

**Regulations Governing the Licensing
and Functioning of Assisted Housing Programs:**

Level II Private Non-Medical Institutions

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**MAINE DEPARTMENT OF HEALTH AND HUMAN SERVICES
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Level II Private Non-Medical Institutions

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Section 3

Licensing

- 3.1 Responsibility for compliance.** The applicant/licensee shall comply with these regulations.
- 3.2 Unlicensed Level II private non-medical institution (PNMI).** No person, firm, partnership, association, corporation or other entity shall manage or operate a Level II private non-medical institution without a license.
- 3.3 Person license issued to.** The license is only valid for the named licensee(s).
- 3.4 Application and licensure.**
- 3.4.1 Application required.** The applicant is required to submit a written application for a license on a form approved by the department. A license must be issued prior to the commencement of operation, or the applicant may be subject to sanctions. Incomplete applications on which no action has been taken by the applicant after sixty (60) calendar days shall be void. A non-refundable licensing fee shall be submitted with the application. The check shall be made payable to the Treasurer, State of Maine. Fees are:
- 3.4.1.1** Private non-medical institutes - \$10.00 each licensed bed.
- 3.4.2 Admission and scope of services policy.** Facilities are required to provide the department with a written admission policy at the time of application for a license. The policy shall describe who may be admitted and scope of services provided, including scope of Nursing Services, consistent with applicable state and federal law.
- 3.4.3 Additional licensing requirements.** Prior to the issuance of a license and prior to re-licensure, the facility shall:
- 3.4.3.1** Be certified to be in compliance with the National Fire Protection Association (NFPA) Life Safety Code and other fire and safety laws and regulations, which are applicable to the facility, as follows:
- 3.4.3.1.1** A residential care facility or private non-medical institution with four (4) to sixteen (16) beds must comply with the sections of the Life Safety Code that apply to small facilities and with the new residential board and care occupancy chapter if that facility is a new facility or with the existing residential board and care occupancy chapter if that facility is an existing facility.
- 3.4.3.2** Comply with all applicable laws and regulations promulgated there under, relating to fire safety, plumbing, water supply, sewage disposal and maintenance of sanitary conditions (Class I, II, III);
- 3.4.3.3** Comply with all other applicable laws and regulations pertaining to licensing;
- 3.4.3.4** Provide evidence of a licensed administrator if required by the rules of the Nursing Home Administrators Licensing Board pursuant to Title 32 M.R.S.A. § 62 *et seq.* and
- 3.4.3.5** Provide evidence that all taxes applicable to PNMI's are current and up-to-date.

- 3.5 Requirement for bond.** The applicant shall furnish evidence of a bond covering the applicant and any employee or agent of the applicant who manages, holds or otherwise is entrusted with resident funds in an amount sufficient to replace those funds in the event of loss.
- 3.6 Limitations on serving as legal representative.** No licensee, owner, proprietor, administrator, employee or a person with a substantial financial interest in the facility may serve as guardian, conservator or power of attorney of any resident, but may be a representative payee or manager of personal funds.
- 3.7 Issuance of license.** A new applicant will be notified by the department within two (2) weeks of filing an application whether the application is complete. The department and the Department of Public Safety are required to provide a new applicant necessary services and inspections within ninety (90) days of the filing of the completed application and the date the building is ready for inspection. The license shall specify the name of the owner, the name of the facility, the type of facility, the name of the administrator, the address of the premises where the facility is located, the maximum number of residents, the type of license, and the expiration date of the license. Any provider who is issued a license for scattered sites will have all the sites listed on the single license.
- 3.8 Default licensing.** If a new applicant has filed a completed application and has a building ready for inspection, has not been provided the necessary notifications, inspections or services from the department and the Department of Public Safety, and a period of more than ninety (90) days has elapsed since notification that the application is complete, a provisional license will be issued. All required application materials must be submitted for the application to be considered complete. The department shall notify a new applicant within two (2) weeks of filing of the application on whether the application is complete. If initial services and inspections are completed within the ninety (90) day time period, an initial license will be issued and no default licensing will occur.
- 3.9 Number of licenses required.** When more than one type of facility or program is provided, the department may consider the following criteria in determining the number of licenses required:
- 3.9.1** The physical location;
 - 3.9.2** The structure or management and ownership;
 - 3.9.3** If providing more than one licensed level of care, the physically distinct part of the building designated for the assisted living program, residential care facility or private non-medical institution; and
 - 3.9.4** The administrative and regulatory burdens and benefits of granting a given number of licenses.
- The department will specify the number of licensed beds or apartments, as appropriate, for each level of care. The provider shall not exceed licensed capacity.
- 3.10 Adult day services programs.** When an adult day services program is physically located in an assisted living program, residential care facility or private non-medical institution, separate licenses shall not be required. The adult day services programs shall comply with the *Regulations Governing the Licensing and Functioning of Adult Day Services Programs* and licensed capacity will be reflected on the license.
- 3.11 Multilevel facility license.** For multilevel facilities, a single license will be issued by the department, identifying each level of service. Multilevel facilities are assisted housing programs that are located on the

