

Paul R. LePage, Governor Ricker Hamilton, Acting Commissioner

Department of Health and Human Services
Commissioner's Office
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IN THE MATTER OF:

Caribou Rehab & Nursing Center, Inc.)
Presque Isle Rehab & Nursing Center)
c/o Philip Cyr) **FINAL DECISION**
10 Bernadette Street)
Caribou, ME 04736)

This is the Department of Health and Human Services Final Decision.

The Recommended Decision of Hearing Officer Pickering, mailed December 21, 2016, and the responses and exceptions filed on behalf of the Department have been reviewed.

I hereby adopt the findings of fact, except for facts 29 and 30, and I accept the Recommendation of the Hearing Officer that the Department was correct when it determined, for the audit period 10/01/2014 through 09/30/2015, that Caribou Rehab and Nursing Center, Inc. was underpaid \$59,670.81 and, for the same audit period, Presque Isle Rehab and Nursing Center, Inc. was underpaid \$75,522.79 due to the Department's reclassification of the cost of the increases in health insurance (labeled as "Obamacare Mandated Insurance") from Fixed Costs to Direct and Routine Costs. The increase in health insurance costs should not be allowed as an Extraordinary Circumstance under Principle 120. The Department was also correct when it determined, for the audit period 10/01/2014 through 09/30/2015, that Presque Isle Rehab and Nursing Center, Inc. was not entitled to include \$18,458.00 of expenses related to Tamiflu administration to staff as Fixed Costs rather than Direct and Routine Costs. I do not, however, accept the Recommendation of the Hearing Officer that the Tamiflu expenses should be allowed as an Extraordinary Expense under Principle 120. It is common knowledge that influenza vaccinations do not always match with the strain of influenza that actually occur after the vaccine is issued and therefore it is incorrect to find that an outbreak of influenza in a nursing home, even with vaccination, is an unforeseen event and there is nothing in the record of this case to indicate that the outbreak that occurred was uncontrollable. Accordingly, I find that the Department was correct when it reclassified the \$18,458.00 in Tamiflu administration costs from Fixed Costs to Direct and Routine Costs.

DATED: August 1, 2017

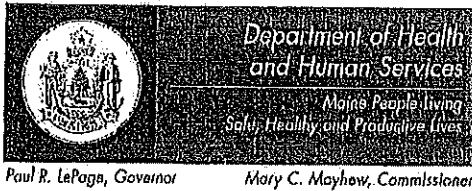
SIGNED: *Ricker Hamilton*

RICKER HAMILTON, ACTING COMMISSIONER
DEPARTMENT OF HEALTH & HUMAN SERVICES

YOU HAVE THE RIGHT TO JUDICIAL REVIEW UNDER THE MAINE RULES OF CIVIL PROCEDURE, RULE 80C. TO TAKE ADVANTAGE OF THIS RIGHT, A PETITION FOR REVIEW MUST BE FILED WITH THE APPROPRIATE SUPERIOR COURT WITHIN 30 DAYS OF THE RECEIPT OF THIS DECISION.

WITH SOME EXCEPTIONS, THE PARTY FILING AN APPEAL (80B OR 80C) OF A DECISION SHALL BE REQUIRED TO PAY THE COSTS TO THE DIVISION OF ADMINISTRATIVE HEARINGS FOR PROVIDING THE COURT WITH A CERTIFIED HEARING RECORD. THIS INCLUDES COSTS RELATED TO THE PROVISION OF A TRANSCRIPT OF THE HEARING RECORDING.

cc: Henry Griffin, III, AAG, Office of the Attorney General
David Hellmuth, Division of Audit



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TO: Mary C. Mayhew, Commissioner
Department of Health and Human Services
221 State Street
11 State House Station
Augusta, ME 04333

DATE MAILED: ~~DEC 21 2016~~

In Re: Caribou Rehab & Nursing Center, Inc. and Presque Isle Rehab & Nursing Center—Appeal
of Final Informal Reviews dated August 26, 2016

RECOMMENDED DECISION

On November 29, 2016, Hearing Officer Joseph Pickering, Esq. held a *de novo* administrative hearing at Caribou, Maine in the case of Caribou Rehab & Nursing Center, Inc. and Presque Isle Rehab & Nursing Center. By special appointment, the Commissioner of the Department of Health and Human Services conferred jurisdiction to the Hearing Officer. The Hearing Officer left the record open until December 19, 2016 for the parties to submit written arguments, which both parties did.

