Office of
The Governor

No. 48 FY 19/20
DATE April 28, 2020

AN ORDER MODIFYING CERTAIN PROCEDURAL REQUIREMENTS FOR EMERGENCY RULEMAKING TO MAXIMIZE FEDERAL COVID-19 FUNDING FOR MAINECARE

WHEREAS, I proclaimed a state of emergency on March 15, 2020 to authorize the use of emergency powers in order to expand and expedite the State's response to the serious health and safety risks of the highly contagious COVID-19, which was extended by a further proclamation issued April 14, 2020; and

WHEREAS, pursuant to the President's Proclamation that the COVID-19 outbreak constitutes a national emergency, the U.S. Department for Health & Human Services waived or modified certain federal law requirements governing the Medicaid program and the Centers for Medicare and Medicaid Services ("CMS") established pathways for state Medicaid programs to apply for waivers and take advantage of opportunities for flexibility tailored to their own unique programs; and

WHEREAS, the Maine Department of Health & Human Services ("MEDHHS") submitted a Section 1135 waiver, a Disaster Relief State Plan Amendment and a request for relief through a Section 1915(c) waiver, Appendix K, for Home and Community Based Services to CMS requesting flexibility in meeting certain other Medicaid requirements that pose challenges for health care in Maine during the COVID-19 pandemic, including waivers of requirements, such as but not limited to member cost sharing, prior authorizations, and provider enrollment processes, as well as permitting temporary rate relief, and allowing the rules, State Plan Amendments and waivers effecting those changes to take effect on March 1, 2020; and

WHEREAS, approval by CMS of Maine's requests, combined with federal funds newly available, facilitate the prompt provision of necessary medical services for effective treatment of COVID-19; and

WHEREAS, the availability of the federal COVID-19 funding for these MaineCare program adjustments ends upon the termination of the national emergency (the "Federal Proclamation of Emergency"), or, in the case of the Appendix K Section 1915(c) waiver, the end of the CMS approved period;

WHEREAS, MEDHHS cannot employ these authorities granted by CMS to the greatest extent possible because of certain limitations in statute governing emergency rule making; and

WHEREAS, 37-B M.R.S.§ 742(1)(C)(1) & (2) and (13)(a) authorize the Governor during a state of emergency to suspend the enforcement of statutes or rules for the conduct of state business if strict compliance with such requirements would in any way prevent, hinder, or delay necessary action in dealing with the emergency; to utilize resources of the state and its subdivisions as reasonably necessary to cope with the disaster; and to reasonably adjust time frames and deadlines imposed by law for state and municipal government when necessary to mitigate an effect of the emergency.

NOW, THEREFORE, I, Janet T. Mills, Governor of the State of Maine, pursuant to 37-B M.R.S. Ch. 13, including but not limited to 37-B M.R.S. § 742(1)(C)(1) & (2) and (13)(a) and § 834, do hereby Order the following:

I. ORDER

The relevant provisions of Title 5, Maine Revised Statutes, Chapter 375 are hereby suspended and modified to permit emergency rules adopted pursuant to the Sections 1135 and 1915(c) and Appendix K waivers and the Disaster Relief State Plan Amendment to:

1. Remain in effect until the later of the end of the Federal Proclamation of Emergency or the end of the federal approval of the MaineCare program adjustments, even if that period exceeds ninety days;

2. Limit the time within which the routine technical and major substantive rules are effective by expressly providing therein that they are automatically repealed without further rulemaking of MEDHHS upon the termination of the Federal Emergency Declaration, or until the end of the federal approval of the MaineCare program adjustments, whichever is later; and

3. Take effect retroactively to March 1, 2020 upon approval by CMS through a waiver, State Plan Amendment approval or other written communication.

II. EFFECTIVE DATE

This Order is effective April 28, 2020 and shall remain in effect until rescinded or until the State of Civil Emergency to Protect Public Health declared in this State is terminated, whichever occurs first.

Janet T. Mills
Governor