same contiguous grounds with licensed nursing facilities; adult day services programs or home health agencies. Multilevel facilities, when subject to licensing action or other sanctions, may have one or more of its levels sanctioned, and the department will specify the particular levels in writing.

- 3.12 Provisional license.** The department shall issue a provisional license, for a minimum period of three (3) months or longer as deemed necessary by the department but not to exceed twelve (12) consecutive months, to an applicant who:
- 3.12.1** Has not previously operated the facility/program for which the application is made or is licensed and has not operated the facility during the term of that license;
 - 3.12.2** Complies with all applicable laws and regulations, except those which can only be complied with once residents are served by the applicant; and
 - 3.12.3** Demonstrates the ability to comply with all applicable laws and regulations by the end of the Provisional license term; or
 - 3.12.4** Meets the criteria for default licensing.
- 3.13 Conditional license.** The department may issue a conditional license when the licensee fails to comply with applicable laws and regulations and, in the judgment of the Commissioner of the Department of Health and Human Services, the best interest of the public would be so served by issuing a conditional license. The conditional license shall specify when and what corrections must be made during the term of the conditional license. A conditional license may be issued for up to a twelve (12) month period.
- 3.14 Transfer of licenses.** No license may be transferred or applicable to any location or persons other than those specified on the license. When an assisted living program, residential care facility or private non-medical institution is sold or otherwise transferred to another provider, the new provider must apply for and obtain a license and pay a licensing fee prior to operating the program.
- 3.15 Term of license.** A license may be valid for two (2) years, as long as the Department has determined the facility is in substantial compliance with licensing rules and has no history of health or safety violations. Prior to the expiration of the license, the Department shall inspect for continued compliance with applicable laws and regulations as often as deemed necessary by the department. In facilities/programs licensed for more than one level of care, the term of the license will be the term permitted for the highest level of care. For purposes of this section, the following terms have the following meanings:
- 3.15.1** “Substantial compliance” means there were no Class I or II violations that would threaten the health or safety of residents.
 - 3.15.2** “No history of health or safety violations” means that within the preceding two (2) years, the applicant was in substantial compliance with the rules.
- 3.16 Reapplications.** Whenever a licensee has made timely and sufficient application for renewal of a license, the existing license shall not expire until the application has been finally determined by the department.
- 3.17 Posting the license.** The licensee shall post a copy of the license at each of its licensed locations, where it can be seen and reviewed by the public.