FACTUAL BACKGROUND AND ISSUE:

On or about August 26, 2016, the Department of Health and Human Services, Division of Audit, Program Integrity (the "Department") notified Caribou Rehab and Nursing Center and Presque Isle Rehab and Nursing Center that it was upholding an audit report that for the period of October 1, 2014 through September 30, 2015 Caribou Rehab and Nursing Center received an underpayment of \$59,670.81 and Presque Isle Rehab and Nursing Center received an underpayment of \$75,522.79. The Department noted it was denying the requests of Caribou Rehab and Nursing Center and Presque Isle Rehab and Nursing Center to re-class health insurance costs. The Department also noted that it was denying Presque Isle Rehab and Nursing Center's request to reclassify costs for the administration of Tamiflu to staff.

On or about August 30, 2016, Caribou Rehab and Nursing Center and Presque Isle Rehab and Nursing Center appealed. Pursuant to an Order of Reference dated October 31, 2016¹, this matter was assigned by James D. Bivins, Esq., Chief Administrative Hearing Officer to the undersigned Hearing Officer to conduct an administrative hearing and to submit to the Commissioner written findings of fact and recommendations on the following issue:

- (1) *Was the Department correct when it determined for the audit period 10/01/2014 through 09/30/2015 Caribou Rehab and Nursing Center, Inc., was underpaid \$59,670.81 and for the same audit period Presque Isle Rehab and*

¹ An earlier Order of Reference was issued. However, at the parties' request, a new Order of Reference was issued to add the Tamiflu expenses as an issue. See Exhibit HO-2 and Exhibit HO-10.

Nursing Center was underpaid \$75,522.79 due to the department's reclassification of the cost of the increase in the health insurance from the Affordable Care Act as a fixed cost back to their routine costs? In the alternative, if the increases in health insurance costs are not allowed, then should they be allowed as an Extraordinary Circumstance under Principle 120?

- (2) *Was the Department correct when it determined for the audit period 10/01/2014 through 09/30/2015, Presque Isle Rehab and Nursing Center, Inc. was not entitled to include \$18,458 of expenses related to Tamiflu administration to staff as Fixed Costs rather than Direct and Routine Costs? In the alternative, if the department is correct, then should the Tamiflu expenses be allowed as Fixed Costs as an Extraordinary Circumstance under Principle 120?*

APPEARING ON BEHALF OF APPELLANT:

Phil Cyr
Rose-Marie Louten

APPEARING ON BEHALF OF AGENCY:

Christopher Leighton, AAG
David Hellmuth, Audit

ITEMS INTRODUCED INTO EVIDENCE:

Hearing Officer Exhibits:

- HO-1. Notice of Hearing dated 09/14/2016
- HO-2. Order of Reference dated 09/12/2016
- HO-3. Fair Hearing Report dated 09/09/2016
- HO-4. Fair Hearing Report dated 09/01/2016
- HO-5. Email chain dated 09/09/2016
- HO-6. Letter of James Bivins, Esq. dated 09/01/2016
- HO-7. Final Informal Decision dated 08/26/2016--Caribou
- HO-8. Letter of Phil Cyr dated 07/15/2016 with attachments
- HO-9. Email chain dated 10/28/2016
- HO-10. Order of Reference dated 10/31/2016
- HO-11. Email chain dated 10/28/2016
- HO-12. Email of Rose-Marie Louten dated 09/07/2016
- HO-13. Final Informal Decision dated 08/26/2016—Presque Isle
- HO-14. Letter of Rose-Marie Louten dated 07/18/2016 with attachments

Department Exhibits:

- D-1. Principles of Reimbursement for Nursing Facilities—Chapter III Section 67- Amended August 15, 2014-Emergency
- D-2. Principles of Reimbursement for Nursing Facilities—Chapter III Section 67- Amended November 13, 2014-Emergency

- D-3. Principles of Reimbursement for Nursing Facilities—Chapter III Section 67-
- D-4. DHHS Cost Report for Nursing Facilities-Ending after 06/30/2014
- D-5. Audit Report Transmittal-dated 06/21/2016
- D-6. Final Informal Review Decision letter dated 08/26/2016
- D-7. Final Informal Review Decision letter dated 08/26/2016—Presque Isle
- D-8. Audit report transmittal-dated 06/21/2016-Presque Isle
- D-9. Schedule N-Presque Isle
- D-10. Schedule N-Caribou
- D-11. Influenza 2014-15 guidance
- D-12. MCDC rules
- D-13. Department's brief

Appellant Exhibits:

- A-1. Affordable Care Act Health Insurance Summary and Exhibits
- A-2. Request for Tamiflu Reimbursement with Exhibits
- A-3. Verification of Vaccinations, Influenza Testing Results, Line list of residents
- A-4. Principles summary
- A-5. Appellant's brief

RECOMMENDED FINDINGS OF FACT:

1. Notice of these proceedings was given in a timely and adequate manner. Caribou Rehab and Nursing Center and Presque Isle Rehab and Nursing Center made a timely appeal.
2. Caribou Nursing Home, Inc. is a corporation with d/b/a's of Caribou Rehab and Nursing Center and Presque Isle Rehab and Nursing Center.
3. The corporation operates two nursing facilities in Caribou and Presque Isle.
4. The Department conducted an audit for the period of 10/01/2014 to 09/30/2015.
5. During the audit process, the Department reclassified expenses that had been labeled "Obamacare Mandated Insurance".
6. For Caribou Rehab and Nursing Center, the Department reclassified \$38,992.00 under the label of "Obamacare Mandated Insurance" from fixed costs to direct and routine costs.
7. For Presque Isle Rehab and Nursing Center, the Department reclassified \$97,812.00 under the label of "Obamacare Mandated Insurance" from fixed costs to direct and routine costs.
8. For the audit period, both Caribou Rehab and Nursing Center and Presque Isle Rehab and Nursing Center had met their cap for direct and routine costs before the "Obamacare Mandated Insurance" costs were reclassified.
9. On December 31, 2008, Caribou Nursing Home, Inc. lost its group health insurance plan due to low employee participation. Caribou Nursing Home, Inc. was unable to find another group health insurance plan.

10. From 01/01/2009 to 12/31/2014, Caribou Rehab and Nursing Center and Presque Isle Rehab and Nursing Center reimbursed their employees for the cost of the employees purchasing private insurance. The reimbursement amount was equal to or greater than the cost for group health insurance in 2008.
11. On 01/01/2015, Caribou Rehab and Nursing Center and Presque Isle Rehab and Nursing Center acquired group health insurance pursuant to the employer mandate under the Affordable Care Act.
12. For Caribou Rehab and Nursing Center, the cost of group health insurance was \$38,992.00 greater than the cost it paid to reimburse employees in 2014.
13. For Presque Isle Rehab and Nursing Center, the cost of group health insurance was \$97,812.00 greater than the cost it paid to reimburse employees in 2014.
14. By at least November 30, 2012, Caribou Rehab and Nursing Center and Presque Isle Rehab and Nursing Center were aware of the potential increase in costs resulting from employer mandated health insurance under the Affordable Care Act.
15. Presque Isle Rehab and Nursing Center routinely vaccinates its residents and staff for influenza.
16. Presque Isle Rehab and Nursing Center has a high rate of vaccination for influenza for its residents.
17. In the Winter of 2014/2015, the flu vaccine was a poor match for the dominant influenza strain, Influenza A/H3.
18. The poor match of the flu vaccine to Influenza A/H3 was an unforeseen and uncontrollable event.
19. In the Winter of 2014/2015, Presque Isle Rehab and Nursing Center had an outbreak of Influenza A/H3 in which many residents and staff became ill and one resident died after being transported to the hospital.
20. The Maine CDC recommended that if the flu vaccine was a poor match for the dominant influenza strain that nursing homes treat all patients and staff with antiviral medications such as Tamiflu in order to limit any outbreaks.
21. Presque Isle Rehab and Nursing Center reported its influenza outbreak to the Maine CDC.
22. The epidemiologist at the Maine CDC told Presque Isle Rehab and Nursing Center to follow the recommendations and provide Tamiflu to all residents and staff to reduce the impact of the outbreak.
23. Presque Isle Rehab and Nursing Center offered Tamiflu to all of its patients and staff.
24. The cost for Tamiflu for the patients was covered by health insurance.
25. The cost for Tamiflu for staff with health insurance was covered by health insurance.

