

## 99-346 MAINE STATE HOUSING AUTHORITY

### Chapter 19: HOMELESS SOLUTIONS RULE

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**Summary:** The Maine State Housing Authority uses funds from certain federal and state resources to give grants to agencies for a variety of activities to assist people who are experiencing homelessness or the risk of being homeless. This rule governs MaineHousing's allocation of resources for such programs, program design, the publication and distribution of program guides, basic criteria for determining eligible recipients, and potential selection criteria. Some resources are distributed according to a funding formula set forth in the rule. Other resources are distributed according to programs designed by MaineHousing.

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#### 1. Definitions

- A. "Act" means the Maine Housing Authorities Act, 30-A M.R.S.A. §4701, *et seq.* as amended.
- B. "Applicant" means the municipality or non-profit corporation applying for funds governed by this rule.
- C. "Bed Capacity" means the maximum number of beds in an Emergency Shelter or of an Emergency Housing Provider as indicated on an annual Continuum of Care Housing Inventory Count (HIC).
- D. "Business Associate Agreement" is a document used primarily to regulate how information is treated and governs the relationship between service providers who are exchanging information regarding clients and the services they receive.
- E. "Clients Assessed and Stabilized" means clients assessed with housing prioritization tools, stabilized with plans, and housed with support services.
- F. "Continuum of Care" or "CoC" is a collaborative funding and planning approach that helps communities plan for and provide, as necessary, a full range of emergency, transitional, and permanent housing and other service resources to address the various needs of Homeless Persons. HUD also refers to the group of service providers involved in the decision making processes as the "Continuum of Care."
- G. "Coordinated Entry Process" means a process designed to coordinate program participant intake, assessment, and provision of referrals within a geographic area. A Coordinated Entry Process covers the geographic area, is easily accessed by individuals and families seeking housing or services, is well advertised, and includes a comprehensive and standardized assessment tool.
- H. "Emergency Shelter" means any facility, the primary purpose of which is to provide a temporary shelter for Homeless Persons or for specific populations of Homeless Persons and which meets the criteria set forth in section 3 of this rule.

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- I. “Emergency Housing Provider” means a provider of emergency housing in other than a fixed facility the primary purpose of which is to provide a temporary place for Homeless Persons to sleep and which meets the criteria set forth in section 3 of this rule.
  - J. “Emergency Solutions Grant” means a grant available under the federal Emergency Solutions Grants Program of the McKinney-Vento Act as amended by the HEARTH Act.
  - K. “Funding Formula Allocation” means an annual allocation of funds by MaineHousing for Emergency Shelters and Emergency Housing Providers as further described in section 4 of this rule.
  - L. “HEARTH Act” means the Homeless Emergency and Rapid Transition to Housing Act of 2009 (P.L. 111-22), and the regulations promulgated thereunder.
  - M. “HMIS” means the Homeless Management Information System as further defined in the McKinney-Vento Act as amended by the HEARTH Act.
  - N. “HMIS Data Standards” provides communities with baseline data collection requirements developed by each of the federal partners which require participation in HMIS as a condition of their funding.
  - O. “Homeless Persons” means persons sleeping in a place not meant for human habitation, in an Emergency Shelter, or in other emergency housing and persons who otherwise are homeless pursuant to the HEARTH Act (42 USC §11302).
  - P. “Homeless Prevention” means activities or programs designed to prevent persons from becoming Homeless Persons including without limitation subsidies for rent, utilities, security deposits, and mortgage payments.
  - Q. “Housing First” is an approach based on the concept that a Homeless Person’s first and primary need is to obtain stable housing, and that other issues that may affect the Homeless Person can and should be addressed once housing is obtained.
  - R. “Housing Inventory Count” (HIC) is a point-in-time inventory of beds and units for Homeless Persons within a Continuum of Care categorized by five program types: Emergency Shelter; transitional housing; Rapid Re-housing; safe haven; and permanent supportive housing.
  - S. “Housing Stabilization” means assessing, arranging, coordinating, and monitoring the delivery of individualized services to facilitate housing stability for a program participant who resides in permanent housing or to assist a program participant in overcoming immediate barriers to obtaining housing.
  - T. “HUD” means the United States Department of Housing and Urban Development.

