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CONFIDENTIAL MEMORANDUM

TO: Ron Hall

FROM: Rebecca Gray Klotzle and Jack Erler

DATE: June 4, 2020

RE: DHHS Licensing Rules Relating To Camps That Rent Lodging

IMPORTANT REMINDER: ***This information is being provided for your general educational purposes only. You should always consult your attorney or other advisors for advice on how these laws apply to specifics at your camp.***

You have asked us to research the rules and licensing requirements that are implicated when Maine summer camps host weddings and other events at their facilities. We have reviewed the relevant laws and rules that govern licensing and other requirements put forth by the Department of Health and Human Services ("DHHS" or the "Department") and summarize and analyze them below.

Camps Operating Under Youth Camp License

Generally, anyone "who conducts, controls, manages or operates, for compensation, directly or indirectly, any eating establishment, lodging place, sporting/recreational camp, youth camp, campground, or recreational vehicle park, must be licensed by the Department." 10-144 CMR c. 201, § 4(E)(1); 22 M.R.S. § 2492(1). Licenses are issued for a one-year term. 22 M.R.S. § 2495; 10-144 CMR c. 201, § 4(E)(4). DHHS licenses and enforces the requirements for both youth camps and lodging places.

When a camp runs its normal children's camp programming, it is a "youth camp" under DHHS's *Rules Relating to Youth Camps* and is licensed as such. As we all know, "youth camp" is defined as "a combination of program and facilities established for the primary purpose of providing an outdoor group living experience for children with social, recreational, spiritual and educational objectives and operated and used for five (5) or more consecutive days during one or more seasons of the year" and includes day camps, residential camps, and trip/travel camps. 22 M.R.S. § 2491(16); 10-144 CMR c. 201, § 1(A)(84); 10-144 CMR c. 208, § 1.H.

When a camp operates as a licensed youth camp and meets the above definition, it is expressly excluded from the definition of "lodging place" under 22 M.R.S. § 2491(7-F) and the DHHS *Rules Relating to Lodging Establishments*. Generally, lodging place means "any place where four or more rooms, cottages or cabins are rented to the public for lodging." 10-144 CMR c. 201(A)(54). But both the statute and the Rules state that lodging place "does not include . . .

youth camps."[1] That is why camps do not need a separate eating and lodging license to house their staff and campers during their camp programs. In addition, camps may, for a fee, house and feed participants in camp training courses and alumni and families in post-season "family camp" under their camp license and do not need a separate lodging license because these "events" are considered a regular part of operating a youth camp.

The question is then how the State treats meals and lodging provided by camps outside of the regular camp programs, such as for weddings and other third-party events. Although we are unaware of any previous attempt by DHHS to enforce lodging licensing requirements against camps holding these shoulder-season events, it is our opinion that – if pressed – DHHS would interpret its rules to require camps to obtain a separate eating and lodging license for those types of events.[2]

We base this opinion on the language of the relevant provisions, the history of how that language came to be included in the law, and the way the Maine Revenue Service has traditionally distinguished between meals that are served as part of a youth camp program (not subject to sales tax) and meals that are served at weddings and other non-youth-camp-related events (subject to sales tax). These factors indicate that DHHS would find that a camp that is operating as a youth camp cannot use its youth camp license to engage in activities outside the youth camp definition. Therefore, if a camp holds events that fall outside the definition of youth camp – events like weddings that are not part of the primary purpose of providing an outdoor group living experience for children – then the camp would also need to obtain an appropriate eating and/or lodging license to cover those events.

Camps Not Operating Under Youth Camp License This Year

If a camp is not running a combination of program and facilities for the primary purpose of providing an outdoor group living experience for children – for five or more consecutive days, then it would not be considered a youth camp for the 2020 season under the *Rules Relating to Youth Camps*. 10-144 CMR Ch. 201(A)(84). This reading is confirmed by DHHS's willingness to refund youth camp licensing fees to suspended camps for 2020. Essentially that means that, for the current year, non-operating Maine summer camps are without any license. So if these camps want to engage in an activity that normally requires a license, they need to apply for and obtain the appropriate DHHS license at least thirty (30) days before they start to operate.

For a camp that is suspending its 2020 season, the question of whether the camp needs any

[1] In addition, the *Rules Relating to Lodging Establishments* contain a second carve-out for bunkhouses that reinforces the conclusion that licensed youth camps are not subject to the State's lodging rules. Those Rules state that "Bunkhouses that are part of a licensed . . . recreational camp [defined to mean and include day camps, boys' and girls' camps, and similar camps] are not lodging places." 10-144 CMR c. 206, § 1-B(18)(b).

[2] We recognize that this interpretation leads to some inconsistencies, including the fact that the State has seemingly "turned a blind eye" to camps that have held weddings with rented lodging in past years. The new Eating & Lodging application now contains an entry and $275 fee for "Food Service At Youth Camps (Eating and Catering)" and our understanding is that that entry is meant to capture food service offered by residential camps outside their regular camp season. This suggests that DHHS is aware that many camps hold such events and this new entry seems inconsistent with the requirement that a youth camp hold a separate eating and lodging license for events because that eating and lodging license would then already cover "food service at youth camps."

sort of license depends on what the camp is looking to do this year. Members have asked about weddings and other events where parts of the camp property are also rented to the wedding party and/or guests to stay in overnight or longer. Although there are a few exceptions (discussed below), such an operation would likely require the camp to obtain an eating and lodging license from DHHS for this season.