- 3.18 Right of entry.** The department's authorized representatives, authorized representatives of the Maine Attorney General's Office and authorized representatives of the Long Term Care Ombudsman Program shall have the right to enter upon and into any licensed facility/program at any time, in order to determine the state of compliance with applicable laws and regulations contained herein. To inspect the premises of a Level II PNMI that the department -knows or believes is being operated without a license, the department may enter only with the permission of the owner or the person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court authorizing entry and inspection. An application for a Level II private non-medical institution license shall constitute permission for entry and inspection to verify compliance with applicable law and rules.
- 3.19 Filing Plans of Correction.** Whenever the department issues an SOD, the applicant/licensee shall submit a specific POC within ten (10) working days of the date the applicant/licensee received the SOD.
- 3.20 Reapplication subsequent to licensing actions.** Subsequent to any of the following actions, a full annual or biennial license will not be issued until the deficiencies identified by the department have been corrected:
- 3.20.1** Issuance of a conditional license;
 - 3.20.2** Refusal to issue or renew a license;
 - 3.20.3** Revocation or suspension of a license; or
 - 3.20.4** Refusal to issue a provisional license.
- 3.21 Renewal.** A renewal application must be received by the department thirty (30) days prior to the license expiration date. Regardless of the term of the license, the licensee must pay a license fee annually. Prior to acting on the application for renewal the department may:
- 3.21.1** Verify any information in the renewal application and conduct an inspection of the facility/program;
 - 3.21.2** Issue an SOD, as appropriate. If cited deficiencies are not corrected within the established time frame, the department may deny the renewal application, impose a fine, issue a Directed POC, and/or impose a conditional license.
- 3.22 Actions requiring prior written approval.** When a proposed alteration of the physical plant involves areas used by residents, residents may not occupy these areas until the department has determined that the changes comply with these regulations and issues a written approval to proceed.
- 3.23 Waivers.** The department may waive or modify any provision(s) of these regulations as long as the provision is not mandated by state or federal law and does not violate resident rights described in Section 5 of these regulations. The applicant/licensee shall indicate, in writing, what alternative method will comply with the intent of the regulation for which the waiver is sought. If approved, the waiver may be time limited.
- 3.24 Informal review of waiver denial.** The applicant/licensee may appeal a decision of the department to deny a waiver request by submitting a written request for an informal review by the department, or its designee, within ten (10) working days of the date of receipt of the denial. The applicant/licensee shall

state in the written request, the grounds for the appeal. Should the applicant/licensee disagree with the informal review decision, an administrative hearing (pursuant to the Maine Administrative Procedure Act) may be requested within ten (10) working days of the date of notice or receipt of the informal review decision by writing to the department. See also Section 4.10 of these regulations.

3.25 Rates and contracts.

3.25.1 Rates. Assisted housing programs shall list all standard charges and make them available to the public.

3.25.2 Signing a contract. Each provider and each resident, or someone authorized to act on the resident's behalf, shall sign a standard contract issued by the department, attached as Appendix A, at the time of any modification of an existing contract and with all new admissions. The resident and/or resident's legal representative shall be given an original of the signed contract and the provider shall keep a duplicate in the resident's file. No one other than the resident shall incur any responsibility for the resident's obligations by signing the contract for admission of the resident. Financial responsibility for the resident's expenses can only be assumed according to Section 3.25.3.7.

3.25.3 Provisions of contract. The contract shall contain standard provisions regarding services and accommodations to be provided and the rates and charges for such and any other related charges not covered by the facility/program's basic rate. The contract may contain additional provisions, as addenda, that do not conflict with these regulations. The provider may supplement but not replace the standard provisions as long as they are consistent with the applicable assisted housing program rules. Each contract is subject to the following requirements:

3.25.3.1 No contract may contain a provision for the discharge of a resident, which is inconsistent with state law or rule.

3.25.3.2 No contract may contain a provision that may require or imply a lesser standard of care or responsibility than is required by law or rule.

3.25.3.3 Each contract shall provide for at least thirty (30) calendar day's notice prior to any changes in rates, responsibilities, services to be provided or any other items included in the contract. The thirty (30) day notice will not be required if it is the resident, or the resident's legal representative, who requests additional services not included in the existing contract.

3.25.3.4 No contract or agreement will require a deposit or other prepayment, except one month's rent in an assisted living program, which may be used as a security deposit. The contract must state the explicit return policy of the facility with regard to the security deposit.

3.25.3.5 No contract may contain a provision, which provides for the payment of attorney fees or any other cost of collecting payments from the resident.