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- U. “Long-term Stayer” means a currently Homeless Person who has either been continuously homeless or has at least 180 cumulative emergency shelter housing stays in a twelve (12) month period of time, as defined by the Statewide Homeless Council.
- V. “MaineHousing” means Maine State Housing Authority.
- W. “Maine Consolidated Plan” is a plan prepared by MaineHousing and the Maine Department of Community and Economic Development (“DECD”) and approved by HUD in accordance with 24 CFR part 91. The Consolidated Plan serves as the framework for a statewide dialogue to identify housing and community development priorities that align and focus funding from the Community Development Block Grant (CDBG) Program administered by DECD and the HOME Investment Partnerships (HOME) Program and Emergency Solutions Grant and (ESG) Program, which are administered by MaineHousing.
- X. “Mainstream Resources” means a variety of Federal and state benefit government assistance programs Homeless Persons may be eligible to receive. These include but are not limited to: Temporary Assistance For Needy Families (TANF), Food Supplement Program, veterans’ benefits, MaineCare, General Assistance, Supplemental Security Income Program (SSI), Social Security Disability Insurance (SSDI), and Housing Choice Vouchers Program.
- Y. “Maine’s Job Bank” is an on-line job posting and job search system provided by Maine CareerCenter.
- Z. “McKinney-Vento Act” means the Stewart B. McKinney-Vento Homeless Assistance Act, 42 U.S.C. §11301 *et seq.*, and the regulations promulgated thereunder.
- AA. “Program” means an offering of grants subject to recapture available to prospective eligible Applicants on certain terms and for certain purposes determined by MaineHousing pursuant to this rule.
- BB. “Program Guide” means the written procedural and administrative guide for a particular Program governed by the terms and conditions of this rule.
- CC. “Rapid Re-housing” means housing relocation and stabilization services and short- and/or medium-term rental assistance as necessary to help Homeless Persons move as quickly as possible into permanent housing and achieve stability in that housing.
- DD. “Regional Homeless Council” means one of the following three advisory committees concerning homelessness: Region I comprising York and Cumberland Counties; Region II comprising Androscoggin, Franklin, Kennebec, Knox, Lincoln, Sagadahoc, Somerset, Oxford, and Waldo Counties; and Region III comprising Penobscot, Piscataquis, Aroostook, Washington, and Hancock Counties.
- EE. “Shelter Operations” are the costs of maintenance (including minor or routine repairs), rent, security, fuel, equipment, insurance, utilities, food, furnishings, and supplies necessary for the operation of an Emergency Shelter.

- FF. “Statewide Homeless Council” means the advisory committee created pursuant to §5046 of the Act.
- GG. “Violence Against Women Act “or “VAWA” is a United States federal law (Title IV, sec. 40001-40703 of the Violent Crime Control and Law Enforcement Act of 1994, H.R. 3355).

## 2. Eligible Applicants

To be eligible to receive funds, an Applicant must:

- A. be a non-profit corporation in good standing in the State of Maine qualified for tax exemption under 501(c)(3) of the Internal Revenue Code or a municipal corporation;
- B. be eligible in accordance with the HEARTH Act;
- C. be a provider of homeless services with at least one (1) year of experience providing emergency housing, street outreach, Homeless Prevention or Rapid Re-housing activities;
- D. be a regular and active participant in the Maine Continuum of Care or the Portland Continuum of Care, in accordance with their respective governance charters and performance criteria;
- E. have board and or advisory board representation from Homeless Persons or formerly Homeless Persons who are involved in policy or planning of the organization;
- F. participate in Coordinated Entry Process by entering into Business Associate Agreements for sharing data and administering housing prioritization and assessment tools;
- G. have the administrative and financial management capacity necessary to administer and to account for the use of the applicable grant in accordance with the funding requirements;
- H. meet the objectives and strategic goals to end homelessness as outlined in the Maine Consolidated Plan;
- I. meet the objectives of the Program under which they are applying as set forth in the applicable Program Guide;
- J. participate in and meet the performance and reporting requirements of the Homeless Management Information System (HMIS) or a comparable database if the Applicant serves victims of domestic violence;
- K. not engage in any explicitly religious activities, such as worship, religious instruction, or proselytization, as part of the activities and services funded with any grant for activities or services covered by this rule; and if religious activities are offered, they must be offered at a separate time or location from the activities and services covered by this rule; and participation in those religious activities must be voluntary for persons receiving assistance with funds covered by this rule;

- L. operate its programs free from discrimination on the basis of age, race, color, religion, national origin, physical or mental disability, sexual orientation, or gender in accordance with applicable federal and state fair housing laws;
- M. comply with Section 504 of the Rehabilitation Act of 1973, which prohibits disability discrimination in programs that receive HUD funds; and
- N. comply with MaineHousing requirements.

