

CHAPTER 36 HOUSING FIRST PROGRAM ADMINISTRATIVE RESPONSIBILITY RULE

Purpose of Rule. This is a joint rule by the State of Maine Department of Health and Human Services and Maine State Housing Authority setting forth the responsibilities of each agency and their joint responsibilities in administering the Housing First Program, a program to facilitate the delivery of support and stabilization services to residents of properties in the State of Maine that are established or developed to provide permanent housing for persons who are experiencing chronic homelessness.

Section 1. Definitions. The following terms have the following meanings:

1. “Affiliate” means with respect to an entity, another entity which it controls or is controlled by, or with which it is under common control, control being an ownership interest, a contractual right, or other interest with respect to an entity that confers upon its holder the authority or right, directly or indirectly, to manage or otherwise direct any material part of the business or financial affairs and policies of the entity or the operation of the entity’s business or assets.
2. “Chronic Homelessness” means a situation in which a person is living in a place not meant for human habitation, including emergency shelters, for at least twelve (12) months and for whom homelessness is correlated with a condition that makes accessing services and maintaining housing a significant challenge such as substance use disorder or a behavioral health condition, and includes a situation in which a person has been living intermittently in an institutional care facility, including but not limited to a correctional facility or health treatment facility, but is otherwise living in a place not meant for human habitation.
3. “Department” means the Department of Health and Human Services, an agency of the State.
4. “Existing Site-based Housing First Properties” mean the 30-unit residential rental property located at 52 Frederic Street in Portland, Maine now or formerly known as Logan Place, the twenty-five (25) independent apartment units in the building located at 190 Valley Street in Portland, Maine now or formerly known as Florence House, and the 30-unit residential rental property located at 72 Bishop Street in Portland, Maine now or formerly known as Huston Commons.
5. “Housing First Fund” means the fund established and administered pursuant to the Housing First Law and this rule.
6. “Housing First Law” means 22 M.R.S. § 20-A (2023).
7. “Housing First Program” means the program established pursuant to the Housing First Law to facilitate the delivery of support and stabilization services to residents of properties in the State that are established or developed to provide permanent housing for persons who are experiencing Chronic Homelessness.
8. “Housing First Team” means a team of entities described in paragraph B of subsection 2

of section 2 of this rule that together will develop, own, and operate a Site-based Housing First Property.

9. “Housing Stability Services” means services offered to residents of permanent housing for persons who are experiencing Chronic Homelessness where supportive services are not necessarily provided on site or twenty-four (24) hours per day, which services must be available to residents at least twenty (20) hours each week, must adequately meet the needs of the residents to build independent living skills, maintain housing, and access necessary community-based services, and can include outreach to persons experiencing Chronic Homelessness to establish connections and provide support that may result in securing stable permanent housing, including Site-based Housing First Properties.
10. “MaineCare” means the joint federal-state Medicaid program established at Title XIX of the Social Security Act and administered by the Department in the State pursuant to 22 M.R.S. § 3173.
11. “MaineHousing” means the Maine State Housing Authority, a public body corporate and politic and an instrumentality of the State.
12. “MaineHousing Loan Program” means a funding program established by MaineHousing pursuant to subsection 3 of section 4 of this rule.
13. “On-site Housing Support and Stabilization Services” means support and stabilization services for persons experiencing Chronic Homelessness that are available on-site at Site-based Housing First Properties twenty-four (24) hours each day, seven (7) days each week and are designed to build independent living skills and connect persons with community-based services, and can also include outreach to persons experiencing Chronic Homelessness to establish connections and provide support to facilitate occupancy at a Site-based Housing First Property.
14. “Qualified Service Provider” means a service provider that the Department has determined is qualified to provide On-site Housing Support and Stabilization Services pursuant to paragraph B of subsection 1 of section 3 of this rule.
15. “Site-based Housing First Property” means permanent residential rental housing in the State of Maine with On-site Housing Support and Stabilization Services for individuals and families who at the time of initial occupancy were experiencing Chronic Homelessness.
16. “State” means the State of Maine.

Section 2. Joint Responsibilities. The Department and MaineHousing will jointly perform the following responsibilities in administering the Housing First Program:

1. Site-based Housing First Properties. Eligibility of Site-based Housing First Properties for funding from the Housing First Fund will be determined by the Department and MaineHousing pursuant to this rule.
2. Housing First Teams.
 - A. Other than Existing Site-based Housing First Properties, all Site-based Housing

First Properties must be developed, owned and operated by a Housing First Team that is selected pursuant to this subsection.

