State procedures.

1070 WAIVER

The failure of the Department to insist, in any one (1) or more instances, upon the performance of any of the terms or conditions of these Principles, or to exercise any right under these Principles, or to disapprove of any practice, accounting procedure or item of account in any audit, shall not be construed as a waiver of future performance of the right. The obligation of the provider with respect to future performance shall continue, and the Department shall not be estopped to require such future performance.

1080 LIMITATIONS ON REOPENING AUDITS

No final audit shall be reopened, nor shall any hearing be allowed concerning any matter contained in any final audit, after three (3) years following the date of the final audit settlement. This limitation does not apply in the event of fraud or misrepresentation, or reviews by Program Integrity for medical necessity or non-covered services.

1100 ALLOWABLE COSTS

1110 Principle

Federal law requires that payment for long term care facility services provided under MaineCare shall be provided through the use of rates that are reasonable and adequate to meet the costs incurred by efficiently and economically operated facilities in order to provide care services in conformity with applicable State and Federal laws, regulations, and quality and safety standards. Costs incurred by efficiently and economically operated

1100 **ALLOWABLE COSTS** (cont.)

facilities include costs that are reasonable, necessary, and related to patient care, subject to principles relating to specific items of revenue and cost.

1111 Costs must be ordinary, reasonable, and necessary and related to resident care. They must be of the nature and magnitude that prudent and cost conscious management would pay for a specific item or service. A cost is considered reasonable if in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.

1112 Costs must not be of the type conceived for the purpose of circumventing the regulations. Such costs will be disallowed under the principle that the substance of any transaction will prevail over form.

1113 Costs that relate to inefficiency, unnecessary or luxurious care, or unnecessary or luxurious facilities, and to activities not common and accepted in the field of mental retardation services are not allowable.

1114 Compensation to be allowable must be reasonable and for services that are necessary and related to resident care habilitation and active treatment and pertinent to the operation of the facility. The services must actually be performed and must be paid in full. The compensation must be reported to all appropriate State and Federal tax authorities to the extent required by law for income tax, social security, and unemployment insurance purposes.

1115 Costs incurred to comply with changes in Federal or State laws and regulations for increased care, habilitation treatment, and improved facilities are to be considered reasonable and necessary costs.

1116 Costs incurred for resident services that are rendered in common to MaineCare residents, as well as to non-MaineCare residents, will be allowed on a prorated basis unless there is a specific allocation defined elsewhere in these Principles.

1120 **Definitions**

1121 Reasonable Costs are those costs incurred by a provider that are ordinary and necessary in providing care, rehabilitation, and treatment to publicly aided residents and are within the requirements and limitations of these Principles. The reasonableness and necessity of any costs shall be determined by reference to or in comparison with the costs of providing comparable services described in the MaineCare Benefits Manual or absolute costs related to resident's unique circumstances and needs.

1122 Allowable Costs are the operating costs after the adjustment required by the Principles have been applied to the provider's total operating costs as reported in the annual costs reports.

1100 **ALLOWABLE COSTS** (cont.)

1123 Necessary and Proper Costs are those costs which are appropriate and helpful in developing and maintaining the efficient and economical operation of resident care and habilitation facilities and activities. They are usually costs that are common and accepted occurrences in the field of mental retardation.

2000 **COST FINDING AND COST REPORTING**

2010 **Cost Report Periods**. All long-term care facilities are required to submit annual cost reports as prescribed herein to the State of Maine, Department of Health and Human Services, Office of Audit, 11 State House Station, Augusta, Maine 04333-0011. Such cost reports shall be based on the fiscal year of the facility.

2020 **Accounting Principles**.The allowable costs shown in all cost reports described herein shall be on the basis of generally accepted accounting principles and the accrual method of accounting except that, for governmental institutions operated on a cash method of accounting, data based on such a method of accounting will be accepted. Any other providers who maintain their records on a cash basis should record such accruals as adjustments.

2021 Generally accepted accounting principles means accounting principles approved by the American Institute of Certified Public Accountants.

2022 Accrual method of accounting means that revenue is reported in the period when it is earned, regardless of when it is collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

2022.1 All year end accruals must be paid by the facility within six (6) months after the end of the fiscal year in which the amounts are accrued. If the accruals are not paid within such time, these amounts will be deducted from allowable costs incurred in the subsequent fiscal year.

2023 Cash method of accounting means that revenues are recognized only when cash is received and expenditures for expense and asset items are not recorded until cash is disbursed for them.

2030 **Cost Finding**. The unit of output for cost finding shall be the costs of routine services for each level of care per patient day. The same cost finding method shall be used for all levels of care in all long-term care facilities. Generally, total allowable costs shall be divided by the actual days of care to determine the cost per bed day. When long-term care facilities provide more than one (1) level of care, total allowable costs shall be allocated to each level based on the occupancy data reported for each level and the following statistical bases:

2000 **COST FINDING AND COST REPORTING** (cont.)

2030.1 **Direct Care Staff Salaries**. Services provided and hours of nursing care by licensed personnel and other qualified direct care staff.

2030.2 **Other Nursing Staff**. Nursing salaries as cost allocations.

2030.3 **Fixed Costs**. By square feet serviced.

2030.4 **Plant operation and maintenance**. By square feet serviced.

2030.5 **Housekeeping**. By square feet serviced.

2030.6 **Laundry**. By patient days.

2030.7 **Dietary**. Number of meals served.

2030.8 **General and Administrative and Financial and Other Expenses Total**. Accumulated costs not including general and administrative and financial expense.

2035 The fixed component (any element of fixed cost that is included in the price charged by a supplier of goods or services) of purchased goods or services, such as plant operation and maintenance, utilities, dietary, laundry, housekeeping, central office allocation, and all others, whether or not acquired from a related party, shall be considered as costs for the particular good or service and not classified as property and related costs (fixed costs) of the facility.

2040 **Cost Reports**

2041 **Forms**. The provider shall use the cost report forms provided or approved by the Department.

2042 **When to File**. The cost report and financial statements for each facility shall be filed not later than five (5) months after the fiscal year end of the provider. When a provider fails to file an acceptable cost report by the due date, the Department will send the provider a notice by certified mail, return receipt requested, advising the provider that all payments are suspended on receipt of the notice until an acceptable cost report is filed. Reimbursement will then be reinstated at the full rate from that time forward, but reimbursement for the suspension period shall be made at the deficiency rate of ninety percent (90%). An extension of time, waiving the deficiency rate, may be approved by the Department for good cause.

2043 **Rounding**. Cents are omitted in the preparation of all schedules except when inclusion is required to properly reflect per diem costs or rates.

2000 **COST FINDING AND COST REPORTING** (cont.)

2044 **Certification by operator**. The cost report is to be certified by the owner and/or administrator of the facility. If the cost report is prepared by someone other than the owner, administrator, or employee of the facility, the preparer should also sign the report.

2045 ICFs-MR are required to submit cost reports to the DHHS, Office of Audit, based on the fiscal year of the facility. If an ICF-MR determines from the cost report filed, that the ICF-MR owes moneys to the DHHS, a check equal to fifty percent (50%) of the amount owed to the Department must accompany the cost report. If a check is not received with the cost report, the Department may elect to offset the current payments to the facility pursuant to state and federal rules and regulations until the entire amount is collected from the provider.

2046 The Office of Audit may reject any filing that does not comply with these regulations. In such a case, the report shall be deemed not filed until refiled and in compliance.

2047 Extensions to the filing deadline will only be granted under the regulations stated in the Medicare Provider Reimbursement Manual (CMS Pub 15).

2050 **Record Keeping and Record Access Requirements**

2051 Providers must maintain accurate and auditable financial and statistical records that are in sufficient detail to substantiate their cost reports for a period of not less than three (3) years following the date of final settlement with the Department of Health and Human Services.

2052 These records of the provider shall include, but not be limited to, matters of provider ownership, organization, operation, fiscal, and other record keeping systems, Federal and State income tax information, asset acquisition, lease, sale, or other action, franchise or management arrangement, patient service charge schedule, documents pertaining to cost of operation, amounts of income received by service and purpose, and flow of funds and working capital.

2053 When the Department of Health and Human Services determines that a provider is not maintaining records as outlined above for the determination of reasonable cost under the program, the Department, upon determination of just cause, shall send a written notice to the provider of its intent to reduce payments to a ninety percent (90%) level of reimbursement in thirty (30) days together with an explanation of the deficiencies. Payments shall remain reduced until the Department is assured that adequate records are maintained, at which time reimbursement will be reinstated at the full rate from that time forward. If upon appeal, the provider documents that there was not just cause for the reduction in payment, all withheld amounts will be restored to the provider.

2000 **COST FINDING AND COST REPORTING** (cont.)

2054 Providers shall make such records available to representatives of the State of Maine Department of Health and Human Services or the U.S. Department of Health and Human Services. Additionally, if the provider has contracted for services, they must include in their contracts a clause that allows the Department access to the subcontractor's contract, books, documents, and records necessary to verify the cost of the services furnished under the contract. Providers that already have contracts or subcontracts allowing such Departmental access are exempt from this requirement.

2055 Overpayments found in audits will be accounted for no later than the second quarter following the quarter in which the overpayment was found to be valid.