26. Presque Isle Rehab and Nursing Center paid for Tamiflu for staff that did not have health insurance for a total cost of \$18,458.00.
27. Presque Isle Rehab and Nursing Center classified the \$18,458.00 in Tamiflu administration costs as a fixed cost.
28. The Department reclassified the \$18,458.00 in Tamiflu administration costs from fixed costs to direct and routine costs.
29. The costs for the administration of Tamiflu were an unforeseen cost arising from the poor match of the flu vaccine and the outbreak at the facility.
30. The costs for the administration of Tamiflu were an uncontrollable cost arising from the poor match of the flu vaccine and the outbreak at the facility.

RECOMMENDED DECISION:

(1) The Department was correct when it determined for the audit period 10/01/2014 through 09/30/2015 Caribou Rehab and Nursing Center, Inc., was underpaid \$59,670.81 and for the same audit period Presque Isle Rehab and Nursing Center was underpaid \$75,522.79 due to the Department's reclassification of the cost of the increase in the health insurance from the Affordable Care Act as a fixed cost back to their routine costs. The increases in health insurance costs should not be allowed as an Extraordinary Circumstance under Principle 120.

(2) The Department was correct when it determined for the audit period 10/01/2014 through 09/30/2015, Presque Isle Rehab and Nursing Center, Inc. was not entitled to include \$18,458 of expenses related to Tamiflu administration to staff as Fixed Costs rather than Direct and Routine Costs. However, the Tamiflu expenses should be allowed as Fixed Costs as an Extraordinary Circumstance under Principle 120.

REASON FOR RECOMMENDATION:

Both parties greatly facilitated the process by submitting evidence by agreement and stipulation. The Hearing Officer appreciates the cooperation of the parties. There are little to no facts in dispute. The issues in dispute mostly revolve around interpretation of the Principles of Reimbursement in MaineCare Benefits Manual, Chapter III, Section 67.

Caribou Nursing Home, Inc. is a corporation with d/b/a's of Caribou Rehab and Nursing Center and Presque Isle Rehab and Nursing Center. The corporation operates two nursing facilities in Caribou and Presque Isle. The first issue regarding the reclassification of health insurance expenses is common to both Caribou Rehab and Nursing Center and Presque Isle Rehab and Nursing Center.

During the audit process, the Department reclassified expenses that had been labeled "Obamacare Mandated Insurance". For Caribou Rehab and Nursing Center, the Department reclassified \$38,992.00 from fixed costs to direct and routine costs. See Exhibit D-5. For Presque Isle Rehab and Nursing Center, the Department reclassified \$97,812.00 from fixed costs to direct and routine costs. See Exhibit D-7.

The reclassification from fixed costs to direct and routine costs had a significant impact. Although the expenses were allowed as direct and routine costs, the parties stipulated that prior to the reclassification that both Caribou Rehab and Nursing Center and Presque Isle Rehab and Nursing Center had reached their caps for routine and direct costs. Since the cap had been reached for routine and direct expenses, no further reimbursement was allowed. If the costs had been allowed for fixed costs, then Caribou Rehab and Nursing Center and Presque Isle Rehab and Nursing Center would have received a dollar for dollar reimbursement.