- B. A Housing First Team must include an affordable housing developer, an owner, a property management company, and a Qualified Service Provider. One entity or an Affiliate of any entity may serve in more than one capacity, except the property manager and the Qualified Service Provider cannot be Affiliates; they must be completely separate entities.
 - C. The Department and MaineHousing will establish a competitive process for selecting Housing First Teams which may be implemented through one or more rounds or processes as determined by the Department and MaineHousing. Housing First Teams will be selected based on their knowledge, experience, capacity, and ability to collaborate in developing and operating affordable housing and supportive housing for persons who are homeless, including persons experiencing Chronic Homelessness.
 - D. MaineHousing will select Housing First Teams, including the Qualified Service Provider, pursuant to the competitive process established pursuant to this subsection. MaineHousing will consult with the Department as needed in selecting Housing First Teams.
3. Location of Site-based Housing First Properties. The Department and MaineHousing will designate areas in the State where Site-based Housing First Properties will be located to most effectively and efficiently address Chronic Homelessness in the State based on data available to the Department and MaineHousing about the current concentrations of Chronic Homelessness in the State.
 4. Operation of Site-based Housing First Properties. The Department and MaineHousing will establish tenant selection criteria and operational requirements for Site-based Housing First Properties to ensure tenant protection and safety and compliance with applicable federal, state, and local laws, including without limitation fair housing laws.
 5. Enforcement. The Department and MaineHousing will cooperate in administering and enforcing compliance with the Housing First Program, the MaineHousing Loan Program, and the policies and procedures of the Department established pursuant to this rule.
 6. Reporting. The Department and MaineHousing will prepare and submit a report annually no later than February 1, beginning February 1, 2025, to the joint standing committee or joint select committee of the State Legislature having jurisdiction over housing matters with the information required under the Housing First Law and such other information as may be required by the committee with oversight to evaluate the effectiveness of the Housing First Program.

Section 3. Department Responsibilities. The Department has the following additional responsibilities in administering the Housing First Program:

1. Supportive Services.
 - A. The Department will establish and administer policies and guidelines for On-site Housing Support and Stabilization Services and Housing Stability Services that

are eligible for funding from the Housing First Fund and the qualifications of the providers of those services. The services must be provided by or include coordination with a MaineCare provider.

- B. The Department will select qualified providers of On-site Housing Support and Stabilization Services and qualified providers of Housing Stability Services pursuant to the qualifications established by the Department pursuant to paragraph A of this subsection and the Department's procurement policies and procedures.
 - C. The Department will establish and administer payment models for On-site Housing Support and Stabilization Services and Housing Stability Services that are eligible for funding from the Housing First Fund. The payment models will maximize eligibility for reimbursement under existing and future federal programs that provide funding for On-site Housing Support and Stabilization Services and the Housing Stability Services eligible for funding under the Housing First Program, including but not limited to MaineCare and the existing housing outreach and member engagement provider program administered by the Department. Funding from the Housing First Fund is intended to supplement, not supplant, the reimbursement or funding available under these existing and future federal programs.
 - D. The Department will enter into contracts with the providers of On-site Housing Support and Stabilization Services and Housing Stability Services that the Department has determined are qualified pursuant to this subsection.
2. Technical Assistance. The Department will provide technical assistance to service providers that receive funding under the Housing First Program and will assist providers in navigating reimbursement under MaineCare and other federal programs for those services.
 3. Housing First Fund.
 - A. The Department will administer the Housing First Fund. An account separate from the Housing First Fund will be established to provide funding for Housing Stability Services and will be administered by the Department.
 - B. On or before July 1 of each year, the Department will determine the amount necessary to pay for On-site Housing Support and Stabilization Services provided at each Site-based Housing First Property that is eligible for funding from the Housing First Fund pursuant to the service contracts between the Department and the Qualified Service Providers for such Site-based Housing First Properties, or the anticipated cost of the On-site Housing Support and Stabilization Services based on the payment models established by the Department pursuant to this rule if a service contract has not been executed, for the current fiscal year plus the anticipated amount needed for the next fiscal year. The Department will consult with MaineHousing about the projected initial occupancy and lease-up and annual occupancy of Site-based Housing First Properties to make the determination under this paragraph.
 - C. Beginning on July 1 of each year, starting July 1, 2025, as amounts in the

Housing First Fund become available, the Department will distribute those amounts for the following purposes:

- (1) First, to deposit the total annual cost of salaries and benefits for two permanent, full-time positions in the Department required to be established pursuant to the Housing First Law to administer the Housing First Program in the appropriate account for the Department to pay such costs;
 - (2) Second, to deposit \$1,000,000 to the account established pursuant to paragraph A of this subsection, which the Department will use to pay for Housing Stability Services that the Department determines are eligible pursuant to this rule;
 - (3) Third, to pay for the On-site Housing Support and Stabilization Services that the Department has budgeted pursuant to paragraph B of this subsection plus any additional amounts needed to pay for On-site Housing Support and Stabilization Services that are agreed to in writing by the Department and MaineHousing; and
 - (4) Finally, no later than June 30 of each year, any remaining amounts in the Housing First Fund will be transferred to MaineHousing to provide technical assistance pursuant to subsection 1 of section 4 of this rule and funding for Site-based Housing First Properties pursuant to subsection 3 of section 4 of this rule.
4. Existing Site-based Housing First Properties. Services offered at an Existing Site-based Housing First Property are eligible for funding under the Housing First Program to the extent (i) the current service funding for the Existing Site-based Housing First Property is reduced by more than fifty percent (50%) or eliminated and (ii) the owner and service provider of the Existing Site-based Housing First Property after commercially reasonable efforts are unable to replace such service funding with another source, provided that the Existing Site-based Housing First Property complies with the requirements of the Housing First Program, including the Housing First Law, this rule, and the policies and procedures and payment models established by the Department for On-site Housing Support and Stabilization Services.
 5. Monitoring. The Department will monitor the service providers for compliance with the Housing First Program, including the policies and procedures and payment models established by the Department for On-site Housing Support and Stabilization Services and Housing Stability Services.
 6. Qualified Service Provider Changes. Any withdrawal, replacement, or addition of a Qualified Service Provider of a Housing First Team selected pursuant to this rule, including any such change resulting from an enforcement action or a sale or transfer of the Site-based Housing First Property, must be approved in writing by the Department prior to the change.
 7. Enforcement.
 - A. Site-based Housing First Properties.

- (1) The Department is responsible for enforcing compliance with the requirements for On-site Housing Support and Stabilization Services and the qualifications of providers of those services, pursuant to the Department's rules, guidelines, policies, procedures and contracts governing On-site Housing Support and Stabilization Services, and all other requirements of this rule that are the Department's responsibility.
 - (2) The Department will give MaineHousing a copy of each written notice of violation issued by the Department concerning On-site Housing Support and Stabilization Services at a Site-based Housing First Property.
 - (3) The Department will coordinate with MaineHousing to enforce compliance to ensure the continued operation of the Site-based Housing First Property.
 - (4) If the violation is not corrected within the period specified for correction in the notice of violation, which period will depend on the nature of the violation, the Department can exercise all rights and remedies under the Department's rules, policies, procedures, and contracts.
- B. Housing Stability Services. The Department is responsible for enforcing compliance with the requirements for Housing Stability Services and the qualifications of providers of those services pursuant to the Department's rules, guidelines, policies, procedures and contracts governing the Housing Stability Services.
8. Recordkeeping. The Department will maintain records of its selection of qualified providers of On-site Housing Support and Stabilization Services and Housing Stability Services, the specific On-site Housing Support and Stabilization Services and Housing Stability Services provided at each property and the providers of and payment for those services, and the Department's monitoring and enforcement responsibilities under this rule pursuant to the State's record retention requirements as they pertain to the Department.

Section 4. MaineHousing Responsibilities. MaineHousing has the following additional responsibilities in administering the Housing First Program:

1. Technical Assistance. MaineHousing will provide technical assistance with respect to capital and planning issues associated with developing Site-based Housing First Properties.
2. Site-based Housing First Properties.
 - A. The number of Site-based Housing First Properties developed by each Housing First Team and the number of units in each Site-based Housing First Property must be approved by MaineHousing.
 - B. The specific site for each Site-based Housing First Properties must be within the areas designated by the Department and MaineHousing pursuant to subsection 3 of section 2 of this rule and must be approved by MaineHousing.