3000 **FIXED COST COMPONENT**

3005 The fixed cost per diem rate is determined from the sum of the following costs:

3005.1 depreciation on land improvements, buildings, fixed and movable equipment, vehicles, and amortization of leasehold improvements;

3005.2 amortization of finance costs for new construction and/or renovations;

3005.3 amortization of start-up costs;

3005.4 real estate and personal property taxes;

3005.5 liability insurance, (not including insurance for directors and officers), fire insurance, bond, and vehicle insurance. Reasonable and necessary costs of insurance involved in operating a facility are considered allowable costs. Premiums paid on property not used for patient care are not allowed;

3005.6 interest on long term debt;

3005.7 rental expenses;

3005.8 8medical supplies that are supplied as part of the regular rate of reimbursement. These supplies are listed in the MaineCare Benefits Manual, Chapter II, Section 60. Excluded are costs that are an integral part of another cost center.

3005.9 **ICF-MR Health Care Provider Tax**. ICFs-MR subject to the Health Care Provider Tax defined in State law 36 M.R.S.A., Chapter 373, will have the tax treated as an allowable fixed cost. If CMS approves, effective January 1, 2012, the tax imposed is six percent (6%) of the facility's annual gross patient services revenue. This expense is allowed based on a cash basis instead of accrual basis.

Final Effective 1/1/2012

3000 **FIXED COST COMPONENT** (cont.)

3005.10 mandated direct care staff training program costs as required by State and Federal regulations.

3005.11 mandated accreditation costs.

3005.12 approved administrator in training expense.

3010 **Depreciation**. Allowance for depreciation based on asset costs.

3011 Principle. An appropriate allowance for depreciation on buildings and equipment is an allowable cost. The depreciation must be:

3011.1 Identified and recorded in the provider's accounting records.

3011.2 Based on historical cost and prorated over the estimated useful life of the asset using the straight-line method. If the estimated life of an asset is less than the term of the note used to purchase it, then the term of the note will be used for the life of that asset.

3011.21 The total historical costs of a building as constructed or purchased becomes the basis for the straight line depreciation method. Component depreciation is not allowed except on those items listed below with their minimum useful lives:

Electronic Components	20 year life
Plumbing and Heating Components	25 year life
Central Air Conditioning Unit	15 year life
Elevator	20 year life
Escalator	20 year life
Central Vacuum Cleaning System	15 year life
Generator	20 year life

3011.22 Any provider using the component depreciation that has been audited and accepted for cost reporting purposes prior to April 1, 1980, will be allowed to continue using this depreciation mechanism.

3011.3 Where an asset that has been used or depreciated under the program is donated to a provider, or where a provider acquires such assets through testate or intestate distribution (e.g., a widow inherits a skilled nursing facility upon the death of her husband and becomes a newly certified

3000 **FIXED COST COMPONENT** (cont.)

provider), the basis of depreciation for the asset is the lesser of the fair market value, or the net book value of the asset in the hands of the owner last participating in the program. The basis for depreciation shall be determined as of the date of donation or the date of death, whichever is applicable.

3011.4 **Special Reimbursement Provisions for Energy Efficient Improvements**

For the Energy Efficient Improvements listed below which are made to existing facilities on or after September 1, 1981, reimbursement will be allowed based on the length of the loan received with the limitations listed below:

CAPITAL EXPENDITURE

Up to $5,000.00	Minimum depreciable Period 3 years
From $5,001.00 to $10,000.00	Minimum depreciable period 5 years
$10,001.00 and over	Minimum depreciable period 7 years

The above limitations are minimum and if a loan is obtained for a period time in excess of these minimum the depreciable period then becomes the length of the loan provided that, in no case shall the depreciable period exceed the useful life as spelled out in the Chart of Accounts published by the American Hospital Association.

The reimbursement for the Energy Efficient Improvements that are 100% financed will consist of reimbursement of the principal and interest payments, based on the length of the loan or the above listed minimum. If no loans are obtained, then the depreciable lives will be based on the above minimum. If only partially financed, then the interest and the principal payments will be reimbursed with the additional amounts reimbursed on a depreciable basis limited to the minimum lives as spelled out above.

If the total expenditure exceeds $25,000.00, then prior approval for such an expenditure must be received in writing from the Department. A request for prior

3000 **FIXED COST COMPONENT** (cont.)

approval will be evaluated by the Department on the basis of whether such a large expenditure would decrease the actual energy costs to such an extent as to render this expenditure reasonable. The age and condition of the facility requesting approval will also be considered in determining whether or not such an expenditure would be approvable.

The reasonable energy efficient improvements are listed below:

1. Insulation (fiberglass, cellulose, etc.)
2. Energy efficient windows or doors for the outside of the facility including insulating shades and shutters.
3. Caulking or weather stripping for windows or doors for the outside of the facility.
4. Fans specially designed for circulation of heat inside the building.
5. Wood and coal burning furnaces, stove, or boilers (not fireplaces).
6. Furnace replacement burners that reduce the amount of fuel used.
7. Enetrol or other devices connected to furnaces to control heat usage.
8. A device or capital expenditures for modifying an existing furnace that reduces the consumption of fuel.
9. Solar active systems for water and space heating.
10. Retrofitting structures for the purpose of creating or enhancing passive solar gain, if prior approved by the Department regardless of amount of expenditure. A request for prior approval will be evaluated by the Department on the basis of whether energy costs would be decreased to such an extent as to render the expenditure reasonable. The age and condition of the facility requesting approval will also be considered.
11. Any other energy saving devices that might qualify as energy efficient other than those listed above must be prior approved by the Department for this special reimbursement provision. A request for prior approval will be evaluated to determine that the energy savings device is a reliable product and would decrease the energy costs of the facility making the expenditure reasonable in nature.

In the event of a sale of the facility the principal payments as listed above will be recaptured in lieu of depreciation.

3000 **FIXED COST COMPONENT** (cont.)

3012 **Definitions**

3012.1 **Historical cost**. Historical cost is the cost incurred by the present owner in acquiring the asset. The historical cost shall not exceed the lower of:

3012.11 current reproduction cost adjusted for straight-line depreciation over the life of the asset to the time of the purchase;

3012.12 fair market value at the time of the purchase;

3012.13 the allowable historical cost of the first owner of record on or after July 18, 1984.

3013 **Recording of depreciation**. Appropriate recording of depreciation encompasses the identification of the depreciable assets in use, the assets historical costs, the method of depreciation, estimated useful lives, and the assets accumulated depreciation. The Chart of Accounts published by the American Hospital Association and publications of the Internal Revenue Service are to be used as a guide for the estimation of the useful life of assets.

3013.1 For new buildings constructed after April 1, 1980 the minimum useful life to be assigned is listed below:

Wood Frame, Wood Exterior	30 years
Wood Frame, Masonry Exterior	35 years
Steel Frame or Reinforced Concrete Masonry Exterior	40 years

If a mortgage obtained on the property exceeds the minimum life as listed above, then the terms of the mortgage will be used as the minimum useful life.

3014 **Depreciation method**. Proration of the cost of an asset over its useful life is allowed on the straight-line method. If the estimated life of an asset is less than the term of the note used to purchase it, then the term of the note will be used for the life of that asset.

3015 Although funding of depreciation is not required, it is strongly recommended that providers use this mechanism as a means of conserving funds for replacement of depreciable assets, and coordinate their planning of fixed expenditures with areawide planning activities of community and State agencies. As an incentive for funding, investment income on funded depreciation will not be treated as a reduction of allowable interest expense.

3000 **FIXED COST COMPONENT** (cont.)

3015.1 **Replacement reserves**. Some lending institutions require funds to be set aside periodically for replacement of fixed assets. The periodic amounts set aside for this purpose are not allowable costs in the period expended, but will be allowed when withdrawn and utilized either through depreciation or expense after considering the usage of these funds. Since the replacement reserves are essentially the same as funded depreciation, the same regulations regarding interest and equity will apply.

3015.2 If a facility is leased from an unrelated party and the ownership of the reserve rests with the lessor, then the replacement reserve payment becomes part of the lease payment and is considered an allowable cost in the year extended. If for any reason the lessee is allowed to use this replacement reserve for the replacement of the lessee's assets, then during that year the allowable lessee will be allowed to depreciate the assets purchased in this situation.

3015.3 If a rebate of a replacement reserve is returned to the lessee for any reason, it will be treated as a reduction of the allowable lease expense in the year reviewed.

3016 **Gains and losses on disposal of assets**. Gains and losses realized from the disposal of depreciable assets are to be included in the determination of allowable costs. The extent to which such gains and losses are includable is calculated on a proration basis recognizing the amount of depreciation charged or assumed in a period prior to the provider's participation in the program when the sale takes place within one (1) year after termination.

The recapture will be made in cash from the seller. During the first eight (8) years of operation, all depreciation allowed on buildings and fixed equipment by the Department will be recaptured from the seller in cash at the time of the sale. From the ninth (9th) to the fifteenth (15th) year, all but three percent (3%) per year will be recaptured, and from the sixteenth (16th) to the twenty-fifth (25th) year, all but eight percent (8%) per year will be recaptured not to exceed one hundred percent (100%.) Accumulated depreciation is recapturable to the extent of the gain on the sale.

3017 **Limitation on the participation of fixed expenditures**. Depreciation is not allowable with respect to any fixed expenditure in plant, property, and equipment related to resident care that has not been submitted to the designated planning agency as required, or has been determined to be inconsistent with health facility planning requirements, or as deemed necessary by the Department.

3000 **FIXED COST COMPONENT** (cont.)

