

Annual List of Rulemaking Activity
Rules Adopted January 1, 2020 to December 31, 2020
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173; 5 MRS §8054
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. I Section 4**, Telehealth Services
Filing number: **2020-055**
Effective date: 3/16/2020
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This emergency rulemaking will remove the *MaineCare Benefits Manual* (MBM), ch. I §4, “Telehealth Services”, blanket prohibition against providers utilizing telehealth to deliver services under the MBM, ch. II §80, “Pharmacy Services”. Pursuant to 5 MRS §8054, the Department has determined that immediate adoption of this rule is necessary to avoid a potentially severe and immediate threat to public health, safety or general welfare. The Department’s findings of emergency are set forth in detail in the Emergency Basis Statement. Maine is facing a substantial public health threat posed by the global spread of the 2019 Novel Coronavirus (COVID-19). On March 11, 2020, the World Health Organization declared COVID-19 a worldwide pandemic. As a preemptive action by the Department, Pharmacy Services will be available via telehealth when medically necessary and appropriate.

This emergency rule change will take effect upon adoption and will be in effect for 90 days (5 MRS §8054). The Department is concurrently engaging in the routine technical rulemaking process for Section 4 to prevent a lapse in the rule and added services.

Basis statement:

Coronaviruses are a large family of viruses that are common in people and many different species of animals, including camels, cattle, cats, and bats. Rarely, animal coronaviruses can infect people and then spread between people. Late in 2019, a new such virus appeared, initially on the Chinese mainland, but rapidly spreading elsewhere. This virus, typically referred to as “Novel Coronavirus,” but officially named “SARS-CoV-2,” has led to the development in humans of a new disease, “coronavirus disease 2019,” typically referred to as “COVID-19.” The precise magnitude of the risk presented by this virus in terms of its communicability and range of severity is not yet determined, but the risk is clearly substantial.

The United States Centers for Disease Control and Prevention (CDC) is still investigating how the virus spreads. The CDC reports that the COVID-19 virus is spread mainly by person-to-person contact between people who are within six feet of one another, through respiratory droplets produced when an infected person coughs or sneezes. The CDC has advised that all symptomatic community members remain home to prevent further spread of the virus. More generally, public health authorities are advising against unnecessary interactions between members of the public, especially those who might be members of vulnerable populations, such as older persons or those with certain preexisting medical conditions. On March 11, 2020, the World Health Organization declared COVID-19 a worldwide pandemic.

The Telehealth Services rule provides that a face to face encounter is not required prior to the provision of covered services via telehealth. This emergency rulemaking will remove the *MaineCare Benefits Manual* (MBM), ch. I §4, “Telehealth Services”, prohibition against providers utilizing telehealth to deliver services under the MBM, ch. II §80, “Pharmacy Services”. Pursuant to 5 MRS §8054, the Department finds that emergency rulemaking is

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necessary to implement these changes as soon as possible to aid in the reduction of the spread of the Novel Coronavirus, while continuing to provide MaineCare services to some of Maine's most vulnerable residents. This emergency rule permits the provision of all Pharmacy Services via Telehealth, as medically necessary and appropriate.

Modification of the usual rulemaking procedures under the *Maine Administrative Procedure Act* is necessary to ensure the public health, safety and welfare of Maine residents. Emergency rules are effective for ninety (90) days. The Department shall promptly follow this emergency rulemaking with proposed rulemaking.

This rule will not have an impact on municipalities or small businesses.

Fiscal impact of rule:

This rule is estimated to be cost neutral.

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Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173; 5 MRS §8054; 24-A MRS §4136
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. I Section 4**, Telehealth Services
Filing number: **2020-136**
Effective date: 6/15/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

This adopted rule implements increased access to all pharmacy services, and particularly substance use disorder (SUD) services, through the removal of the blanket prohibition against the provision of Pharmacy Services (Section 80) via telehealth. On March 16, 2020, the Department implemented these changes on an emergency basis due to the COVID-19 health threat, in an effort to limit face-to-face contact, expedite these services to members, and mitigate disease transmission. The Department now seeks to make these changes permanent, in part because they will ensure delivery of SUD services more quickly and broadly to members, in hopes of helping to stem the opioid crisis. Additionally, the changes will be generally preemptive against any future spread of communicable disease threat or outbreak by decreasing in-person contact for pharmacy services, as medically and situationally necessitated.

Additionally, this rule removed two prohibitions within the Telehealth rule, and adds five new definitions to the rule, including Consultative Physician, Established Patient, Requesting Physician, Specialist, and Treating Provider.