3.25.3.6 The following shall be appended to the contract and made a part thereof:

3.25.3.6.1 Grievance procedure;

3.25.3.6.2 Tenancy obligations, if they exist;

3.25.3.6.3 Resident rights; and

3.25.3.6.4 Copy of the admissions policy.

3.25.3.7 The contract signed for admission of the resident may not require or encourage anyone other than the resident to obligate himself/herself for the payment of the resident's expenses. If anyone other than the resident informs the facility that he/she wishes to guarantee payment of the resident's expenses, he/she can do so only in a separate written agreement. No provision in the separate written agreement can conflict with these rules. This separate written agreement must be provided to the guarantor of payment and must plainly state the following:

3.25.3.7.1 Do not sign this agreement unless you voluntarily agree to be financially liable for paying the resident's expenses with your own money.

3.25.3.7.2 You may change your mind within forty-eight (48) hours of signing this agreement by notifying the facility that you wish to revoke this agreement.

3.25.3.7.3 You may call the Long Term Care Ombudsman Program for an explanation of your rights.

3.26 Information to residents. The licensee must provide an information packet that includes the following information to the resident and/or resident's legal representative at the time of admission or within sixty (60) calendar days of the effective date of these regulations for all current residents who have not already been given this information:

3.26.1 Advance Directives information;

3.26.2 Information regarding the type of facility and the licensing status;

3.26.3 The Maine Long Term Care Ombudsman Program brochure;

3.26.4 The department's toll-free telephone numbers for the Office of Advocacy, Adult Protective Services, and the Division of Licensing and Regulatory Services, Community Services Programs;

3.26.5 The process and criteria for placement in, or transfer or discharge from, the program; and

3.26.6 The program's staff qualifications.

3.27 Information for residents of Alzheimer's/dementia units. When a provider operates a unit meeting the requirements of a Designated Alzheimer's/Dementia Care Unit as all or part of its program, residents and family members, or any other authorized representative must be provided the following information:

3.27.1 A written statement of philosophy;

3.27.2 The process used for resident assessment and establishment of a residential services plan and its implementation;

3.27.3 Those physical environment and design features that support the functioning of adults with cognitive impairments;

3.27.4 The frequency and types of group and individual activities provided by the program;

- 3.27.5** A description of family involvement and the availability of family support programs;
 - 3.27.6** A description of security measures provided by the facility;
 - 3.27.7** A description of in-service training provided for staff; and
 - 3.27.8** Policies with criteria and procedures for admission and discharge of residents to and from the facility/unit.
- 3.28 Refunds.** Refunds are to be managed as follows:
- 3.28.1** If a resident dies or is discharged, the provider shall issue a refund to the resident, the resident's legal representative or the resident's estate for any advance payments on a pro-rated basis.
 - 3.28.2** Refunds shall be made within thirty (30) calendar days of date of discharge-or death.
 - 3.28.3** If a resident is determined to be retroactively eligible for third party payment, upon payment from a third party payer, the provider must repay the family or other payer any payments made for the period covered by third party payment.
- 3.29 Use of personal funds by operator.** Under no circumstances shall any operator or agent of an assisted housing program use the personal funds of any resident for the operating costs of the facility or for items, which are part of the contractual payment. The personal funds of any resident shall not be commingled with the business funds of the facility or with the personal funds or accounts of the owner, any member of the owner's family or any employee of the facility. No operator or agent of the facility shall borrow money from any resident. (*Class IV*)
- 3.30 Tenancy obligation.** Tenancy obligations, if they exist in the facility, must not conflict with these regulations and are subject to Section 5.26 of these regulations.
- 3.31 Administrative and resident records.**
- 3.31.1 Confidentiality.** All administrative and resident records shall be stored in such a manner that unauthorized persons cannot gain access to them.
 - 3.31.2 Location of records.** All resident records, resident finances, admission/discharge records and census logs shall be readily accessible to the department even in the event of a change of ownership or administration, unless this is done pursuant to a court order or to Section 5.12 of these regulations. Other administrative records, including personnel records, shall be made available with reasonable notice by the department. All records shall be maintained in a format that is readily accessible and available to all appropriate staff.
 - 3.31.3 Inspection of records.** All reports and records shall be made available for inspection upon request by the department, the Long Term Care Ombudsman Program or the Maine Attorney General's Office without the consent of the resident or his/her legal representative.
 - 3.31.4 Record retention.** All administrative and resident records shall be maintained in an accessible format for at least seven (7) years after the date of death or last discharge of the resident.
 - 3.31.5 Storage of records.** Provisions shall be made for the safe storage of all records required by these regulations.