### **3. Emergency Shelter or Emergency Housing Provider Requirements**

Applicants that are Emergency Shelters or Emergency Housing Providers must do the following:

- A. provide access 365 days per year to assist Homeless Persons meet basic emergency shelter needs;
- B. provide adequate sleeping space or beds, and clean and functioning shower and toilet facilities;
- C. provide safe and nutritious food, including breakfast or access to breakfast and, if open 24 hours, also provide lunch and dinner or access to lunch and dinner;
- D. treat all guests with dignity and respect, regardless of religious or political beliefs, cultural background, disability, gender identity or sexual orientation;
- E. provide shelter and housing services based upon a Rapid Re-housing or Housing First ;
- F. operate at Bed Capacity unless the homeless response system is experiencing demand insufficient to fill capacity;
- G. provide linkages and access to community resources such as health care, job readiness and employment services, Mainstream Resources, and educational services to assist guests in achieving housing stability;
- H. assess guests for housing prioritization and services to enable mobility to permanent housing with adequate supports;
- I. inform guests of their rights and responsibilities, including specific shelter policies and house rules;
- J. accept eligible persons regardless of their ability to pay or their eligibility for reimbursement or actual reimbursements from any third party source, including local, municipal, state, or federal funding sources;
- K. have no lease requirements for guests;

- L. if serving families with children, provide space other than open dormitory style and do not require involuntary family separation for admission;
- M. provide separate accommodations for male and female consumers;
- N. protect the privacy and confidentiality of guests and their personal information;
- O. provide training, policies, procedures and regular maintenance to encourage, improve, and maintain the health and safety of guests, volunteers and staff;
- P. post fire, disaster, and other emergency procedures in a conspicuous place and review the procedures with each guest;
- Q. maintain a daily and confidential census of shelter clients including precise sleeping locations;
- R. operate in compliance with all applicable federal, state and local codes, laws and regulations; and
- S. have written policies and procedures for standards that address the following areas: access to shelter services, residential rights and responsibilities; program, personnel and facility operations; health and safety; food preparation and distribution; case management services; staff training; and HMIS and computer protocols.

#### 4. **Funding Formula Allocation**

From time to time MaineHousing will allocate a certain amount of funds to be distributed, subject to availability, to Emergency Shelters and Emergency Housing Providers (the “Funding Formula Allocation”) pursuant to the following funding methodology:

- A. **Shelter Operations.** An amount equal to 40% of the Funding Formula Allocation will be disbursed among eligible agencies, such that each Emergency Shelter will receive a percentage equal to the Emergency Shelter’s Bed Capacity divided by a number equal to the total Bed Capacity available statewide for the calendar year. Agencies will receive scheduled payments on a quarterly basis.
- B. **Rapid Re-housing, Long-term Stayer and Stabilization Share.** An amount equal to 40% of the Funding Formula Allocation will be disbursed among eligible agencies, such that each agency providing staffing for Rapid Re-housing, Housing First and Housing Stabilization services operated by the agency will be eligible to receive a percentage equal to the agency’s number of Clients Assessed and Stabilized, divided by the total number of Clients Assessed and Stabilized statewide in the previous quarter. Agencies are reimbursed for costs on a quarterly basis.

In order for an agency to achieve the full amount of the Rapid Re-housing, Long-term Stayer and Stabilization Share for which it is eligible, it will need to meet certain performance measures to be published at the time of allocation. The measures will be based on successful housing outcomes

including housing prioritization assessment, housing stability plans and transfers to permanent housing.