As stated above, anyone who operates any lodging place for compensation must be licensed by DHHS. 10-144 CMR c. 201, § 4(E)(1). "Lodging places" means "every building or structure, or any part thereof, used, maintained, advertised or held out to the public as a place where sleeping accommodations are furnished to the public for business purposes." 10-144 CMR c. 206, § 1-B(18). Lodging places include bunkhouses, cottages, and guest homes, which are all defined in the Rules but appear to cover the various sleeping options available at most Maine summer camps. For example, "bunkhouse" means and includes "a rough simple building providing sleeping quarters, with or without bedding; or any other similar rustic dwelling which provides lodging." 10-144 CMR c. 206, § 1-B(18). Although bunkhouses that are a part of a licensed youth camp ordinarily are not lodging places, camps that are not licensed and operating as youth camps would not fall under this exception this summer.

Therefore, if closed camps are considering hosting weddings and events and renting out rooms, cabins, or bunkhouses to guests attending the event, then the camps need to apply for a lodging license – at least 30 days before they plan to rent any lodging space – and they need to comply with the requirements set forth in the DHHS *Rules Relating to Lodging Establishments*, 10-144 CMR c. 206, unless they meet one of the exceptions below. The application can be found at https://www.maine.gov/dhhs/mecdc/environmental-health/el/forms.htm and is called the Eating & Lodging License Application, HHE-602.[3]

Possible Exceptions to DHHS Rules

There are a few ways that a suspended camp might be able to provide some event-related lodging to guests this year without obtaining a lodging license – by renting less than four rooms or by not charging for the rentals.

First, if the camp only rents out three or fewer rooms or cabins, then it is not required to have a lodging license. 22 M.R.S. § 2501 ("Rooms and cottages are not deemed or considered lodging places and subject to a license where not more than 3 rooms and cottages are let."). That exception should be read narrowly; it does not say "three rooms at a time" so a camp

[3] Note that the same application is used for both eating and lodging establishments. Maine law used to separately include a definition for an "eating and lodging place" and the *Rules Relating to Lodging Establishments* still define an eating and lodging place or lodging place as "every building or structure or any part thereof kept, used as, maintained as, advertised as or held out to the public to be a place where eating and sleeping or sleeping accommodations are furnished to the public as a business." 10-144 CMR c. 206, § 1-B(18)(e). Presumably, a camp that was only renting cabins and was not permitting any food to be served on the premises over the summer (whether prepared by a caterer or in-house) would need to only check the appropriate "Lodging Place" box and pay the sliding-tier fee, ranging from $150 to $200, based on the number of rooms being rented. A camp that would allow food to be served onsite, however, would need to check the "Eating and Catering" box and/or the "Eating and Lodging" box and pay the $275 license fee and comply with the *Maine Food Code* as well as the *Rules Relating to Lodging Establishments*.

that wanted to ensure it fell within this exception should decide at the beginning of the season which three buildings it will rent for sleeping and only rent those three buildings this year. For example, a camp that rents Cabins One, Two, and Three for the first wedding of the year needs to continue to only rent those same three cabins for remaining events. If the camp later rented Cabins Two, Three, and Four for an event, DHHS would likely consider it to be renting four or more rooms, which would trigger the requirement to have a lodging license.

Second, if the camp permits guests to stay on the property but does not charge them for the lodging rental, it would not need a lodging license. A license is only required if an entity operates a lodging place "for compensation, directly or indirectly." 22 M.R.S. § 2491. Again, this exception should be read narrowly to ensure that camps are not found to be unlawfully operating without a license. For example, a camp that hosts an alumni weekend or a camp work week where guests stay for free and are not charged would likely qualify for this exception so the camp would not be required to have a lodging license. On the other hand, if a camp charges a blanket fee for rental of its common space for guests to hold a wedding and the camp allows the guests to stay in cabins for free because they've rented the common space, that would likely not meet the exception because the cabins are indirectly being provided for compensation as part of the larger rental fee.

Nonprofit camps have the benefit of an additional exception. By statute and by rule, "[n]onprofit organizations including, but not limited to, 4-H Clubs, scouts and agricultural societies are exempt from department rules and regulations relating to dispensing foods and nonalcoholic beverages at not more than 12 public events or meals within one calendar year" and "[n]o fee is assessed for non-profit establishments that conduct 12 or fewer events and meals per year." 22 M.R.S. § 2501; 10-144 CMR c. 201, § 4(A)(2). Although nonprofit camps would be exempt from the food-related rules and fees if they host twelve or fewer events this year, it does not appear that there is any similar exception from the lodging rules and fees.[4]

Penalties for Operating Without a License

DHHS is authorized to close an unlicensed operation as well as to assess penalties. The Department has the discretion to assess the following penalty amounts for operating without the correct license:

- Unlicensed for more than 30-44 days: $200
- Unlicensed for 45-60 days: $500
- Unlicensed for 60 days or more: $1,000

10-144 CMR c. 201, § 8(E)(2). Those assessed fines would be in addition to the license fees that the establishment should have paid for the current year. 10-144 CMR c. 201, § 8(E)(3). Note: "It is the responsibility of the establishment to be licensed at all times of operation and to notify the Department, if there are any questions or concerns regarding proper licensure." 10-144 CMR c. 201, § 8(E)(1).

[4] Please note that this memorandum does not address the possible tax implications under Maine and federal law for nonprofit camps that may hold weddings and other events and take in additional revenue not related to their charitable purpose. It is important for these camps to consult with their attorneys and tax advisors before engaging in activities that might jeopardize their current tax exemptions.