- 3.31.6 Disaster plan.** Each facility/program shall develop a comprehensive disaster plan. This plan shall include the following:
- 3.31.6.1** Contingencies for loss of power, heat, lights, water and/or sewage disposal;
 - 3.31.6.2** Contingencies for short term and long term emergencies; and
 - 3.31.6.3** If a facility has no back up power source that can be used to continue operation of heat, lights, water and sewage disposal, the plan shall include contingencies for evacuation that include contractual arrangements with other agencies or facilities for temporary living accommodations.
- 3.32 Confidential information.** Pursuant to 22 M.R.S.A. §7703, confidential information may not be released without a court order or a written release from the person about whom the confidential information has been requested, except as provided by law.

Section 4

Enforcement Procedures

- 4.1 Inspections required.** The provider shall submit to regular and unannounced inspection surveys and complaint investigations in order to receive and/or maintain a license. The provider shall give access to all records required by these regulations. The department has the right to interview residents and employees in private. *[Class I]*
- 4.2 Frequency and type of inspections.** An inspection may occur:
- 4.2.1** Prior to the issuance of a license;
 - 4.2.2** Prior to renewal of a license;
 - 4.2.3** Upon complaint that there has been an alleged violation of licensing regulations;
 - 4.2.4** When there has been a change or proposed change in administrator, physical plant or services;
 - 4.2.5** When necessary to determine compliance with a Directed Plan of Correction, conditions placed on a license or that cited deficiencies have been corrected;
 - 4.2.6** For routine monitoring of resident care; or
 - 4.2.7** Any time the department has probable cause to believe that an assisted housing program has violated a provision of these regulations or is operating without a license.
- 4.3 Licensing records kept by the department.** The department will maintain a complete record of all licensing activities related to the assisted housing program. Those sections of the files not made confidential by law are available for public inspection at any time during normal business hours.
- 4.4 Complaints.** The department will accept complaints from any person about alleged violation(s) of licensing regulations. The provider shall not retaliate against any resident or his/her representative for filing a complaint. Complainants have immunity from civil or criminal liability when the complaint is made in good faith. Any licensing violations noted as a result of a complaint investigation will be provided to the assisted housing program in writing.
- 4.5 Enforcement process.**
- 4.5.1** After inspection, an SOD will be sent to the licensee if the inspection identifies any failure to comply with licensing regulations. An SOD may be accompanied by a Directed POC.
 - 4.5.2** The licensee shall complete a POC for each deficiency, sign the plan and submit it to the department within ten (10) working days of receipt of any SOD.
 - 4.5.3** Failure to correct any deficiency(ies) or to file an acceptable POC with the department may lead to the imposition of sanctions or penalties as described in Sections 4.7 and 4.8 of these regulations.
 - 4.5.4 Informal conference.** If a licensee disagrees with the imposition or amount of any penalty assessed by the department, the licensee must submit a written notification to the department

stating the nature of the disagreement, within ten (10) working days of receipt of an Assessment of Penalties. Upon receipt of this request, the Assistant Director of Licensing and Regulatory Services, Community Services Programs or his/her designee shall schedule an informal conference for the purpose of trying to resolve the dispute. The Director or his/her designee shall inform the licensee of the results of the informal conference in writing. If a provider desires to appeal the result of an affirmed or modified assessment of penalties following an informal conference, a written request for an administrative hearing, pursuant to Section 4.10, must be made. The department will stay the collection of any fiscal penalties until final action is taken on an appeal. Penalties shall accrue with interest for each day until final resolution and implementation.

4.6 Grounds for intermediate sanctions. The following circumstances shall be grounds for the imposition of intermediate sanctions:

- 4.6.1** Operation of an assisted living program or Private Non-Medical Institute without a license;
- 4.6.2** Operation of an assisted living program or Private Non-Medical Institute over licensed capacity;
- 4.6.3** Impeding or interfering with the enforcement of laws or regulations governing the licensing of assisted housing programs, or giving false information in connection with the enforcement of such laws and regulations;
- 4.6.4** Failure to submit a POC within ten (10) working days after receipt of an SOD;
- 4.6.5** Failure to take timely corrective action in accordance with a POC, a Directed POC or Conditional License;
- 4.6.6** Failure to comply with state licensing laws or regulations that have been classified as Class I, II, III or IV pursuant to Sections 4.8.2 & 4.8.3;
- 4.6.7** Failure to comply with 22 M.R.S.A. §7904- A (10) regarding time drills, as further described in Section 14.3.