Examples of Potential Performance:

- ✓ % of agency households screened for prioritization of housing options.
- ✓ % of agency household departures placed in permanent housing with a lease.
- ✓ % of agency household departures with documented income through benefits, employment, education or training.

C. **Incentives and Performance Share.** An amount equal to 20% of the Funding Formula Allocation will be made available to eligible agencies that provide successful housing outcomes based on performance indicator data in HMIS (or elsewhere for providers of services to victims of domestic violence). Providers will receive a percentage of funding for each outcome performance measure that they meet. The amount of funding available for each performance measure will be the same. The percentage of funding a provider receives for each performance measure met will be equal to the number of clients served by the provider divided by the total number of clients served by all of the providers that meet the respective performance measure benchmark in the previous quarter, or in the previous calendar year for the recidivism benchmark. Agencies will receive a performance based payment on a semi-annual basis.

- Payments are based on performance of successful housing exits including housing retention, income and supports, and recidivism.

Examples of Performance Measures:

- ✓ % of agency household departures to permanent housing that retains housing for at least six months.
- ✓ % of agency household departures whose income increased between entry and departure through benefits, employment, education or training.
- ✓ % of decrease in average length of stay.

Grantees that receive allocations from federal funds, including Emergency Solutions Grant or HOME Investment Partnership Act funds, may be required to provide match from local or private funds.

## 5. Program Design

- A. **Allocation.** In addition to the Funding Formula Allocation, MaineHousing may allocate other funds for Programs to assist Homeless Persons in accordance with applicable federal and state laws.
- B. **Programs.** MaineHousing shall design and offer Programs based upon available funds, restrictions attached to such funds, best practices, and needs. The funds may be used for shelter services and outreach activities; for Homeless Prevention and Rapid Re-housing activities such as rental assistance, housing search, mediation, outreach to property owners, legal services, security on utility deposits, and moving

costs; and to support entities that offer an integrated array of services to meet the health, housing, employment, and other basic needs of Homeless Persons.

- C. **Program Guides.** MaineHousing shall publish on MaineHousing's website a Program Guide with respect to each Program and shall distribute the Program Guide to parties who may be eligible for the Program and who have expressed an interest to MaineHousing in connection with the type of activities eligible under the Program, to parties MaineHousing selects for marketing the particular Program, and upon request.

## 6. Funding

- A. **Processing of Applications.** MaineHousing may process applications on a first come first served basis or may set an application due date described in the Program Guide for submission for review by a scoring committee.
- B. **Selection for Funding.** MaineHousing shall retain final discretion as to whether or not to offer funds to a particular Applicant for a particular purpose.
- C. **Availability of Funds.** Grants are always subject to the availability of funds.
- D. **Selection Criteria.** MaineHousing will set forth requirements and selection and approval criteria germane to a particular Program in the applicable Program Guide. Selection criteria may include but are not limited to the following:
1. **Mainstream Resources**
    - a. how well the Applicant assists clients in the completion and submission of applications for Mainstream Resources; and
    - b. how well the Applicant captures the results of the actual benefits received.
  2. **Housing**
    - a. how well the Applicant assists clients in the completion and submission of applications for client appropriate housing;
    - b. how well the Applicant assists clients with housing searches;
    - c. how well the Applicant assists clients with landlord relationships; and
    - d. how well the Applicant has developed and maintained effective working relationships with local General Assistance offices in assisting clients with access and applications.

3. **Health Care**

- a. Applicant's relationships and links with one or more local health care providers who provide treatment for clients; and
- b. Applicant's ability to provide or refer clients for mental health or substance abuse assessments and treatment.

4. **Employment**

- a. how well the Applicant assists clients with employment searches, including registering with Maine's Job Bank;
- b. how well the Applicant has developed and maintained effective working relationships with local CareerCenters in assisting clients; and
- c. how well the Applicant has developed and maintained effective working relationships with local employers or employment agencies in assisting clients.

5. **Prevention**

- a. Applicant's knowledge of and ability to refer clients to Pine Tree Legal Assistance for eviction prevention and other legal assistance; and
- b. Applicant's knowledge of and ability to actively refer clients to other local and regional resources, as appropriate.