Philip Cyr is the administrator for Caribou Rehab and Nursing Center. Mr. Cyr testified that the corporation had health insurance for its employees under a group health plan. However, this group health plan ended on December 31, 2008 due to low employee participation. He testified that the insurance company terminated the group health plan and they could not find a group health plan to cover them. See also Exhibit A-1.

Mr. Cyr testified that the company provided reimbursement to employees who purchased private health insurance from 01/01/2009 to 12/31/2014. Mr. Cyr testified that the cost for this reimbursement was equal to or greater than the amount the company paid for health insurance in 2008. Mr. Cyr testified that the employer mandate for health insurance under the Affordable Care Act started effective 01/01/2015. Mr. Cyr testified that they were able to procure health insurance but they had to pay a great deal more for the health insurance as there were limits on how much the employees could be required to pay. See also Exhibit A-1. Mr. Cyr testified that they listed the additional cost for health insurance as a fixed cost under the term "Obamacare Mandated Insurance". Mr. Cyr testified that they only listed the additional cost as a fixed cost. He testified that they listed in routine and direct expenses in 2015 the same amount that they spent in 2014 for reimbursement for health insurance. Mr. Cyr argued that the additional health insurance cost should be treated as a fixed cost under Principle 24.6 or Principle 120.

During the applicable audit period, MaineCare Benefits Manual, Chapter III, Section 67, Principle 24.6 stated:

Costs which must be incurred to comply with changes in federal or state laws and regulations and not specified in these regulations for increased care and improved facilities which become effective subsequent to December 31, 1998 are to be considered reasonable and necessary costs. These costs will be reimbursed as a fixed cost until the Department calculates the State wide peer group mean cost of compliance from the facility's fiscal year data following the fiscal year the cost was originally incurred....

Mr. Cyr argued that the additional costs were incurred to comply with the Affordable Care Act. The Department did not dispute this point. Mr. Cyr argued that the costs were necessary for providing care to the residents and therefore the costs were for increased care. The Department's major argument is that to be eligible the costs must not be "specified in these regulations". The Department notes that health insurance costs for employees are specifically mentioned and are treated as routine and direct costs in Principle 43.4.1(16)(C) and Principle 41.1.7(3). The Hearing Officer agrees that group health insurance costs are specifically listed as direct and routine costs in Principle 43.4.1(16)(C) and Principle 41.1.7(3). Since group health insurance costs are specified in the regulations, they do not qualify as a fixed cost under Principle 24.6.

During the applicable audit period, MaineCare Benefits Manual, Chapter III, Section 67, Principle 120 stated:

EXTRAORDINARY CIRCUMSTANCE ALLOWANCE

Facilities which 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 allowance. Extraordinary circumstances include, but are not limited to:

- *events of a catastrophic nature (fire, flood, etc.)
- *unforeseen increase in minimum wage, Social Security, or employee retirement contribution expenses in lieu of social security expenses
- *changes in the number of licensed beds
- *changes in licensure or accreditation requirements

Mr. Cyr argued that Principle 120 applies if the expenses are “unforeseen or uncontrollable”. Mr. Cyr argued that they did not have control over the increase costs for insurance as a result of the employer mandate. The Department notes that the event which causes the increase in expenses must be “unforeseen and uncontrollable”. The Department argues that the Affordable Care Act has been a well-known issue since its passage in 2010.

In reviewing the plain language of the regulation, the Hearing Officer agrees with the Department. Although the increased expenses may be unforeseen or uncontrollable, the event that causes the increase in expenses must be unforeseen and uncontrollable. Between 2010 and 2015, the Affordable Care Act has been one of the main topics in two Congressional elections, one Presidential election, and two major Supreme Court cases. On November 30, 2012, Mr. Cyr was well aware of the potential impact of the Affordable Care Act and its mandate regarding insurance. Mr. Cyr raised the issue in an email to the Division of Audit. See Exhibit A-1. The Hearing Officer concludes that the potential increase in health insurance costs was not an unforeseen event.