4.7 Intermediate sanctions. The department is authorized to impose one or more of the following intermediate sanctions when any of the circumstances listed in Section 4.6 are present and the department determines that a sanction is necessary and appropriate to ensure compliance with State licensing regulations to protect the residents of an assisted housing program or the general public:

- 4.7.1** The assisted living program, residential care facility or private non-medical institution may be directed to stop all new admissions, regardless of payment source, or to admit only those residents the department approves, until such time as it determines that corrective action has been taken.
- 4.7.2** The department may issue a Directed POC or Conditional License.
- 4.7.3** The department may impose a financial penalty.

4.8 Financial penalties.

- 4.8.1** Certain provisions of these regulations have been classified as noted below. Financial penalties may be imposed only when these regulations are violated.

- 4.8.2** Certain provisions of the regulations have a single classification. Such regulations are followed by a notation (i.e., “Class I”). Classifications have been established according to the following standards:
- 4.8.2.1** Class I - Any failure to comply with a regulation where that failure poses an immediate threat of death to a resident(s).
 - 4.8.2.2** Class II - Any failure to comply with a regulation where that failure poses a substantial probability of serious mental or physical harm to a resident(s).
 - 4.8.2.3** Class III - The occurrence of a repeated deficiency that poses a substantial risk to the health or safety of a resident(s).
 - 4.8.2.4** Class IV - The occurrence of a repeated deficiency that infringes upon resident rights.
- 4.8.3** Certain regulations have been given alternative classifications. Such regulations are followed by an alternative notation (i.e., Class I/II or Class II/III). When these regulations are not complied with, the department will determine which classification is appropriate, on a case-by-case basis, by reference to the standards set forth in Section 4.8.2.
- 4.8.4** If the department assesses financial penalties, an Assessment of Penalties will be issued. The Assessment shall describe the classification of each violation found to have been committed by the facility, the regulation or law that has been violated and the scheduled amount of time corresponding to that violation. If the provider does not contest the imposition or amount of the penalty, the provider must pay within thirty (30) calendar days of receipt of the Assessment of Penalties. If the provider disagrees with the imposition or amount of the penalty, the provider must notify the department, in writing, stating the nature of the disagreement, within ten (10) working days of receipt of the Assessment of Penalties. The department will schedule an informal conference to resolve the dispute and a written decision based upon this conference will be provided. If the provider is still dissatisfied with the written decision, an administrative hearing may be requested in accordance with Section 4.10.
- 4.8.5** The amount of any penalty to be imposed shall be calculated according to the following classification system:
- | | | |
|----------------|--|--|
| 4.8.5.1 | Any failure to comply with regulations classified as Class I, pursuant to Section 4.8.2.1; | \$6.00 per resident per occurrence per day |
| | Operation of an assisted living program or residential care facility over licensed capacity, or | |
| | Impeding, interfering or giving false information in connection with the enforcement of laws or regulations governing licensure. | |
| 4.8.5.2 | Any failure to comply with regulations classified as Class II, pursuant to Section 4.8.2.2; | \$5.00 per resident per occurrence per day |
| | Failure to submit a POC within ten (10) working day’s after receipt of an SOD; or | |
| | Failure to take timely corrective action in accordance | |

with a POC, Directed POC or conditional license.

4.8.5.3	The occurrence of a repeated deficiency in complying with regulations classified as Class III, pursuant to Section 4.8.2.3;	\$4.00 per resident per occurrence
	The occurrence of a repeated deficiency in complying with regulations classified as Class IV, pursuant to Section 4.8.2.4.	per day

4.8.6 The department may impose a penalty upon a licensee of a Level II PNMI for a violation of these rules. Each day of violation constitutes a separate offense. A penalty or a combination of penalties imposed on a facility may not be greater than a sum equal to \$10 times the total number of residents in the facility per violation, up to a maximum of \$10,000 for each instance in which the department issues a statement of deficiency to a licensee of a Level II PNMI.