7. **Data Collection Requirements**

In order to receive funding, eligible Applicants must do the following, unless prohibited by VAWA:

- A. Enter into a Business Associate Agreement to share certain Homeless Management Information System (HMIS) data with the other Homeless Shelters, Emergency Housing Providers, and homeless providers;
- B. Enter client data as prescribed by MaineHousing and HUD in accordance with requirements set forth in the HMIS Data Standards as revised, and the HEARTH Act, and ensure data completeness and quality in regard to program performance measures on a monthly basis and submit reports as prescribed by MaineHousing or HUD;
- C. Enter client data on outcomes and housing stability as prescribed by MaineHousing or HUD, which will be used for performance measurement, research, or evaluation;

- D. Have the capacity to enter client level data into Bowman Systems, LLC ServicePoint system, or its successors, the designated vendor for HMIS data entry; and
- E. Submit de-duplicated aggregate reports as required by MaineHousing.

Providers of shelter to victims of domestic violence are required to have the capacity of a comparable database that collects client level data and exports aggregate, de-duplicated data to MaineHousing in electronic form.

## 8. Reporting Requirements

- A. **General Reporting Requirements.** A grantee must provide client data prescribed by MaineHousing in a form or forms prescribed by MaineHousing to centralized data collection systems prescribed by MaineHousing as often as required by MaineHousing.
- B. **Missing Reports or Data.** A grantee must provide all reports and all required client data in accordance with the reporting requirements at the time of funds disbursement in order to receive funding.
- C. **Complete Report.** A report will not be considered submitted unless MaineHousing determines that the report is sufficiently complete and all client data is valid.
- D. **Final Reports.** A grantee must submit a final report showing its use of a grant within 30 days of the end of the term of the grant.

## 9. Monitoring and Assessment.

- A. MaineHousing will review for program compliance at least once a year at reasonable times.
- B. MaineHousing may copy and examine all of a grantee's records other than medical or other confidential client information protected by privacy laws.
- C. Grantees will maintain records sufficient to meet monitoring and auditing requirements of MaineHousing and HUD including without limitation daily rosters and client files.

In the case of a physical shelter program facility, MaineHousing will inspect to a minimum for compliance with HUD's Housing Quality Standards (HQS).

## 10. Rule Limitations

- A. **Other Laws.** If this rule conflicts with any provision of federal or state law, the federal or state law shall control.
  - B. **Waivers.** Upon determination of good cause, the Director of MaineHousing or the Director's designee may, subject to statutory limitations, waive any provision of this rule. Each waiver shall be in writing and shall be supported by documentation of the pertinent facts and grounds.
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**BASIS STATEMENT:** This Rule replaces in its entirety the current *Homeless Programs Rule*. MaineHousing uses funds from certain federal and state resources to give grants to agencies for a variety of activities to assist people who are experiencing homelessness or the risk of being homeless. The rule governs MaineHousing's allocation of resources for such programs, program design, the publication and distribution of program guides, basic criteria for determining eligible recipients, and potential selection criteria. This replacement *Homeless Solutions Rule* places new emphasis on outcomes in alignment with current federal initiatives to end homelessness.

**PUBLIC COMMENT:**

*Process:*

Notice of Agency Rule-making Proposal (MAPA-3) was submitted to the Secretary of State for publication in the Wednesday, July 15, 2015 edition of the appropriate newspapers. Additionally, MaineHousing sent the proposed rule to Interested Parties on Wednesday, July 15, 2015, and published the proposed rule on its website on Wednesday, July 15, 2015.

MaineHousing held a public hearing on Tuesday, August 4, 2015 to receive testimony on its proposal to repeal and replace the Rule. The comment period was held through close of business on Friday, August 14, 2015. MaineHousing received comments from Preble Street, The Bangor Area Homeless Shelter, the Milestone Foundation, City of Portland, Statewide Homeless Council, Penobscot Health & Community Center at the public hearing and written comments from Tedford Shelter and the Milestone Foundation.

*Summary of Comments and Responses to Comments*

*Performance Measures and HMIS:*

**Jon Bradley of Preble Street** said that he supports the general direction that MaineHousing is moving in but is concerned that the funding formula is shifting too much from operations to staff and performance outcomes. He said that the additional funding from the Legislature was intended for operations. He said that the performance measures hold shelters responsible for outcomes that depend on factors outside of their control such as vacancy rates and availability of VASH vouchers. Mr. Bradley expressed concern that the performance measures may not take into consideration the challenges of the particular population that a shelter is serving.