During the audit process, the Department reclassified \$18,458.00 from fixed costs to direct and routine costs. See Exhibit D-7. The \$18,458.00 represented expenses that Presque Isle Rehab and Nursing Center had had incurred in administering Tamiflu to its staff during an influenza outbreak in the Winter of 2014/2015.

Rose-Marie Louten is the administrator for Presque Isle Rehab and Nursing Center. She is the sister of Philip Cyr. Ms. Louten testified that during the Winter of 2014/2015 they admitted a resident from home. The resident became ill and testified positive for Influenza A/H3. The patient was transferred to the hospital and died. Ms. Louten testified that several of the residents became ill. A total of 19 residents became ill and two tested positive for the virus. After testing individuals, Ms. Louten testified that it is CDC protocol to consider the rest of the ill patients as having influenza.

Ms. Louten testified that Presque Isle Rehab and Nursing Center has a high rate of vaccination for influenza for their patients. She testified that it was close to 100%. Unfortunately, the vaccination for the Winter of 2014/2015 was not a good match for Influenza A/H3. This was acknowledged by the Maine CDC. See Exhibit A-2.

Ms. Louten testified that they contacted the Maine CDC because it was deemed an outbreak. She testified that the epidemiologist from Maine CDC told them to offer anti-viral medication (Tamiflu) to all residents and all staff in accordance with Maine CDC recommendations. See Exhibit D-11 and Exhibit A-2. Ms. Louten testified that the residents and some staff had the Tamiflu covered by insurance. For the uninsured staff, the cost born by the facility was \$18,458.00.

Presque Isle Rehab and Nursing Center sought to classify the costs as fixed costs under Principles 24.6 and/or 120. In regards to Principle 24.6, the parties argue back and forth whether the directive from the Maine CDC or the epidemiologist from the Maine CDC was a mandate or a recommendation. To Ms. Louten, it certainly felt like a mandate. However, the parties have not presented any evidence or pointed to any regulation or law that required the administration of Tamiflu. In the absence of any regulation or law requiring the administration of Tamiflu, the Hearing Officer cannot find that Principle 24.6 applies. If there is no regulation or law, then there could not have been a change as a result of a regulation or law.

In regards to Principle 120, the Department argues that an outbreak of influenza is not unforeseen and that the costs for administering recommended safeguards are not an uncontrollable increase in expenses. The Hearing Officer notes that the Hearing Officer is not admitting a portion of the Department's brief. In the Department's brief, the Department includes a citation to an article about common infections in nursing homes. Neither the citation nor the article was offered into evidence at the hearing. At the hearing, the Department asked Ms. Louten about what the most common infections were. She testified that influenza was not one of the most common infections. She testified that the most common infections were urinary tract infections and C-diff. She testified that some facilities might have influenza but their facilities do not because they have a high rate of vaccination for patients.

Even if the Hearing Officer were to accept the Department's brief in full, the Hearing Officer finds the Department's argument to be wanting. The unforeseen and uncontrollable event was not the presence of influenza. The unforeseen and uncontrollable event was the fact the vaccination for influenza that year was such a poor match. Normally, Presque Isle Rehab and Nursing Center was able to control for influenza by administering the vaccination to all of its patients.

Throughout the hearing and even in its brief, the Department appeared to confuse Tamiflu with a vaccine. In its brief, the Department notes that the administration of Tamiflu is not addressed in the rules regarding Immunization Requirements for Healthcare Workers. The Hearing Officer would not expect to find anything about Tamiflu in a chapter regarding immunization requirements because Tamiflu is not a vaccine. The Maine CDC notes that "Chemoprophylactic drugs are not a substitute for vaccination." See Exhibit A-2.

Presque Isle Rehab and Nursing Center did administer the flu vaccination to its patient and staff. Since the flu vaccination was not effective, the Maine CDC recommended the administration of antiviral medications (Tamiflu) as an adjunct in preventing and controlling the outbreak. The Maine CDC recommended that Tamiflu be administered to all staff if "the outbreak is caused by a strain of influenza that is not well matched by the vaccine." See Exhibit A-2 and Exhibit D-11.