- C. MaineHousing will establish minimum building design requirements for Site-based Housing First Properties. All Site-based Housing First Properties must comply with these requirements.
3. MaineHousing Loan Program. MaineHousing will establish and implement one or more programs to provide funding for costs associated with the development, acquisition, construction of Site-based Housing First Properties approved by MaineHousing pursuant to this rule.
- A. The program(s) will identify the available source(s) of funding, eligible uses of funding, funding caps based on cost reasonableness and efficient use of available funding, underwriting criteria, affordability and use restrictions, site eligibility, design and construction requirements, project reserve requirements, and the requirements of the funding sources and the Housing First Program. The program(s) will limit funding for each Site-based Housing First Property to the extent funding for the program(s) is available, the funding is necessary for the financial feasibility and long-term viability of the Site-based Housing First Property, and there are other available funding sources.
- B. The funding may include, but is not limited to, interest bearing debt financing, federal low-income housing tax credits, and no-interest deferred payment debt funded with the portion of the Housing First Fund transferred by the Department to MaineHousing.
- C. The program(s) will require the owner of each Site-based Housing First Property to enter into a restrictive covenant to be recorded in the appropriate registry of deeds with priority over all mortgages and other encumbrances on the Site-based Housing First Property obligating the owner, its successors and assigns, to maintain the property as a Site-based Housing First Property for at least 45 years, unless (1) MaineHousing and the Department determine there is no longer a market need for the Site-based Housing First Property, or (2) there is no service funding available for the Site-based Housing First Property under the Housing First Fund or other source after reasonable efforts made by the owner of and the service provider for the Site-based Housing First Property to secure alternative service funding.
- D. The program(s) will comply with all applicable existing rules and regulations governing MaineHousing's funding programs, including but not limited to MaineHousing's rules Chapter 29, *Multi-family Mortgage Loans*, 99-346 C.M.R. Ch. 29, and Chapter 16, *Low-Income Housing Tax Credit Rule*, 99-346 C.M.R. Ch. 16, in effect at the time the program(s) are established.
- E. Funding from MaineHousing is not required for a Site-based Housing First Property to be eligible for funding from the Department under the Housing First Program.
4. Rental Assistance. MaineHousing may provide rental assistance for Site-based Housing First Properties that are funded under a MaineHousing Loan Program, which may include but is not limited to Section 8 project-based vouchers pursuant to MaineHousing's Housing Choice Voucher Program and governing federal laws and regulations.

Any rental assistance from MaineHousing will be limited by funding availability, other sources of project-based rental assistance available to a Site-based Housing First Property, and the applicable laws, regulations, and program requirements governing the rental assistance, and will be no more than is necessary to support the operating costs of a Site-based Housing First Property as determined by MaineHousing pursuant to applicable federal subsidy layering regulations and the underwriting criteria of the applicable MaineHousing Loan Program.

5. Monitoring. MaineHousing will monitor the design, construction, management, and operation of the Site-based Housing First Properties for compliance with all requirements of the applicable MaineHousing Loan Program, any rental assistance provided by MaineHousing, the Housing First Program, including without limitation the tenant selection criteria and operational requirements of the Housing First Program established by the Department and MaineHousing, and other applicable local, state and federal laws, rules and regulations.
6. Changes to Site-based Housing First Properties. Any withdrawal, replacement, addition, or other change of affordable housing developer, owner, or property management company of a Housing First Team selected pursuant to this rule, including any change resulting from any voluntary or involuntary sale or transfer of the Site-based Housing First Property or any change in an ownership interest in the Site-based Housing First Property, must be approved in writing by MaineHousing prior to the change.
7. Enforcement.
 - A. MaineHousing is responsible for enforcing compliance with the process for selecting Housing First Teams, the requirements set forth in subsection 2 of section 4 of this rule, the requirements of the applicable MaineHousing Loan Program and the funding provided thereunder and any rental assistance provided by MaineHousing, the tenant selection criteria and operational requirements for Site-based Housing First Properties established pursuant to this rule, and all other requirements of this rule that are MaineHousing's responsibility.
 - B. MaineHousing will give the Department a copy of each written notice of violation or default issued by MaineHousing to the owner of a Site-based Housing First Property.
 - C. MaineHousing will coordinate with the Department to enforce compliance to ensure the continued operation of the Site-based Housing First Property.
 - D. If the violation or default is not corrected within the period specified for correction in the notice, which period will depend on the nature of the violation or default, MaineHousing can exercise any and all rights and remedies under the instruments and documents executed in connection with the funding and rental assistance from MaineHousing and under applicable laws, rules and regulations.
8. Recordkeeping. MaineHousing will maintain records of the selection of Housing First Teams, the development, construction, and operation of Site-based Housing First Properties, and MaineHousing's monitoring and enforcement responsibilities through the period ending six (6) years after the end of the Housing First Program.

Section 5. General.