**Bob Fowler of the Milestone Foundation** also expressed concern that the performance measures may not take into consideration the challenges of the particular population that a shelter is serving. Mr. Fowler suggested that outcomes for any particular shelter be customized to account for the unique circumstances of that program. Mr. Fowler also suggested that the move from general operational support to support that is based on outcomes be phased in over time.

**Dennis Marble of The Bangor Area Homeless Shelter** stated that he does not agree with HUD's direction. He said that working with homeless persons is a delicate dance and asking a homeless person to sign a release regarding their personal information to be input into HMIS is not a good fit. He is concerned that there is too much emphasis on compliance. He thanked MaineHousing and

Peter Merrill in particular for their support in obtaining additional funds for homeless shelters from the Legislature.

**Dawn Stiles, City of Portland** spoke in support of the new rule and the use of performance measures in particular. She said that she has witnessed the remarkable transformation that permanent housing can bring to persons who thought they could never be housed.

**Wes Phinney, Chair of the Statewide Homeless Council** spoke in support of the changes to the rule and applauded the efforts of MaineHousing in obtaining additional resources for homeless shelters through legislation.

**Joshua D’Allesio, Penobscot Health & Community Center** spoke in support of the rule. He said that it is a good tool for a single point of reference, prioritization, and getting all the shelters working on the same page. He also stated that he has done intake for about 1,300 homeless persons in the last 3 years and only two of them objected to signing an HMIS release.

#### **MaineHousing Response:**

Over the past several years MaineHousing has created new initiatives which comport with HUD’s focus on solutions and outcomes for homeless persons. HUD’s focus is on (1) maintaining an adequate geographic network of emergency housing, (2) emphasizing rapid rehousing with support for stability and success in maintaining housing, and (3) implementing system performance measures to ultimately end and prevent homelessness. MaineHousing supports this approach. MaineHousing understands that shelters across the State face different challenges based upon the populations they serve and their location. MaineHousing intends to establish realistic performance measures that are linked to a shelter’s population and location. The new allocation and awards for the Shelter Incentive funds for the first half of 2015 showed that every shelter was successful in attaining at least one of the performance benchmarks and seven of our shelters and Home to Stay grantees achieved all three. This is an indication that performance measures and outcomes can be achieved, regardless of the type of shelter or subpopulation served. MaineHousing is currently analyzing data to determine realistic performance benchmarks for our 2016 programs. MaineHousing consistently stated to the Legislature and others that any additional funds for homeless shelters from the Legislature would be distributed under the funding formula in the rule which we were in the process of revising.

#### *Suggested Edits:*

**Craig Phillips of Tedford Shelter** submitted suggested language changes to the rule in writing. Mr. Phillips suggested that the rule: (1) require applicants to be regular and active participants in the Regional Homeless Council (2.D.); (2) state that performance measures will be in the ESG contracts (4A.2. & 4 A.3.); (3) include the language “as defined in the program guide and contract” after “Agencies are reimbursed for costs.” (4A.2); (4) require MaineHousing to initiate the application process by November 15 and execute contracts by January 31 (section 6.); (5) require MaineHousing to provide reasonable notice re changes to HMIS requirements and reasonable time to train staff and implement changes to HUD Data Standards (7.B.); and (6) require MaineHousing to provide public access to monitoring and compliance reports (9.D.).

**MaineHousing Response:**

MaineHousing does not believe any of the requested changes are needed. The rule already requires applicants to be regular and active participants in a Continuum of Care, which satisfies HUD's consultation and participation requirements. The ESG contracts will incorporate the program guide, which in effect means that the performance measures will be in the contracts without need to modify the proposed language. MaineHousing will address the application process and deadlines in the program guide rather than in the rule. MaineHousing must respond as HUD directs to comply with HUD requirements for the notification and implementation of the HMIS Data Standards. All monitoring and compliance reports are accessible for the public upon request.

STATUTORY AUTHORITY: 30-A M.R.S.A. §4741.1, §4741.18, §4852, *et seq.*

EFFECTIVE DATE: OCTOBER 7, 2015