3020 **Purchase, Rental, Donation, and Lease of Fixed Assets**

3021 **Purchase of facilities from related individuals and/or organizations**

3021.1 Where a facility is purchased from an individual or organization related to the purchaser by common control and/or ownership; or

3021.2 Where a facility is purchased after April 1, 1980 by an individual related to the seller as:

3021.21 a child,

3021.22 a grandchild,

3021.23 a brother or sister,

3021.24 a spouse of a child, grandchild, or brother or sister, or

3021.25 an entity controlled by a child, grandchild, brother, sister, or spouse of child, grandchild or combination brother or sister thereof;

3021.3 Where a facility, through purchase, converts from a proprietary to a nonprofit status and the buyer and seller are entities related by common control and/or ownership; then the purchaser's basis for depreciation shall not exceed the seller's basis under the program, less accumulated depreciation recognized under the program.

Also, accumulated depreciation of the seller under the program shall be considered as incurred by the purchaser for purposes of computing gains and applying the depreciation recapture rules (Section 3016) to subsequent sales by the buyer. There will be no recapture of depreciation from the seller on a sale between stipulated related parties since no step-up in the basis of depreciable assets is permitted to the buyer.

3021.4 **One-time exception to Section 3021.2**. At the election of the seller, Section 3021.3 will not apply to a sale made to a buyer defined in Section 3021.2 if:

3021.41 the seller is an individual or any entity owned or controlled by an individual or related individuals who were selling assets to a "related party" as defined in Section 3021.1 or 3021.2;

3021.42 the seller has attained the age of fifty-five (55) before the date of such sale or exchange; and

3000 **FIXED COST COMPONENT** (cont.)

3021.43 during the twenty (20) year period ending on the day of the sale, the seller has owned and operated the facility for periods aggregating ten (10) years or more; or

3021.44 the seller has inherited the facility as property of a deceased spouse to satisfy the holding requirements under Section 3021.43

3021.45 if the seller makes a valid election to be exempted from the application of Section 3021.3, the allowable basis of depreciable assets for reimbursement of interest and depreciation expense to the buyer will be determined in accordance with Section 3012 as though the parties were not related.

3021.5 The one time exception to Section 3021.2 applies to individual owners and not to each facility. If an individual owns more than one (1) facility, he must make the election as to which facility he wishes to apply this exception to.

3021.6 **Limitation in the application of Section 3021.4**

3021.61 Section 3021.4 shall not apply to any sale or exchange by the seller if an election by the seller under Section 3021.4 with respect to any other sale or exchange has taken place.

3021.62 Section 3021.4 shall not apply to any sale or exchange by the seller unless the seller:

A. immediately after the sale has no interest in the facility (including an interest as officer, director, manager, or employee) other than as a creditor, and

B. does not acquire any such interest within ten (10) years after the sale of this or any other facility, and

C. agrees to file an agreement with the Department of Health and Human Services to notify the Department that any acquisition as defined by the Section 3021.62(B) has occurred.

If Section 3021.62 is satisfied, Section 3021.1 and Section 3021.3 will also be satisfied.

3000 **FIXED COST COMPONENT** (cont.)

If the seller acquires any interest defined by Section 3021.62 (B), then pursuant to the agreement the basis will revert to what the seller's basis would be if the seller had continued to own the facility, the amounts paid by the Title XIX program for depreciation, interest and return of owner's equity from the increase in basis will be immediately recaptured, and an interest rate of nine percent (9%) per annum on recaptured monies will be paid to the Department for seller's use of the Title XIX monies. A credit against this, of the original amount of depreciation recapture from the seller, will be allowed with any remaining amount of the original depreciation recapture becoming the property of the Department.

3022 Basis of assets used under the program and donated to a provider. Where an asset that has been used or depreciated under the program is donated to a provider, the basis of depreciation for the asset shall be the lesser of the fair market value or the net book value of the asset in the hands of the owner last participating in the program. The net book value of the asset is defined as the depreciable basis used under the program by the asset's last participating owner less the depreciation recognized under the program.

3023 Allowances for depreciation on assets financed with Federal or Public Funds. Depreciation is allowed on assets financed with Hill Burton or other Federal or Public Funds.

3024 **Leases**

3024.1 **Information and Agreements Required for Leases**

If a provider wishes to have costs associated with leases included in reimbursement:

3024.11 A copy of the signed lease agreement is required.

3024.12 An annual copy of the federal income tax return of the lessee will be made available to representatives of the State of Maine Department of Health and Human Services or the U.S. Department of Health and Human Services in accordance with Section 2050. Lease agreements for office or day program space between unrelated parties are exempt from this requirement.

3024.13 If the lease is for the use of a building and/or fixed equipment, the articles and bylaws of the corporation, trust indenture, partnership agreement, or limited partnership agreement of the lessor is required.

3024.14 A copy of the mortgage or other debt instrument of the lessor will be made available to representatives of the Department.

3000 **FIXED COST COMPONENT** (cont.)

The lessor will furnish the Department a copy of the bank computer printout sheet on the lessor's mortgage showing the monthly principle and interest payments.

3024.2 **Lease Arrangements Between Individuals or Organizations Related by Common Control and/or Ownership**. A provider may lease a facility from a related organization within the meaning of the Principles of Reimbursement. In such case, the rent paid to the lessor by the provider is not allowed as a cost. The provider, however, would include in its costs the costs of ownership of the facility. Generally, these would be costs such as depreciation, interest on the mortgage, real estate taxes, and other expenses attributable to the leased facility. The effect is to treat the facility as though it were owned by the provider.

3024.3 **Lease Arrangement Between Individuals or Organizations Not Related by Common Control or Ownership**

The allowable cost between two (2) unrelated organizations is the lesser of:

3024.31 The actual costs calculated under the assumption that the lessee and the lessor are related parties; or

3024.32 The actual lease payments made by the lessee to the lessor.

If the cost as defined in Section 3024.32 are less than the costs as defined in Section 3024.31, then the difference can be deferred to a subsequent fiscal period. If in a later fiscal period, costs as defined in Section 3024.32 exceed costs as defined in Section 3024.31, the deferred costs may begin to be amortized. Amortization will increase allowable costs up to the level of the actual lease payments for any given year. These deferred costs are not assets of the provider for purposes of calculating allowable costs of interest, and except as specified, do not represent assets that a provider or creditor of a provider may claim is a monetary obligation from the Title XIX program.

This does not apply to leases for office space or day program space in facilities that are separate from an ICF-MR; for such leases, the provider must demonstrate that the costs do not exceed prevailing market rates.

3024.4 A lease payment to an unrelated party for moveable furnishings and equipment is an allowable cost. Lease payments for vehicles shall be limited to the fixed cost of the vehicle at the inception of the lease depreciated over the life of the lease.

3000 **FIXED COST COMPONENT** (cont.)

3025 **Sale and Leaseback Agreements and Rental Charges**. Rental costs specified in sale and leaseback agreements incurred by providers through selling physical plant facilities or equipment to a purchaser not connected with or related to the provider, and concurrently leasing back the same facilities or equipment, are includable in allowable cost if these conditions are met:

3025.1 The rental charges are reasonable based on consideration of rental charges or comparable facilities and market conditions in the area, the type, expected life, condition and value of the facilities or equipment rented, and other provisions of the rental agreements;

3025.2 Adequate alternate facilities or equipment which would serve the purposes are not or were not available at lower cost;

3025.3 The leasing was based on economic and technical consideration. If all these conditions are not met, the rental charge cannot exceed the amount that the provider would have included in reimbursable costs had s/he retained legal title to the facilities or equipment, such as interest on mortgage, taxes, depreciation, insurance, and maintenance costs.

3030 **Interest Expense**

3031 **Principle**. Necessary and proper interest on both current and capital indebtedness is an allowable cost.

3032 **Definitions**

3032.1 **Interest**. Interest is the cost incurred for the use of borrowed funds. Interest on current indebtedness is the cost incurred for funds borrowed for a relatively short term, usually one (1) year or less, but in no event more than fifteen (15) months. This is usually for such purposes as working capital for normal operating expenses. Interest on capital indebtedness is the cost incurred for funds borrowed for capital purposes, such as acquisition of facilities and equipment, and capital improvements. Generally, loans for capital purposes are long-term loans. Except as provided in Section 3036, interest does not include interest and penalties charged for failure to pay accounts when due.

3032.2 **Necessary**. Necessary requires that the interest:

3032.21 Be incurred on a loan made to satisfy a financial need of the provider. Loans which result in excess funds or investments would not be considered necessary.

3000 **FIXED COST COMPONENT** (cont.)

3032.22 Be reduced by investment income except where such income is from gifts and grants, whether restricted or unrestricted, and which are held separate and not comingled with other funds. Income from funded depreciation is not used to reduce interest expense.

3032.3 **Proper**. Proper requires that interest:

3032.31 Be incurred at a rate not in excess of what a prudent borrower would have had to pay in the money market existing at the time the loan was made.

3032.32 Be paid to a lender not related through control or ownership, or personal relationship to the borrowing organization.

3032.33 **Refinancing**. Any refinancing of property mortgages or loans on fixed assets must be prior approved by the Department. If prior approval is not obtained any additional interest costs or finance changes will not be allowed.