The adopted provisions expand Covered Services by adding Store-and-Forward, Virtual Check-Ins, Remote Consultations, and Telephone Evaluation & Management. Store and Forward and Remote Consultation services permit Health Care Providers to, for example, get reimbursed for communications regarding a member's treatment and diagnoses. This action aligns the MaineCare rule with recent changes to 24-A M.R.S. § 4316, requiring private insurers to more broadly cover services through telehealth. As part of Store-and-Forward modalities, the Department has also added two additional procedure codes associated with Remote Consultation Between a Treating Provider and Specialist. Both new added services permit the transmission of member health information between two or more providers and/or allow collaboration between a primary provider and specialist using a virtual platform. Additionally, the two new remote consultation codes allow for the reimbursement of the requesting and consulting physicians, a departure from reimbursement for the other interprofessional consultation codes extant in policy.

Virtual Check-Ins have been added to Covered Services to align MaineCare policy with recently expanded Medicare coverage of telehealth. The addition of Virtual Check-In is intended to allow providers to communicate with members about their health status in between office visits, and to determine medical necessity for future in-office visits. Telephone Evaluation & Management permits a provider to more broadly consult with a member via telephone.

Additionally, the Department is permanently adding codes to the reimbursement section that were opened initially through the COVID-19 Public Health Emergency Services

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rule (the “COVID Rule”), 10-144 C.M.R. Ch. 101, Ch. I, Sec. 5. The COVID Rule shall be effective temporarily, to assist members and providers in specific ways during the COVID crisis, and then the Department intends to repeal the COVID Rule. The COVID Rule makes various other changes to the Telehealth rule, including:

- (i) allows waiver of the requirement in 4.04-1(2) that the covered service delivered by Interactive Telehealth be of comparable quality to what it would be if delivered in person, subject to a new comparability review process and prior approval by the Department;
- (ii) for 4.04-3 (Telephonic Services) – waives requirement that Interactive Telehealth Services be unavailable before one may utilize Telephonic Services; and
- (iii) waives requirement in 4.06-2(B) that the provider do member education and obtain written consent from the member prior to provision of services via Telehealth.

The requirement in this adopted rule for the provision of member education and procurement of informed written consent before the provision of Virtual Check In, Store and Forward, Remote Consultation, and Telephone Evaluation & Management services conflicts with the COVID Rule. Where the COVID Rule and a separate MaineCare rule conflict, the COVID rule supersedes and shall apply. See COVID Rule, Sec. 5.01. Thus, per the COVID Rule, **no education/written informed consent is required for these new Covered Services while the COVID Rule is in effect.**

The Department is seeking and anticipates receiving approval from the Centers for Medicare and Medicaid Services for these changes.

As a result of review by the Office of the Attorney General, the Department finds that changes are necessary in the final rule. The Department is adding a covered service description and additional clarifying language associated with Telephonic Evaluation & Management. The Department also made two clerical corrections to billing codes so that they are consistent with the codes used in the COVID-19 Emergency Rule.

Fiscal impact of rule:

The Department anticipates that this rulemaking will have minimal to no fiscal impact.

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Agency name: Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173; 5 MRS §§ 8054, 8073
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. I Section 5**, COVID-19 Public Health Emergency Services (*New*)
Filing number: **2020-057**
Effective date: 3/20/2020
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

To expedite and improve access to medical care for MaineCare members due to the 2019 Novel Coronavirus (COVID-19). On March 11, 2020, the World Health organization declared COVID-19 a worldwide pandemic. On March 15, 2020, Governor Janet T. Mills declared a state of civil emergency in Maine. Please see the Emergency Basis Statement for more detail regarding the bases for this emergency rulemaking.

Basis statement:

Coronaviruses are a large family of viruses that are common in people and many different species of animals, including camels, cattle, cats, and bats. Rarely, animal coronaviruses can infect people and then spread between people. Late in 2019, a new such virus appeared, initially on the Chinese mainland, but rapidly spreading elsewhere. This virus, typically referred to as “Novel Coronavirus,” but officially named “SARS-CoV-2,” has led to the development in humans of a new disease, “coronavirus disease 2019,” typically referred to as “COVID-19.” The precise magnitude of the risk presented by this virus in terms of its communicability and range of severity is not yet determined, but the risk is clearly substantial.

The United States Centers for Disease Control and Prevention (CDC) is still investigating how the virus spreads. The CDC reports that the COVID-19 virus is spread mainly by person-to-person contact between people who are within six feet of one another, through respiratory droplets produced when an infected person coughs or sneezes. The CDC has advised that all symptomatic community members remain home to prevent further spread of the virus. More generally, public health authorities are advising against unnecessary interactions between members of the public, especially those who might be members of vulnerable populations, such as older persons or those with certain preexisting medical conditions. On March 11, 2020, the World Health Organization declared COVID-19 a worldwide pandemic.