4.8.7 Failure to comply with 22 M.R.S.A. §7904 (6) regarding time drills, as further described in Section 13.3, commits a civil violation for which a forfeiture of not more than \$25 per bed for each occurrence of failure to comply may be adjudged.

4.8.8 Any provider unable to immediately pay penalties may within thirty (30) calendar days from receipt of notification of penalty assessment apply to the department for a delay in payment or installment payments or, in certain circumstances, to have the penalty reduced.

4.8.8.1 In order to have the payment delayed or paid in installments, a provider must supply sufficient information to the department to demonstrate that immediate full payment of the total amount due would result in the interruption of the provision of necessary services to residents.

4.8.8.2 In order to have a fine reduced, a provider must supply sufficient information to the department to demonstrate that payment in full would result in a permanent interruption in the provision of necessary services to residents.

4.8.8.3 The department has the authority to determine whether the provider has supplied sufficient information.

4.9 Other sanctions for failure to comply.

4.9.1 When an applicant fails to comply with applicable laws and regulations, the department may refuse to issue or renew a license to operate an assisted living program, residential care facility or private non-medical institution.

4.9.2 If, at the expiration of a full or Provisional license, or during the term of a full license, the provider fails to comply with applicable laws and regulations, and, in the judgment of the Commissioner, the best interest of the public would be served, the department may issue a Conditional license, or change a full license to a Conditional license. Failure by the licensee to meet the conditions specified by the department shall permit the department to void the Conditional license or refuse to issue a full license. The conditional license shall be void when the department has delivered in hand or by certified mail a written notice to the licensee, or, if the licensee cannot be reached for service in hand or by certified mail, has left written notice thereof at the agency or facility. For the purposes of this subsection

the term “licensee” means the person, firm, or corporation or association to whom a conditional license or approval has been issued.

- 4.9.3** Upon investigation, whenever conditions are found which, in the opinion of the department, immediately endanger the health or safety of the persons living in or attending the assisted living program, residential care facility or private non-medical institution. The department may request that the District Court suspend the license on an emergency basis, pursuant to Title 4 M.R.S.A. § 184, subsection 6.
- 4.9.4** Any license may be suspended or revoked for violation of applicable laws or regulations, committing, permitting, aiding or abetting any illegal practices in the operation of the assisted living program, residential care facility or private non-medical institution or conducts or practices detrimental to the welfare of persons living in or attending the facility/program. When the department believes a license should be suspended or revoked, it shall file a complaint with the District Court as provided in the Maine Administrative Procedures Act, Title 5 M.R.S.A. Chapter 375 § 10051.
- 4.9.5** Pursuant to Title 22 M.R.S.A. § 7931 *et seq.*, the department may petition the Superior Court to appoint a receiver to operate the assisted living program, residential care facility or private non-medical institution.
- 4.9.5.1** When the assisted living program, residential care facility or private non-medical institution intends to close, but has not arranged for the orderly transfer of its residents at least thirty (30) calendar days prior to closure;
- 4.9.5.2** When an emergency exists which threatens the health, security or welfare of residents; or
- 4.9.5.3** When the assisted living program, residential care facility or private non-medical institution is in substantial or habitual violation of the standards of health, safety or resident care established under State or Federal laws and regulations, to the detriment of the welfare of the residents.
- 4.10 Appeal rights.** Any assisted living program, residential care facility or private non-medical institution aggrieved by the department’s decision to take any of the following actions, or to impose any of the following sanctions, may request an administrative hearing to refute the basis of the department’s decision, as provided by the Maine Administrative Procedures Act, Title 5 M.R.S.A. § 9051 *et. seq.* Administrative hearings will be held in conformity with the department’s Administrative Hearings Regulations. A request for a hearing must be made, in writing, to the Assistant Director of Licensing and Regulatory Services, Community Services Programs, and must specify the reason for the appeal. Any request must be submitted within ten (10) working days from receipt of the department’s decision to:
- 4.10.1** Issue a conditional license;
- 4.10.2** Amend or modify a license;
- 4.10.3** Void a conditional license;
- 4.10.4** Refuse to issue or renew a full license;
- 4.10.5** Refuse to issue a provisional license;