3033 **Borrower-lender relationship**

3033.1 To be allowable, interest expense must be incurred on indebtedness established with lenders or lending organizations not related through control, ownership, or personal relationship to the borrower. Presence of any of these factors could affect the "bargaining" process that usually accompanies the making of a loan, and could thus be suggestive of an agreement on higher rates of interest or of securing unnecessary loans. The loans intent of this provision is to assure that loans are legitimate and necessary, and that the interest rate is reasonable. Thus, interest paid by the provider to partners, stockholders, or related organizations of the provider would not be allowable.

3033.2 Exceptions to the general rule regarding interest on loans from controlled sources of funds are made in the following circumstances. Where the general fund of a provider borrows from a donor-restricted fund and pays interest to the restricted fund, this interest expense is an allowable cost. The same treatment is accorded interest paid by the general fund on money borrowed from the funded depreciation account of the provider. In addition, if a provider of a facility operated by members of a religious order borrows from the order, interest paid to the order is an allowable cost.

3000 **FIXED COST COMPONENT** (cont.)

3033.3 Where funded depreciation is used for purposes other than improvement, replacement, or expansion of facilities or equipment related to patient care, allowable interest expense is reduced to adjust for offsets not made in prior years for earnings on funded depreciation

3034 **Loans not reasonably related to patient care**. Loans made to finance that portion of the cost of acquisition of a facility that exceeds historical cost, are not considered to be for a purpose reasonably related to patient care.

3035 **Interest expense of related organizations**. Where a provider leases facilities from a related organization and the rental expense paid to the related organization is not allowable as a cost, costs of ownership of the leased facility are allowable costs of the provider. Therefore, in such cases, mortgage interest paid by the related organization is allowable as an interest cost to the provider.

3036 **Interest on Property Taxes**. Interest charged by a municipality for late payment of property taxes is an allowable cost when the following conditions have been met:

3036.1 The rate of interest charged by the municipality is less than the interest that a prudent borrower would have had to pay in the money market existing at the time the loan was made;

3036.2 The payment of property taxes is deferred under an arrangement acceptable to the municipality;

3036.3 The late payment of property taxes results from the financial needs of the provider, and does not result in excess funds; and

3036.4 Approval in writing has been given by the Department prior to the time period in which the interest is incurred. Any requests for prior approval must be received by the Department at least two (2) weeks prior to the desired effective date of the approval.

3037 **Limitation on the participation of fixed expenditures**. Interest is not allowable with respect to any fixed expenditure in plant, property, and equipment related to patient care that has not been submitted to the designated planning agency as required, or has been determined to be inconsistent with health facility planning requirements.

3038 **Administrator in Training**. The reasonable salary of an administrator in training will be accepted as an allowable cost for an ICF-MR nursing facility for a period of one (1) year provided there is a set policy, in writing, stating the training program to be followed, position to be filled, and this individual obtains an administrator's license and serves as an administrator of a facility in the State of Maine.

3000 **FIXED COST COMPONENT** (cont.)

Prior approval in writing must be issued by the Department in advance of the date of any salary paid to an administrator in training. A request for prior approval must be received by the Department at least two (2) weeks prior to the desired effective date of the approval.

Failure to become an administrator within one (1) year following completion of the examination to become a licensed administrator will result in the Department of Health and Human Services recovering one hundred percent (100%) of the amount allowed for the administrator in training. If the administrator in training discontinues the training program for any reason or fails to take the required examination to become a licensed administrator, the Department will recover one hundred percent (100%) of the amount allowed to the ICF-MR nursing facility.

3040 *[Reserved]*

3050 **Start-up Costs**

3051 **General**

Start-up costs incurred during the period of developing a provider's ability to furnish patient care services must be capitalized as deferred charges and amortized over a number of benefiting periods.

Start-up costs include, for example; administrative and nursing salaries, heat, gas, electricity, taxes, insurance, mortgage and other interest; employee training costs; repairs, maintenance, housekeeping, and any other allowable costs incident to the start-up period. However, any costs that are properly identifiable as organization costs, or which may be capitalized as construction costs, must be appropriately classified as such and excluded from start-up costs.

3052 **Applicability**

Start-up costs are incurred from the time preparation begins on a newly constructed or purchased building, wing, floor, unit, or expansion thereof to the time the first member is admitted for treatment, or where the start-up costs apply only to nonrevenue-producing patient care functions or nonallowable functions, to the time the areas are used for their intended purposes. If a provider intends to prepare all portions of its entire facility at the same time, start-up costs for all portions of the facility should be accumulated in a single deferred charge account and should be amortized when the first patient is admitted for treatment. However, if a provider intends to prepare portions of its facility on a piecemeal basis (i.e., preparation of a floor or wing of a provider's facility is delayed), start-up costs would be capitalized and amortized separately for the portion(s) of the provider's facility prepared during different time periods. Moreover, if a provider expands its facility by constructing or purchasing

3000 **FIXED COST COMPONENT** (cont.)

additional buildings or wings, start-up costs should be capitalized and amortized separately for these areas.

Start-up costs that are incurred immediately before a provider enters the program and that are determined to be immaterial by the Department need not be capitalized, but rather, may be charged to operations in the first cost reporting period. In the case where a provider incurs start-up costs while in the program and these costs are determined to be immaterial by the Department, these costs need not be capitalized, but may be charged to operations in the periods incurred. For program reimbursement purposes, costs of the provider's facility and building equipment should be depreciated over the lives of these assests starting with the month the first member is admitted for treatment, subject to the provider's method of determining depreciation in the year of acquisition or construction. Where portions of the provider's facility are prepared for patient care services after the initial start-up period, these asset costs applicable to each portion should be depreciated over the remaining lives of the applicable assets. If the portion of the facility is a patient care area, depreciation should start with the month the first patient is admitted for treatment. If the portion of the facility is a nonrevenue-producing patient care area or nonallowable area, depreciation should begin when the area is opened for its intended purpose. Costs of major movable equipment, however, should be depreciated over the useful life of each item starting with the month the item is placed into operation.

3060 **Cost Treatment for Reimbursement**

3061 Where a provider prepares all portions of its facility for patient care services at the same time and has capitalized start-up costs, the start-up costs must be amortized over a period of sixty (60) consecutive months beginning with the month in which the first member is admitted for treatment.

3062 Where a provider prepares portions of its facility for patient care services on a piece-meal basis, start-up costs must be capitalized and amortized separately for the portions of the provider's facility that are prepared for patient care services during different periods of time.

4000 **VARIABLE COST COMPONENT**

Variable Costs include all allowable costs that are not defined as fixed costs, staff wages, salaries, or authorized staff benefits, and that are incurred in the efficient and economical operation of the facility.

4010 **Principle**. All reasonable variable costs that providers mustincur to meet State Licensing and Federal Certification standards are allowable.

4011 Allowable variable costs shall also include all items of expense that efficient and economical providers incur for the provision of routine services.

4000 **VARIABLE COST COMPONENT** (cont.)

4011.1 **Allowable costs for routine services** shall include but not be limited to:

a. Supplies for activities, social services, maintenance, housekeeping, laundry, dietary, and office;
b. food, plant operations, and plant repairs;
c. help-wanted advertising;
d. dues (net of lobbying);
e. subscriptions;
f. legal fees (related to resident care, see Sections 4160 & 4165);
g. accounting fees;
h. short-term working capital interest;
i. in-state travel expenses;
j. seminars;
k. central office administrative and bookkeeping costs;
l. auto expenses (see Section 4140);
m. pharmacy, dietary, and social services consultants.

4011.2 **Professionally qualified dietary consultants** may be employed by the facility or by the Department. If employed by the Department, dietary consultation services will be provided without any charge to the facilities.

4011.3 **Physician participation in the Professional Policy Committee ICF's**. Physicians participating in the semi-annual review meetings of the Professional Policy Committee of an Intermediate Care Facility are an allowable cost up to a maximum of forty-four dollars ($44) per hour. The allowable cost shall be pro-rated on the number of Title XIX residents.

4011.4 **Social worker consultant**. Social worker consultants may be provided by the Department or by the facility.

4011.5 **Pharmacist consultants**. Pharmacist consultants will be paid directly by the facility and reimbursed through the per diem rate.

4020 **Bad Debts, Charity, and Courtesy Allowance**

4021 **Principle**. Bad debts, charity, and courtesy allowances are deductions from revenue and are not to be included in allowable cost.

4030 **Cost of Educational Activities**

4031 **Principle**. An appropriate part of the net cost of education activities is an allowable cost.

4000 **VARIABLE COST COMPONENT** (cont.)

4032 **Definitions**

4032.1 **Educational Activities**. Educational activities mean formally organized or planned workshops, seminars, or programs of study usually engaged in by staff members of a facility in order to enhance the quality of resident care within the facility. These continuing education activities are distinguished from and do not include orientation, basic education programs, on-the-job training, in-service education, and similar work learning programs.

4032.2 **Net Cost**. The net cost means the cost of educational activities less any reimbursement from grants, tuition, and specific donations. These costs may include; transportation (mileage), registration fees, salary of the staff member if replaced, and meals and lodging as appropriate. Out-of-State programs will be reimbursed for registration fee only.

4032.3 **Appropriate Part**. Appropriate part means the net cost of the activity apportioned in accordance with the methods set forth in these Principles. Expense for educational activities may be evaluated by the the Department as to appropriateness, quality and cost, and may or may not be included as an allowable cost based on the findings.

4033 **Basic Education**. Educational training programs which a staff member must successfully complete in order to qualify for a position or job shall be considered basic education. Costs related to this education is not within the scope of reimbursement.