This emergency rulemaking institutes measures, effective immediately, to expedite and improve access to medical care for MaineCare members in light of COVID-19. Pursuant to 5 MRS §§ 8054 and 8073, the Department finds that emergency rulemaking is necessary to implement these changes as soon as possible to aid in the reduction of the spread of the Novel Coronavirus, while continuing to provide MaineCare services to some of Maine’s most vulnerable residents.

This is a single new section of the *MaineCare Benefits Manual* that implements emergency changes for multiple types of MaineCare Services. The following sections of MaineCare policy are affected by this rulemaking: Ch. I Section 1 (“General Administrative Policies and Procedures”); Ch. I Section 4 (“Telehealth Services”); Ch. II and III Section 31 (“Federally Qualified Health Center Services”); Ch. II and III Section 40 (“Home Health Services”); Ch. II and III Section 45 (“Hospital Services”); Ch. II Section 55 (“Laboratory Services”); Ch. II Section 60 (“Medical Supplies and Durable Medical Equipment”); Ch. II and

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III Section 65 (“Behavioral Health Services”); Ch. II Section 80 (“Pharmacy Services”); Ch. II Section 90 (“Physician Services”); Ch. II and III Section 96 (“Private Duty Nursing and Personal Care Services”); Ch. II Section 101 (“Medical Imaging”); and Ch. II and III Section 103 (“Rural Health Clinic Services”).

This emergency rulemaking implements the following changes:

1. **Co Payments:** The Department is waiving some co-payments for MaineCare services for all MaineCare members. The co-payment waivers include pharmacy, clinical visits, medical imaging, laboratory services, behavioral health services, medical supplies and durable medical equipment, private duty nursing and home health services. Should COVID-19 specific treatments and/or vaccines become available during the duration of this rule, co-payments will be waived for those services as well.
2. **Pharmacy:** The Department is altering some of the MBM, Section 80, Pharmacy Services, requirements in order to expedite and improve access to prescriptions. Restrictions are lifted for asthma and immune-related prescriptions. Prior Authorizations for COVID-19 treatments and/or vaccines, should they come available, are waived. Early refills of prescriptions are allowed, and the physical assessment requirements for Buprenorphine and Buprenorphine Combination products for SUD are waived.
3. **Durable Medical Equipment:** Prior Authorization requirements for certain durable medical equipment are being extended and early refills allowed for individuals with COVID-19, in self quarantine who may have COVID-19, or in a high-risk category for developing complications from COVID-19.
4. **Home Health Services.** Home Health Services document submission requirements are being extended for Plans of Care submissions.
5. **Telehealth:** The Department is waiving the advance written notice/consent for telehealth services, waiving the comparability requirement for services with specific approval by the Department, and allowing the provision of telephone-only evaluation and management services for MaineCare members.

In the event of conflict between the COVID-19 Public Health Emergency Services rule and any other MaineCare rule, the terms of this rule supersede other rules and shall apply.

The Department shall seek and anticipates receiving approval of those changes from the Centers for Medicare and Medicaid Services (CMS) retroactive to March 18, 2020.

Except for the changes affecting MBM, Ch. II and III Section 40, “Home Health Services”, these emergency rule changes shall be effective for ninety (90) days, per 5 MRS §8054. MBM Ch. II and III Section 40, “Home Health Services”, are major substantive rules, thus, if CMS approves, the emergency rule changes affecting Section 40 shall be effective for up to one year pursuant to 5 MRS §8073.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$1,976,845.00 in SFY 2020, which includes \$607,035.00 in state dollars and \$1,369,810.00 in federal dollars, and \$7,907,380.00 in SFY 2021, which includes \$2,430,813.00 in state dollars and \$5,476,567.00 in federal dollars.

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Agency name: Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173; 5 MRS §§ 8054, 8073
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. I Section 5**, COVID-19 Public Health Emergency Services
Filing number: **2020-116**
Effective date: 5/13/2020
Type of rule: Routine Technical (except section 506, major substantive)
Emergency rule: Yes

Principal reason or purpose for rule:

To expedite and improve access to medical care for MaineCare members due to the 2019 Novel Coronavirus (COVID-19). On March 11, 2020, the World Health organization declared COVID-19 a worldwide pandemic. On March 15, 2020, Governor Janet T. Mills declared a state of civil emergency in Maine.