- 4.10.6 Stop or limit admissions;
 - 4.10.7 Issue a directed POC;
 - 4.10.8 Affirm or modify an Assessment of Penalties after an informal review;
 - 4.10.9 Deny an application to reduce the amount or delay the payment of a penalty; or
 - 4.10.10 Deny a request for a waiver of a rule.
- 4.11 **Surveillance and Utilization Review:** The provider will cooperate with the department's Surveillance and Utilization Review (SUR) Unit and/or the department's authorized designee who carries out a program of safeguarding against unnecessary or inappropriate utilization of, and excess payments for, care and services available under MaineCare and assessing the quality.
- 4.12 **Operating without a license**
- 4.12.1 **License required.** A person, firm, partnership, association, corporation or other entity may not, without first obtaining a license, manage or operate a Level II PNMI.
 - 4.12.2 **Civil penalty for operating without a license.** A person, firm, partnership, association, corporation or other entity who operates a Level II PNMI without a license commits a civil violation and is subject to a civil penalty of not less than \$500 nor more than \$10,000 per day. Each day of violation constitutes a separate offense.
 - 4.12.3 **Injunctive relief.** Notwithstanding any other remedies provided by law, the Office of the Attorney General may seek an injunction to require compliance with the provisions of section 4.12.
 - 4.12.4 **Enforcement.** The Office of the Attorney General may file a complaint with the District Court seeking civil penalties or injunctive relief or both for violations of section 4.12.
 - 4.12.5 **Jurisdiction.** The District Court has jurisdiction pursuant to 4 M.R.S.A. § 152 for violations of section 4.12.
 - 4.12.6 **Burden of proof.** The burden is on the department to prove, by a preponderance of the evidence, that the alleged violations of section 4.12 occurred.
 - 4.12.7 **Right of entry.** To inspect the premises of a Level II PNMI that the department knows or believes is being operated without a license, the department may enter only with the permission of the owner or the person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court, authorizing entry and inspection.
 - 4.12.8 **Administrative inspection warrant.** The department and a duly designated officer or employee of the department have the right to enter upon and into the premises of an unlicensed Level II PNMI with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court at a reasonable time and, upon demand, have the right to inspect and copy any books, accounts, papers, records and other documents in order to determine compliance with section 4.12. Pursuant to the Maine Rules of Civil Procedure, Rule 80E the department's right of entry and inspection may extend to any premises and documents of a person, firm, partnership, association, corporation or other entity that the

department has reason to believe is operating without a license.

- 4.12.9 Noninterference.** An owner or person in charge of an unlicensed Level II PNMI may not interfere with or prohibit the interviewing by the department of residents or consumers of services.
- 4.12.10 Violation of injunction.** A person, firm, partnership, association, corporation or other entity that violates the terms of an injunction issued under section 4.12 shall pay to the State a fine of not less than \$500 nor more than \$10,000 for each violation. Each day of violation constitutes a separate offense.
- 4.12.10.1** In an action brought by the Office of the Attorney General against a person, firm, partnership, association, corporation or other entity for violating the terms of an injunction under section 4.12, the District Court may make the necessary orders or judgments regarding violation of the terms of the injunction.
- 4.12.10.2** In an action under section 4.12, when a permanent injunction has been issued, the District Court may order the person, firm, partnership, association, corporation or other entity against which the permanent injunction is issued to pay to the General Fund the costs of the investigation of that person, firm, partnership, association, corporation or other entity by the Office of the Attorney General and the costs of suit, including attorney's fees.

Statutory Authority

Public Law 2007, Chapter 324 (5) (6) (7) (11). [routine technical rule]
22 M.R.S.A. Chapters 1663 and 1664
22-A M.R.S.A. § 205(2)

Regulatory History

AMENDED

June 1, 2006 [major substantive rulemaking process]

AMENDED

Sections 3 and 4 [routine technical rules pursuant to Public Law 2007, Chapter 324 (5) (6) (7) (11)]