4040 **Research Costs**

Principle. Costs incurred for research purposes, over and above usual patient care, are not includable as allowable costs.

4050 **Grants, Gifts, and Income from Endowments**

4051 **Principle**. Unrestricted grants, gifts, and income from endowments should not be deducted from operating costs in computing reimbursable costs. However, unrestricted Federal or State grants or gifts received by a facility will be used to reduce the operating costs of that facility. Grants, gifts, or endowment income designated by a donor for paying specific operating costs should be deducted from the particular operating costs or group of costs.

4051.1 DHHS funds designated for cash flow assistance, start-up costs, development costs, services/materials not reimbursable through other funding sources or related purposes that must be paid back out of operating funds shall not, for the purposes of determining MaineCare reimbursement, be deducted from operating costs or group of costs.

4000 **VARIABLE COST COMPONENT** (cont.)

4052 **Definitions**

4052.1 **Unrestricted grants, gifts, income from endowment**. Unrestricted grants, gifts, and income from endowments are funds, cash or otherwise, given to a provider without restriction by the donor as to their use.

4052.2 **Designated or restricted grants, gifts, and income from endowments**. Designated or restricted grants, gifts, and income from endowments are funds, cash or otherwisethat must be used only for the specific purpose designated by the donor. This does not refer to grants, gifts, or income from endowments that have been restricted for a specific purpose by the provider.

4060 **Donation of Produce or Other Supplies**. Donations of produce or supplies are restricted gifts. The provider may not impute a cost for the value of such donations and include the imputed cost in allowable costs. If an imputed cost for the value of the donation has been included in the provider's costs, the amount included is deleted in determining allowable costs.

4070 **Donation of Use of Space**. A provider may receive a donation of the use of space owned by another organization. In such case, the provider may not impute a cost for the value of the use for the space and include the imputed cost in allowable costs. If an imputed cost for the value of the donation has been included in the provider's cost, the amount included is deleted in determining allowable costs.

4080 **Value of Services of Nonpaid Workers**

4081 **Principle**. The value of services in positions customarily held by full-time employees performed on a regular scheduled basis by individuals as nonpaid members of organizations, and a provider for the performance of such services without direct remuneration from the provider to such individuals, is an allowable cost subject to the limitation that such services are necessary. The amounts allowed are not to exceed those paid others for similar work. Such amounts must be identifiable in the records of the institutions as a legal obligation for operating expenses.

4082 **Limitations; services of non-paid workers**. The services must be performed on a regular scheduled basis in positions customarily held by full-time employees and necessary to enable the provider to carry out the functions of normal patient care and operation of the institution. The value of the services of a type for which providers generally do not remunerate individuals performing such services, is not allowable as a reimbursable cost under the program. For example, donated services of individuals in distributing books and magazines to patients, or in serving in a provider canteen or cafeteria or in a provider gift shop, would not be reimbursable.

4000 **VARIABLE COST COMPONENT** (cont.)

4090 **Purchase Discounts and Allowances, and Refunds of Expenses**

4091 **Principle**. Discounts and allowances received on purchases of goods or services are reductions of the costs to which they relate. Similarly, refunds of previous expense payments are reductions of the related expense.

4092 **Definitions**

4092.1 **Discounts**. Discounts, in general, are reductions granted for the settlement of debts.

4092.2 **Allowances**. Allowances are deductions granted for damages, delay, shortage, imperfections, or other causes, excluding discounts and returns.

4092.3 **Refunds**. Refunds are amounts paid back or a credit allowed on account of an over-collection.

4093 **Reduction of Costs**

All discounts, allowances, and refunds of expenses are reductions in the cost of goods or services purchased and are not income. When they are received in the same accounting period in which the purchases were made or expenses were incurred, they will reduce the purchases or expenses of that period. However, when they are received in a later accounting period, they will reduce the comparable purchases or expenses in the period in which they are received.

4094 **Application**

4094.1 Purchase discounts have been classified as cash, trade, or quantity discounts. Cash discounts are reductions granted for the settlement of debts before they are due. Trade discounts are reductions from list prices granted to a class of customers before consideration of credit terms. Quantity discounts are reductions from list prices granted because of the size of individual or aggregate purchase transactions. Whatever the classification of purchase discounts, like treatment in reducing allowable costs is required. In the past, purchase discounts were considered as financial management income. However, modern accounting theory holds that income is not derived from a purchase, but rather for a sale or an exchange, and the purchase discounts are reductions in the cost of whatever was purchased. The true cost of the goods or services is the net amount actually paid for them. Treating purchase discounts as income would result in an overstatement of costs to the extent of the discount.

4000 **VARIABLE COST COMPONENT** (cont.)

4094.2 All discounts, allowances, and rebates received from the purchases of goods or services and refunds of previous expense payments are clearly reductions in costs and must be reflected in the determination of allowable costs. This treatment is equitable and is in accord with that generally followed by other governmental programs and third-party organizations paying on the basis of costs.

4100 **Advertising expenses**

4101 **Principle**. The reasonable and necessary expense of newspaper or other public media advertisements for the purpose of securing necessary employees is an allowable cost. No other advertising expenses are allowed.

4102 **Marketing Expenses**. Marketing expenses are not allowable costs.

4110 **Administration, Policy Planning, Bookkeeping, and Management Expenses**

4111 **Principle**. If administrative, policy planning, bookkeeping, and management functions are performed at the facility site, then the hours must be approved by the Department. The wages and benefits related to the approved hours are reimbursed through the labor component. If these functions are performed at a location other than at the facility, these costs are to be included with the variable component.

4112 **Administrative Functions**. The administration function includes those duties which are necessary to the general supervision and direction of the current operations of the facility, including, but not limited to, the following:

4112.1 Hiring and Firing of personnel

4112.2 Administrative supervision of the nursing, dietary, and other personnel.

4112.3 Supervising the maintenance of patient records and other personnel, payroll, bookkeeping, etc. records of business.

4112.4 Supervising the maintenance and repairs of the facility.

4112.5 Procuring necessary supplies and equipment.

Administrators, assistant administrators, business managers, controllers, office managers, personnel directors, and purchasing agents, typify those who are included in the administration function category.

4000 **VARIABLE COST COMPONENT** (cont.)

4113 **Policy-Planning Function**. The policy-planning function includes the policy-making, planning and decision-making activities necessary for the general and long-term management of the affairs of the facility, including, but not limited to the following:

4113.1 The financial management of the facility.

4113.2 The establishment of personnel policies.

4113.3 The planning of patient admission policies.

4113.4 The planning of expansion and financing thereof.

4114 **Bookkeeping Function**. Bookkeepers, secretaries, clerks, telephone operators, etc., are included in this category.

4114.1 Central office bookkeeping costs may be allocated to each facility on the basis of licensed beds limited to the reasonable cost of bookkeeping services if they had been performed by the individual facility.

4115 **Management fees**. Management fees charged by a parent company are not allowable costs.

4120 **Cost to Related Organizations**

4121 Costs of services, facilities, and supplies furnished to the provider by organizations related to the provider by common ownership or control are includable in the allowable costs of the provider at the cost to the related organization. However, such costs are allowable at the lower of; the cost to the provider or the price of comparable services, facilities, or supplies that could be purchased elsewhere.

4122 **Compensation**. Compensation means total benefit provided for the administration, policy-planning, bookkeeping, or other services rendered to the provider. It includes:

4122.1 Salaries, wages, payroll taxes, fringe benefits, contributions to deferred compensation plan, and other increments paid to or for the benefit of those providing the administration, policy planning , bookkeeping, or other services.

4000 **VARIABLE COST COMPONENT** (cont.)

4122.2 Life insurance premiums related to insurance on the lives of officers and key employees, where the provider is a direct or indirect beneficiary, are not allowable costs.

A provider is a direct beneficiary where, upon the death of the insured officer or key employee, the insurance proceeds are payable directly to the provider.

An example of a provider as an indirect beneficiary is the case where insurance on the lives of officers is required as part of a mortgage loan agreement entered into for a building program, and, upon the death of an insured officer, the proceeds are payable to the lending institution as a credit against the loan balance. In this case, the provider is not a direct beneficiary because the provider does not receive the proceeds directly, but is, nevertheless, an indirect beneficiary since liability on the loan is reduced.

4123 **Dividends and Bonuses**. Bonuses, dividends, or accruals for the express purpose of giving additional funds to the administrator or owner(s) of the facility are not allowable costs.

4124 Salaries paid to corporate officers and directors are not allowable costs unless they are paid for direct services provided to the facility as required by licensing regulations such as those provided by the Chief Executive Officer, the administrator, or other staff member.

4126 **Definitions**

4126.1 **Related to Provider**. Related to the provider means that the provider to a significant extent is associated or affiliated with or has control of or is controlled by the organization furnishing the services, facilities, and supplies.

4126.2 **Common Ownership**. Common Ownership exists when an individual possesses significant ownership or equity in the provider and the institution or organization serving the provider.

4126.3 **Control**. Control exists where an individual or an organization has the power, directly or indirectly, to significantly influence or direct the actions or policies of an organization or institution.

4126.4 **Owners**. Owners include any individual or organization with ten percent (10%) equity interest in the provider's operation and any members of such individual's family or his or her spouse's family. Owners also include all partners and all stockholders in the provider's operation and all partners and stock holders or organizations that have an equity interest in the provider's operation.