As noted above, to qualify under Principle 120 the event has to be unforeseen and uncontrollable, but the expenses arising from the event only have to be unforeseen or uncontrollable. The poor match of the flu vaccine to the influenza virus in the Winter of 2014/2015 was an unforeseen and uncontrollable event. Ms. Louten testified that the flu vaccination manufactures normally make a good prediction of what the virus strains will be. That was not the case in early 2015. Presque Isle Rehab and Nursing Center was faced with an emergency. They had an outbreak of influenza that killed one of their patients. The expenses for the administration of Tamiflu to staff per the strong recommendation of the Maine CDC and its epidemiologist were at least unforeseen if not also uncontrollable.

The increase in expense for the administration of Tamiflu by Presque Isle Rehab and Nursing Center should be allowed as an Extraordinary Circumstance Allowance under Principle 120.

For all of the above reasons, the undersigned Hearing Officer recommends that the Commissioner find that:

(1) The Department was correct when it determined for the audit period 10/01/2014 through 09/30/2015 Caribou Rehab and Nursing Center, Inc., was underpaid \$59,670.81 and for the same audit period Presque Isle Rehab and Nursing Center was underpaid \$75,522.79 due to the department's reclassification of the cost of the increase in the health insurance from the Affordable Care Act as a fixed cost back to their routine costs. The increases in health insurance costs should not be allowed as an Extraordinary Circumstance under Principle 120.

(2) The Department was correct when it determined for the audit period 10/01/2014 through 09/30/2015, Presque Isle Rehab and Nursing Center, Inc. was not entitled to include \$18,458 of expenses related to Tamiflu administration to staff as Fixed Costs rather than Direct and Routine Costs. However, the Tamiflu expenses should be allowed as Fixed Costs as an Extraordinary Circumstance under Principle 120.

MANUAL CITATIONS:


MaineCare Benefits Manual, Chapter III

THE PARTIES MAY FILE WRITTEN RESPONSES AND EXCEPTIONS TO THE ABOVE RECOMMENDATIONS. ANY WRITTEN RESPONSES AND EXCEPTIONS MUST BE RECEIVED BY THE DIVISION OF ADMINISTRATIVE HEARINGS WITHIN TWENTY (20) CALENDAR DAYS OF THE DATE OF MAILING OF THIS RECOMMENDED DECISION. A REASONABLE EXTENSION OF TIME TO FILE EXCEPTIONS AND RESPONSES MAY BE GRANTED BY THE CHIEF ADMINISTRATIVE HEARING OFFICER FOR GOOD CAUSE SHOWN OR IF ALL PARTIES ARE IN AGREEMENT. RESPONSES AND EXCEPTIONS SHOULD BE FILED WITH THE DIVISION OF ADMINISTRATIVE HEARINGS, 11 STATE HOUSE STATION, AUGUSTA, ME 04333-0011. COPIES OF WRITTEN RESPONSES AND EXCEPTIONS MUST BE PROVIDED TO ALL PARTIES. THE COMMISSIONER WILL MAKE THE FINAL DECISION IN THIS MATTER.

THE INFORMATION CONTAINED IN THIS DECISION IS CONFIDENTIAL. See, e.g., 42 U.S.C. section 1396a(a)(7), 22 M.R.S.A. section 42(2) and section 1828(1)(A), 42 C.F.R. section 431.304, MaineCare Benefits Manual, Ch.1, sec. 1.03-5. ANY UNAUTHORIZED DISCLOSURE OR DISTRIBUTION IS PROHIBITED.

DATED: December 21, 2016

SIGNED:



Joseph M. Pickering, Esq.
Administrative Hearing Officer
Division of Administrative Hearings

cc: Philip Cyr, 10 Bernadette Street, Caribou, ME 04736
Thomas Bradley, AAG, Office of the Attorney General
David Hellmuth, Audit