1. Joint Rule. This rule is a joint rule with the Department. Reference is made to Chapter 20 of the Department’s Office of Behavioral Health rules, *Housing First Program Administrative Responsibility Rule*, 14-118 C.M.R. Ch. 20.
2. Other Laws. If this rule conflicts with any provision of applicable federal or state law, such federal or state law will control.
3. Waivers.
 - A. Upon determination for good cause, the Commissioner of the Department may, subject to statutory limitations, waive any requirement of the rule within the scope of responsibility of the Department under this rule. Each waiver must be in writing and supported by documentation of the pertinent facts and grounds for the waiver. The Department may not waive any requirement of the rule within the scope of responsibility of MaineHousing under any circumstances. The Department may only waive any requirement involving a joint responsibility under the rule with the prior written approval of MaineHousing.
 - B. Upon determination for good cause, the Director of MaineHousing may, subject to statutory limitations, waive any requirement of the rule within the scope of responsibility of MaineHousing under this rule. Each waiver must be in writing and supported by documentation of the pertinent facts and grounds for the waiver. MaineHousing may not waive any requirement of the rule within the scope of responsibility of the Department under any circumstances. MaineHousing may only waive any requirement involving a joint responsibility under the rule with the prior written approval of the Department.
4. Context. The headings and captions in this rule are for convenience only and do not affect the meaning, construction, or effect of the provisions of this Agreement. The singular form of any word used or defined herein shall include the plural.

BASIS STATEMENT: The Housing First Program Administrative Responsibility Rule is a joint rule by the State of Maine Department of Health and Human Services, Office of Behavioral Health (the “Department”) and Maine State Housing Authority (“MaineHousing”) setting forth the responsibilities of each agency and their joint responsibilities in administering the State of Maine’s Housing First Program (the “Program”). The Program provides funding for support and stabilization services for residents of properties in the State of Maine that provide permanent housing for persons who are experiencing chronic homelessness.

The Department is responsible for administering the funding under the Program. The funding is primarily for 24-hour on-site supportive services, except for an annual amount that is set aside for housing stability services available for residents at least 20 hours each week but not necessarily on site or 24 hours per day. Any funding that is not used for these supportive services and the Department’s costs of administering the Program will be transferred to MaineHousing to develop affordable permanent housing with 24-hour on-site supportive services, which initially will be the majority of the funding to produce the housing where these services will be provided.

The Department is also responsible for establishing and administering the requirements for the two types

of supportive services that are eligible for funding under the Program, the payment models for the services, and the qualifications of the providers of the services. The Department is obligated to maximize eligibility for reimbursement under existing and future federal programs that provide funding for the supportive services, such as MaineCare, to supplement and expand the use of the funding and to provide technical assistance to providers in navigating these federal programs.

MaineHousing will work with the Department to administer the permanent housing with 24-hour on-site services. The Department and MaineHousing will identify the areas in the State where the properties should be located to best serve persons who are chronically homeless. The funding under the Program will only be available to teams that are selected under one or more competitive processes and consist of a service provider that the Department has determined is qualified through its procurement process together with an experienced affordable housing developer and property manager that MaineHousing, in consultation with the Department as needed, determines can work together to successfully develop, own and operate permanent housing with 24-hour on-site services for persons who are chronically homeless. MaineHousing will provide technical assistance, approve specific sites, develop construction standards to ensure successful operation and delivery of services at the properties, and offer financing for the development of the properties, including Program funding transferred to MaineHousing, other capital funding, and low-income housing tax credits.

The rule delegates oversight of the service providers to the Department, but the Department and MaineHousing will work together to develop, administer, and enforce the operational guidelines for the permanent housing with 24-hour on-site supportive services to effectively address chronic homelessness and ensure long-term viability of these properties. The rule also addresses other administrative responsibilities of the Department and MaineHousing, including recordkeeping and reporting requirements.

Public Notice, Hearing, and Comment

The Notice of Agency Rulemaking Proposal (MAPA-3) was published on the Maine Secretary of State website on October 30, 2024 and published in the October 30, 2024 editions of the Bangor Daily News, Portland Press Herald, Lewiston Sun Journal, and Central Maine Newspapers. MaineHousing also sent the Notice of Agency Rulemaking Proposal and the proposed rule to interested parties on October 22, 2024 and October 23, 2024 and posted the proposed rule and notice of the public hearing on the Maine State Housing Authority website on October 30, 2024.

A joint public hearing was held by the Department and MaineHousing at 10:00 a.m. on November 19, 2024 at MaineHousing's office. No oral or written comments were presented at the public hearing. The public comment period remained open until 5:00 p.m. on December 2, 2024. The Department and MaineHousing did not receive any comments.

STATUTORY AUTHORITY: 22 M.R.S. § 20-A (2023) and 30-A M.R.S. § 4741(1)

FISCAL IMPACT NOTE: The Housing First Program Administrative Responsibility Rule will not impose any cost on municipalities or counties for implementation or compliance.

EFFECTIVE DATE: December 25, 2024