4000 **VARIABLE COST COMPONENT** (cont.)

4130 *[Reserved]*

4140 **Motor Vehicle Allowance**. Cost of operation of a motor vehicle necessary to meet the facility needs is an allowable cost less the portion of usage of that vehicle that is considered personal. Travel between an employee's home and the facility is considered personal usage and is not allowable. The provider must keep a mileage log to track vehicle usage with notations indicating personal or business usage. The facility is allowed one vehicle. Any additional vehicles must be approved by the Department of Health and Human Services, Office of Adults with Cognitive and Physical Disability Services.

4150 *[Reserved]*

4160 **Legal Fees**. Legal fees and related costs incurred by a provider are allowable if related to the provider's furnishing of patient care, e.g., legal fees incurred in appeals. However, legal fees and related costs incurred by a provider related to actions including alleged civil fraud or indictment for a criminal act by the provider or its owners, employees, directors, etc., or legal fees for certain anti-union activities are not related to the furnishing of patient care, and therefore, are unallowable provider costs.

4165 **Costs Related to Union Activities**. Legal fees or other costs incurred for activities directly related to influencing employees with respect to unionization or related to attempts to coerce employees or otherwise interfering with or restraining the exercise of employees rights under the NLRA (National Labor Relations Act) are not allowable costs for program purposes. Such costs are unallowable whether such activities are performed directly by the provider or through an independent contractor, consultant or outside attorney.

Costs incurred for activities directly related to expressing management's opinions for purposes of influencing employees not to organize and to form a union are not allowable costs.

Consultants and/or attorneys fees associated with collective bargaining activities in violation of the NLRA are not allowable costs.

After an election is held and the employees have elected to be represented by a union, then all contract negotiations and any procedures that form enforcement of contract terms that are necessary and reasonable are allowable costs. If the contract period is for a period of several years, the costs of collective bargaining will be amortized over the life of the contract.

Within sixty (60) days after the close of their operating year all health care facilities shall submit a written report noting all costs involved in any form of union activity to the Office of MaineCare Services, Department of Health and Human Services, 11 State House Station, Augusta, Maine 04333-0011.

4000 **VARIABLE COST COMPONENT** (cont.)

4170 **Day Habilitation Services Outside of the Facility**

Effective 9/2/11

4171 The staffing costs of the facility will not be allowed during the time members are attending outside Community Support programs, unless a member is unable to attend due to illness, etc., unless such staffing costs are approved by the DHHS Office of Adults with Physical and Cognitive Disabilities. If such a situation occurs, only a minimal amount of staffing required to assist the member not attending Community Support will be allowed.

4172 The Department of Health and Human Services will reimburse Community Support services in accordance with Section 21, Chapters II & III, Home and Community Benefits for Members with Intellectual Disabilities or Autistic Disorder. The costs associated with Community Support are not included in the ICF/MR per diem rate.

4180 **Costs Attributable to Asset Sales**. Costs attributable to the negotiation of settlement or a sale or purchase of any capital asset (by acquisition or merger) are not allowable costs. Included among such unallowable costs are: legal fees, accounting and administrative costs, appraisal fees, banking and broker fees, travel costs, and the cost of feasibility studies.

5000 **SPECIAL SERVICE ALLOWANCE**

5010 **Principle**. A special service is to be distinguished from a routine service.

5010.1 A special service is that of an individual nature required in the case of a specific member. This service is limited to professional services such as physical therapy, occupational therapy, and speech and hearing services. Special services of this nature must be billed monthly to the Department as separate items required for the care of individual members.

6000 **LABOR COST COMPONENT**

6010 **Wages**: Reasonable costs incurred for personnel wages will be reimbursed at actual cost.

6011 **All Facility Staff**

6011.1 The reasonable allowable cost of wages for personnel employed on site at the facility shall be determined based on the lesser of actual hours worked, or hours approved by the Department.

6011.2 Direct care staff hours related to mandatory programs, as specified in Section 3005.10, above, will be considered allowable and will be reimbursed at the actual hourly wage for the relevant category of direct care staff.

6011.3 Contract labor costs for RNs, LPNs, and CNAs working on-site are an allowable labor cost. Contract labor hours must be included with the direct care worked hours for the comparison to approved hours.

6000 **LABOR COST COMPONENT** (cont.)

6011.4 Bonuses that are part of a written policy of the provider and that require some measurable and attainable job performance expectation from the employee are allowable.

6011.5 Orientation, on the job training, in-service education, and similar work learning programs are recognized as normal operating costs for labor cost. The hours associated with orientation are not used to determine approved hours (staffing pattern) for the facility.

6020 **Fringe Benefits**. The Department will reimburse the facility for its actual contribution to the reasonable and customary cost of the following designated types of fringe benefits if they are provided to the facility's personnel:

6021 **Designated Benefits**

6021.1 health insurance - insurance premiums for employees are an allowable cost

6021.2 dental insurance

6021.3 life and disability insurance

6021.4 worker's compensation

6021.5 holiday leave

6021.6 sick leave

6021.7 unemployment compensation

6021.8 Federal Insurance Contribution Act (FICA) vacation

6021.9 qualified retirement contributions

6022 **Pay In Lieu of Benefits (PIB)**. PIB is an allowable cost for those benefits unrelated to wage driven benefits such as FICA and Worker's Compensation. In order to receive pay in lieu of health insurance the staff member must demonstrate to the facility that he/she is covered for comprehensive medical care under an alternative program or policy. This benefit shall be reimbursable for personnel who are employed at the facility at least twenty-four (24) hours per week. PIB shall be reported as a fringe benefit on the appropriate cost reporting form.

For facilities that have hired per diem nursing staff prior to April 1, 1989, those per diem nursing staff members will be exempt from the twenty-four (24) hour per week requirement as stated in this Principle. The facility must make documentation available at the time of audit.

6000 **LABOR COST COMPONENT** (cont.)

6023 Costs incurred for fringe benefits other than those designated in 6021 or 6022 above, if they are determined to be reasonable, may be reimbursed only as a part of the variable cost component.

7000 **PROSPECTIVE METHOD OF PAYMENT**

7010 **Prospective Per Diem Rate**

7011 Intermediate Care Facilities for Mentally Retarded will be reimbursed for services provided to a member under MaineCare based on a rate that the Department establishes on a prospective basis. In establishing the prospective rate, the Department will determine what costs are reasonable and necessary to provide the services.

7012 **Definitions**

7012.1 Per Diem Rate means total allowable costs divided by days of care. The prospective per diem rate, multiplied by days of care for MaineCare members, will determine reimbursement.

7012.2 Days of Care means total number of actual days of care provided whether or not payment is received, and the number of any other days for which payment is made. (Note: Bed hold days and discharge days are included only if payment is received for these days.)

7020 **Establishment of Prospective Per Diem Rate**

7021 For payment periods beginning on or after July 1, 2006, the Department will establish an interim and prospective per diem rate to be paid to each facility throughout its fiscal year. The prospective rate shall consist of three (3) components: the fixed cost component as defined in Principle 3000; the variable cost component as defined in Principle 4000; and the reasonable cost of employee wages, salaries, and benefits as defined in Principle 6000.

7021.1 The fixed cost rate is based on the last audited cost report.

7021.2 The variable cost rate is based on the base year’s variable rate inflated for the applicable fiscal year end.

7021.3 The labor cost rate is based on the last audited labor cost rate inflated for the applicable fiscal year end.

7021.4 Each facility's base year shall be its fiscal year ending in 2004. For any facility sold after December 31, 2003 the variable rate will be determined from the base year of the seller. Costs approved through the certificate of need review shall determine the base year for new facilities. The base year may be adjusted to include directors’ and officers’ liability insurance costs in these base year costs.

7000 **PROSPECTIVE METHOD OF PAYMENT** (cont.)

7021.1 Central office costs as set forth in Section 4114.1 are to be considered part of the variable costs component.

For the first rate set by these Principles, an adjustment to the prospective variable component will be made to transfer allowable FY 2004 central office fixed costs to variable costs.

When a central office bookkeeping system is set up, salary costs will be removed from retrospective reimbursement and will be transferred to the variable cost component.

7022 **Example of how the first prospective rate will be set**. The following example is intended to show the methodology only and does not use actual inflation factor percentages.

Example: A new rate letter effective July 1, 2006 through fiscal year ended June 30, 2007 would be based on:

Rate Components:	**Rate source: last audited cost report or 06/30/04**	**Inflation factor To FY 2005**	**Inflation factor To FY 2006**	**Inflation factor To FY 2007**	**06/30/07**
Fixed rate – including fixed central office costs *(source last audited cost report- say FY 2004)*	$30.00				
Less: fixed portion of central office costs FY 2004	($2.50)				
Fixed rate net of fixed portion of central office costs FY 2004	$27.50				$27.50
Prospective **variable rate** without fixed portion of central office costs *(source FYE 06/30/04)*	$50.00				
Plus: fixed portion of central office costs FY 2004	$2.50				
Prospective variable rate with fixed portion of central office costs *(source FYE 06/30/04)*	$52.50	2 %	2 %	2 %	$55.71
			($52.50 x 1.02 x 1.02 x 1.02 = $55.71)		
Labor rate *(source last audited cost report-say FY 2004)*	$200.00	3 %	3 %	3 %	$218.55
			($200.00 x 1.03 x 1.03 x 1.03 = $218.55)		
	$280.00				$301.76

7030 **Subsequent Prospective Interim Rates**

7031 The Department will assign an interim prospective rate at least fifteen (15) days prior to the commencement of a facility's fiscal year or immediately following the availability of the inflationary information which will take effect for all services rendered on or after the first day of that fiscal year.

7000 **PROSPECTIVE METHOD OF PAYMENT** (cont.)

The subsequent rate will be calculated as follows:

A. The fixed cost component of the rate will be based on the last completed MaineCare audit.

B. The variable cost component of the rate will be based on the variable cost component from the previous rate letter inflated to the provider's current year end.

C. The labor cost component will be from the last audited cost report or FY 2004 (which ever is later) inflated to the provider's fiscal year end.

7032 **Example of subsequent rate calculation**

Example: A new rate letter effective July 1, 2007 through fiscal year ended June 30, 2008 would be based on:

Rate components:	**Rate source: last audited cost report or 06/30/04 or FY 07 rate letter**	**Inflation factor To FY 2008**	**06/30/08**
Fixed rate – including fixed central office costs *(source last audited cost report- say FY 05)*	$32.00		
Less: fixed portion of central office costs FY 05	($3.00)		
Fixed rate net of fixed portion of central office costs FY 05	$29.00		$29.00
Prospective **variable rate** with fixed portion of central office costs *(source FYE 06/30/04 plus inflation to FY 07)*	$54.62	2 %	$55.71
		($54.62 x 1.02 = $55.71)	
Labor rate *(source last audited cost report-say FY 05 plus inflation through FY 07)*	$210.00	3 %	$216.30
		($210.00 x 1.03 = $216.30)	
	$293.62		$301.01

7000 **PROSPECTIVE METHOD OF PAYMENT** (cont.)

7033 **Interim Adjustments to the Prospective Rate**

A facility may request an adjustment to its interim prospective rate, not to exceed actual costs of employee wages, salaries, and benefits for a current twelve (12) month period. In order to receive an adjustment to the interim prospective rate a facility must submit documentation of actual cost adjusting for the changes described in these rules. At the time of audit, the Department will determine actual allowable costs and will determine the final settlement based on the actual allowable costs.

A facility may request an interim adjustment as described above only once, unless it can demonstrate extreme hardship. Such an adjustment based on extreme hardship will be granted no more often than once every six (6) months. Facilities must submit documentation to the Office of Audit when applying for an interim adjustment.

7036 **Inflation Adjustment**. The “Center for Medicare and Medicaid Services (CMS) Nursing Home Without Capital Market Basket” forecasts published quarterly by Global Insight in the Health-Care Cost Review will be used to determine the expected increases in the cost of the goods and services which must be purchased by Intermediate Care Facilities for the Mentally Retarded. In computing the labor cost component and variable cost component of each facility's prospective rate, the base rate of each facility whose fiscal year ends during a given calendar quarter will be adjusted to reflect the forecasted change in the market basket of facilities whose fiscal year ends in the same quarter of the following year. The most recent forecast prior to the beginning of a quarter will be used to determine the inflation projection for facilities with a fiscal year ending in that quarter.

7040 *[Reserved]*

7050 *[Reserved]*

7060 *[Reserved]*

7070 **Final Audit of First and Subsequent Prospective Years**

7071 **Principle**

All facilities will be required to submit a cost report at the end of their fiscal year on cost report forms provided by the Department. The Department will conduct a final audit of each facility's cost report that may consist of a full scope examination by Department.

7000 **PROSPECTIVE METHOD OF PAYMENT** (cont.)

Upon final audit of a facility's cost report for the first and subsequent prospective years, the Department will:

7071.1 determine the actual allowable labor costs incurred by the facility. The allowable labor costs cannot include hours that exceed the approved staffing pattern. The total allowable labor component dollars are divided by total days to determine the labor component rate.

7071.2 determine the actual allowable variable costs incurred by the facility. The total allowable variable component dollars are divided by total days to determine the variable component rate. Facilities that incur variable costs during their fiscal year that exceed the amount paid through the prospective rate, will be reimbursed nor more than the amount allowed by the prospective rate.

7071.3 determine the actual allowable fixed costs incurred by the facility. The total allowable fixed component dollars are divided by total days to determine the fixed component rate.

7071.4 calculate a final prospective rate. This is the sum of the three components.

7071.5 calculate any overpayments or underpayments made by the Department based on the above determinations.

7072 *[Reserved]*

7073 *[Reserved]*

7074 **Incentive Payments**

ICFs-MR that operate in an efficient and economical manner, and thereby limit their variable costs during their fiscal year to less than the amounts paid through the variable cost component of the final prospective rate, will share with the Department in the resulting savings. Eligible ICFs-MR will receive an incentive payment after final audit in an amount equal to fifty percent (50 %) of the variable cost savings.

The amount of the incentive payment will be determined upon final audit and will be calculated in the determination of any overpayments or underpayments made by the Department.

ICFs-MR that incur variable costs during their fiscal year in excess of or equal to the variable cost component of the prospective rate will receive no more than the amount allowed by the prospective rate.

7000 **PROSPECTIVE METHOD OF PAYMENT** (cont.)

Example: Facility A's final prospective rate included a variable cost component of $34.56. During the year, it actually incurs an allowable variable cost per day of $34.00. Ninety percent (90%) of the 29,200 days of care provided (or 26,280 days of care) were provided to MaineCare members. The difference ($34.56 - $34.00 x 26,280 = $14,717) will be the savings that Facility A and the Department will share. Facility A will retain $7,358.50 (.50 x $14,717) and the Department will retain $7,358.50 (.50 x $14,717) in savings.

7074.1 **Exception to Incentive Payment**

If the Department issues a conditional or temporary license or formally notifies an ICF-MR that it must immediately correct its deficiencies, the ICF-MR will be ineligible to receive an "incentive payment" for the fiscal year in which the deficiency notice, conditional or temporary license was issued, and for any fiscal year in which it has not cured the deficiency to the satisfaction of the Department.

7075 *[Reserved]*

7076 **Calculation of Overpayments and Underpayments**

Upon determination of final prospective rate, the Department will calculate the net amount of any overpayments or underpayments made to the facility.

If the Department determines that it has underpaid a facility, it will estimate the amount due and forward the result to the facility within thirty (30) days.

If the Department determines that it has overpaid a facility, the Department will notify the facility pursuant to Title 22, Section 1714-A(3). Facilities will pay the total overpayment within sixty (60) days of the notice of overpayment or request the Department to reduce future payments to the facility. Facilities that do not notify the Department of the method by which they intend to repay the overpayment will, beginning sixty (60) days after their receipt of the notice of overpayment, have their subsequent payments from the Department reduced by the amount of the overpayment, pursuant to state and federal rules and regulations.

If a facility appeals a determination of overpayment, the facility may voluntarily repay within sixty (60) days of the notice of overpayment all portions of the determined overpayment except those that are expressly disputed and for which specific dollar values are identified. Repayment of each such specifically disputed portion and identified amount shall be stayed pending resolution of the dispute with respect thereto. The amount of money in dispute must be identified in the manner outlined in Section 8010.

7000 **PROSPECTIVE METHOD OF PAYMENT** (cont.)

7080 **Changes in Staffing**

7080.1 In the event that a facility believes that the need of the residents it serves have increased or decreased considerably and, consequently, that an increase or decrease in the number of full time equivalent staff it employs is warranted, it may request the DHHS, Integrated Services, Office of Adults with Cognitive and Physical Disability Services to conduct an audit of its residents and their needs.

7080.2 The Office of Adults with Cognitive and Physical Disability Services will notify the Office of Audit when staffing change has been approved.

7080.3 The cost associated with any additional personnel approved by the Department will be incorporated into the facility's interim adjustment rate of reimbursement. The facility must notify the Office of Audit when the approved position has been filled.

7080.4 The facility will be responsible for maintaining appropriate records that the Department can audit to demonstrate the need for changes in staffing (either increases or decreases) based on the needs and changes in needs of its residents.

7080.5 If the Department determines that the needs of the residents are not adequately met, it may order the facility to retain the additional personnel needed to do so.

7080.6 If the Department determines that the number of staff in the facility is greater than the number required to adequately serve the needs of its residents, it may adjust the facility's approved staffing pattern and its prospective rate. Any such adjustment made will not be applied on a retroactive basis; but instead will be applied as of the effective date of the adjustment.

7090 *[Reserved]*

7095 **Certified Nursing Assistant Training (CNA)**

7095.1 The reasonable and necessary cost of certified nursing assistant training programs necessary for providing proper training to qualify individuals as certified nursing assistants is reimbursable under MaineCare. These programs must be conducted in accordance with the requirements of the Maine Board of Nursing for education programs for nursing assistants. These programs must be conducted within a licensed Nursing Facility or Intermediate Care Facility for the Mentally Retarded within the State of Maine or under contract with an educational institute where the classroom instruction is provided in the educational facility, but the supervised clinical experience must be within the licensed ICF-MR receiving reimbursement under this Section.

7000 **PROSPECTIVE METHOD OF PAYMENT** (cont.)

7095.2 **Definitions**

7095.21 **Allowable Programs**. All CNA programs must be approved by the Department of Education in order for a facility to be reimbursed for a CNA training program. The Department will reimburse for the number of courses needed to meet the facility's needs, or the needs of a group of facilities on a prorated basis, which is expected to be no more than three (3) CNA courses per year, unless it is found that three (3) courses are not enough to meet the facility's needs. However, costs for classes of four (4) or fewer students will be allowed no more than twice a year.

7095.22 **Allowable Costs**

a) qualified instructor for classroom instruction and clinical instruction, not to exceed one hundred-fifty (150) hours.

b) instructor preparation time, not to exceed fifteen (15) hours.

c) additional clinical instructor time when number of students in the program exceeds ten (10).

d) one (1) "Train the Trainer Program" per facility per year.

e) training materials, books and supplies necessary for providing the CNA program.

f) liability insurance.

g) competency examinations, if Department of Education no longer provides the competency examinations.

h) administrative overhead expenses shall be limited to ten percent (10%) of the total allowable CNA training budget.

The cost per student cannot exceed the cost of tuition in a program offered through the Department of Education. If it is determined that any of the CNA training programs offered by a facility have not met or do not presently meet the requirements of the Maine Board of Nursing or are not an approved program through the Department of Education and the Department of Professional and Financial Regulation, the Department will initiate action to recoup all reimbursement.

7000 **PROSPECTIVE METHOD OF PAYMENT** (cont.)

All income received from these programs must be used to reduce the overall cost of the services.

7095.23 **Reimbursement**. In order for a facility to be reimbursed for conducting an approved CNA training program, the facility must submit a formal request for reimbursement to the Director of the Office of MaineCare Services, 11 State House Station, Augusta, Maine, 04333-0011. All requests must be received by the Department before the end of the facility's current fiscal year in which the CNA program began.

Any request that is not received before the end of the facility's current fiscal year in which the CNA program begins will not be considered as an allowable cost under MaineCare.

All requests must include:

a) A completed schedule "Request for Budget Approval" available from the Office of MaineCare Services.

b) Copies of the letters of intent to employ for non-employees participating in the training program.

c) Copy of the Department of Education "Notice of Status" letter.

The Department will reimburse the facility its fair share of allowable CNA training program costs based upon the number of MaineCare residents at the facility. The allowable cost of approved CNA training programs at the facility will not be included in the calculation of the facility's prospective rate, but will be reimbursed in a lump sum payment upon approval by the Office of MaineCare Services.

7095.24 The Office of Audit will audit all CNA training costs at the time of the facility's final audit. The facility must maintain accurate records of CNA training programs conducted.

7000 **PROSPECTIVE METHOD OF PAYMENT** (cont.)

7100 **New Facilities**

At the start of participation in the program, available historical data relating to a provider's costs will be received by the State of Maine Department of Health and Human Services and an interim prospective payment rate will be established for such provider. This rate will be based on the rate approved by the Department in accordance with the provisions of the Maine Certificate of Need Act. The rate approved by the Department in accordance with the provisions of the Maine Certificate of Need Act for a facility's first year of operation will be adjusted at the time the facility opens to reflect actual inflation since the approval of the Certificate of Need. The facility's second year prospective rate will be based on the second year projected rate approved under the Maine Certificate of Need Act adjusted for actual inflation since the approval of the Certificate of Need The third fiscal period and subsequent periods will be based on the second fiscal period of operation. The second fiscal period of operation will be used as a “base year” going forward, unless the Department determines there is a need to rebase.

7150 **Transfer of Ownership**

In the case of a sale of a facility, the Department will review the new owner's Certificate of Need application and evaluate the appropriateness and reasonableness of the capital related costs as well as operating costs. The Department will establish a prospective rate for the new owner of the facility based on its analysis under the Certificate of Need process.

7200 **Extraordinary Circumstances Allowance**

Facilities that experience unforeseen and uncontrollable events during a year that result in unforeseen or uncontrollable increases in expenses, may request an adjustment to a prospective rate in the form of an extraordinary circumstance allowance. Extraordinary circumstances include, but are not limited to:

a) events of a catastrophic nature (fire, flood, etc.),

b) unforeseen minimum wage or Social Security increases,

c) changes in licensure or accreditation requirements.

If the Department concludes that an extraordinary circumstance existed, an adjustment will be made by the Department in the form of a supplemental allowance.

The Department will determine from the nature of the extraordinary circumstance whether it would have a continuing impact and therefore whether the allowance should be included in the computation of the base rate for the succeeding year.

7000 **PROSPECTIVE METHOD OF PAYMENT** (cont.)

7210 All funds granted under this section are considered a supplemental allowance and as such any funds not expended for the purpose for which granted will be recouped in future audits.

7300 *[Reserved]*

7400 *[Reserved]*

7500 *[Reserved]*

7600 **Adjustments for Appeal Decisions**

The Department will adjust any interim or final prospective rate to reflect appeal decisions made subsequent to the establishment of those rates.

7700 *[Reserved]*

7800 *[Reserved]*

8000 **APPEAL PROCEDURES - - DEFICIENCY RATE - RATE LIMITATION**

8010 **Procedures**

8010.1 A facility may administratively appeal any of the following types of Office of Audit determinations:

8010.11. Audit Adjustment; or

8010.12. Calculation of final settlement.

8010.2 An Administrative appeal will proceed in the following manner:

8010.21 Within sixty (60) days of receipt of an audit or other appealable determination, the facility must request, in writing, an informal review before the Director of the Office of Audit or his/her designee. The facility must forward, with the request, any and all specific information it has relative to the issues in dispute, note the monetary amount each issue represents, and identify the appropriate principle supporting the request. Only issues presented in this manner and time frame will be considered at an informal review or at a subsequent administrative hearing.

8010.22 The Director or his/her designee shall notify the facility in writing of the decision made as a request of such informal review. If the facility disagrees with the results of the informal review, the facility may request an administrative hearing before the Commissioner or a presiding officer designated by the Commissioner.

8000 **APPEAL PROCEDURES - DEFICIENCY RATE - RATE LIMITATION** (cont.)

Only issues presented in the informal review will be considered at the administrative hearing. A request for an administrative hearing must be made, in writing, within sixty (60) days of receipt of the decision made as a result of the informal review.

8010.23 To the extent the Department rules in favor of the facility, the audit report or prospective rate will be corrected.

8020 *[Reserved]*

8030 *[Reserved]*

8040 **Deficiency per diem rate**. When a facility is found not to have provided the quality of service or level of care required, reimbursement will be made on ninety (90%) of the provider's per diem rate. This "deficiency rate" will be applied following written notification to the facility of the effective date of the reduced rate for any of the following service deficiencies:

8041 Staffing over a period of two (2) weeks or more does not meet the Federal Certification and State Licensing requirements, except where there is written documentation of a good faith effort to employ licensed nurses to meet the licensed nurse requirements over and above the full time director of nursing;

8042 Food service does not meet the Federal Certification and State Licensing requirements;

8043 Specific, documented evidence that the care provided does not meet the Federal Certification and State Licensing requirements. Such penalty to be effective no sooner than thirty (30) days from written notification that such deficiencies exist;

8044 Failure to correct, within the time frames of an accepted Plan of Correction, deficiencies in meeting the Federal Certification and State Licensing requirements, which cause a threat to the health and safety of members in a facility or the surrounding community;

8045 Failure to submit acceptable cost reports and maintain auditable records as required. A reduction in rate because of service deficiencies shall remain in effect until the deficiencies have been corrected, as verified by representatives of the Department of Health and Human Services, following written notification by the provider that the deficiencies no longer exist. No retroactive adjustments to the full rate shall be made for the period that the deficiency rate is in effect.

8000 **APPEAL PROCEDURES - - DEFICIENCY RATE - RATE LIMITATION** (cont.)

8050 **Limitation**

8051 In no case may payment exceed the facility's customary charges to the general public for such services. This determination will be based on the Principles described in the Medicare Provider Reimbursement Manual (CMS Pub15) in effect at the time of such determination.

STATUTORY AUTHORITY: 22 MRSA §42(1)

EFFECTIVE DATE:
July 1, 1982 (filing 82-116)

AMENDED:

July 1, 1983 -	Section 4170 (filing 83-165)
October 1, 1984 - (filing 84-337)	Introduction (Savings Clause), Sections 3011, 3012, 4180, 7012
July 1, 1985 -	Section 4170 (filing 85-296)
July 1, 1986 -	Section 4165 (filing 86-210)
July 1, 1986 -	Sections 4112.1, 4170 (filing 86-233)
March 1, 1987 -	Sections 4111, 4112, 4120 (filing 87-77)
April 15, 1987 -	Sections 7300 through 7340 (filing 87-118)
January 1, 1988 -	Section 4170 (filing 87-441)
April 3, 1988 -	Section 7210 (filing 88-98)
April 1, 1989 -	Sections 2031, 5012, 7012, 7020, 7030, 7072, 7075.2, 7076, 7080, 7095, 8000 (filing 89-462)
March 10, 2001 -	entire chapter reconstructed in electronic format from the above filings and submitted to the Department of Human Services for examination
August 1, 2003 -	filing 2003-250
July 1, 2006 -	Section 7074, filing 2006-235 (major substantive)
September 1, 2007	major revisions, filing 2007-295 (major substantive)
April 1, 2010 -	Sections 4171 and 4172 (filing 2010-115, EMERGENCY major substantive)
September 2, 2011 -	Sections 4171 and 4172 (filing 2011-255, final adoption, major substantive)
January 1, 2012	Adopted 6-23-12 (Retroactive to January 1, 2012)