Basis statement:

Pursuant to 5 MRS §§ 8054 and 8073, the Department finds that further emergency rulemaking is necessary to implement these additional changes to the COVID-19 rule as soon as possible to further aid in the reduction of the spread of the Novel Coronavirus, while continuing to provide MaineCare services to some of Maine's most vulnerable residents. The COVID-19 rule impacts the following sections of MaineCare policy: Chapter 1, Section 1 (General Administrative Policies and Procedures); Chapter I, Section 4 (Telehealth Services); Chapter II, Section 12 (Consumer-Directed Attendant Services); Chapter II, Section 17 (Community Support Services); Chapters II and III, Section 31 (Federally Qualified Health Center Services); Chapters II and III, Section 40 (Home Health Services); Chapters II and III, Section 45 (Hospital Services); Chapter II, Section 55 (Laboratory Services); Chapter II, Section 60 (Medical Supplies and Durable Medical Equipment); Chapter II, Section 67 (Nursing Facility Services); Chapters II and III, Section 94 (Early and Periodic Screening, Diagnosis and Treatment Services); Chapters II and III, Section 96 (Private Duty Nursing and Personal Care Services); Chapter III, Section 97 (Private Non-Medical Institution Services); Chapter X, Section 3 (Katie Beckett Benefit); and Chapter X, Section 1 (Benefit for People Living with HIV/AIDS).

In the event of conflict between the COVID-19 Rule and any other MaineCare rule, the terms of this rule supersede other rules and shall apply.

In particular, this emergency rulemaking implements the following changes:

1. **Co Payments:** The Department is waiving some co-payments for MaineCare services for all MaineCare members. This Second COVID-19 Rule adds co-payment waivers including: Section 96, private duty nursing and personal care services, Section 12, allowances for consumer directed attendant services, and Ch. X, Sec. 1, benefits for people living with HIV/AIDS.
2. **Waiver of Premiums:** The Department is waiving all enrollment fees, premiums, and similar charges for all beneficiaries.
3. **Durable Medical Equipment:** If CMS approves, the Department is authorizing Advanced Practice Providers to prescribe durable medical equipment and allowing audiologist orders to justify medical necessity of hearing aids when all other criteria are met. The Department may implement these changes permanently through separate rulemaking in the MBM, Chs. II and III, Section 60.
4. **Home Health Services.** The Department is authorizing Advanced Practice Providers as qualified providers to order and recertify plans of care. The Department may implement these changes permanently through separate rulemaking in the MBM, Chs. II and III, Section 40.

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5. **Telehealth:** The Department is allowing the provision of telephone-only evaluation and management services for MaineCare members. As noted specifically in the Second COVID-19 Rule, the Department is implementing some of these telehealth services permanently through separate rulemaking in the MBM, Ch. I, Section 4.
6. **Early and Periodic Screening, Diagnosis and Treatment:** If CMS approves, the Department is allowing for one additional health assessment visit per member within a year following an initial assessment via Telehealth under Bright Futures Health Assessment Visits.
7. **Hospital Services:** The Department is allocating a special supplemental pool in the amount of ten million dollars (\$10,000,000) for COVID-19 among the Acute Care Non-Critical Access hospitals and Critical Access hospitals. The special supplemental pool payments shall be allocated proportional to the 2016 MMIS base date distribution of MaineCare payment for inpatient and outpatient services, not to exceed the total supplemental pool amount and not to exceed allowable aggregate upper payment limits.
8. **Private Non-Medical Institution Services:** The Department is increasing reimbursement uniformly for Appendix B substance abuse treatment facilities by 23.9% effective 3/1/2020 to 5/31/2020. This increased reimbursement may not duplicate any other reimbursement received for COVID-19, and the Department may cease paying the rate increase to any provider it determines has received such funding after providing advance notice.
9. **Uninsured Individuals:** As authorized by the Disaster SPA and the Families First Coronavirus Response Act (FFCRA) H.R. 6201, 116 Cong. (2019-2020), P.L. No. 116-127, effective retroactive to March 18, 2020, individuals who meet the eligibility requirements set forth in the MaineCare Eligibility Manual, 10-144 C.M.R. Ch. 332 shall receive coverage for testing and diagnosis of COVID-19.
10. **Community Support Services:** Members who require annual verification for determination of eligibility shall retain eligibility through previously-rendered diagnoses and clinical judgment. Retroactive to April 15, 2020, for community integration services only, providers must verify that a member meets specific eligibility requirements within sixty days of the start date of services.
11. **Private Duty Nursing and Personal Care Services:** The period of time for an individual without the required training to enroll in a certified training program for Personal Support Specialists is extended from sixty days to one-hundred twenty days from date of hire. The period of time in which an individual must complete and pass the training requirements is extended from nine months to twelve months from date of hire.
12. **Nursing Facility Services:** The federal Preadmission Screening and Resident Review (PASRR) requirements for nursing facilities are being waived for thirty days. All new admissions can be treated like exempted hospital discharges. After thirty days, new admissions with mental illness or intellectual disability should receive a PASRR as soon as resources become available.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$12,478,433.00 in SFY 2020, which includes \$3,643,997.00 in state dollars and \$8,834,436.00 in federal dollars; and \$7,887,262.00 in SFY 2021, which includes \$2,226,915.00 in state dollars and \$5,660,915.00 in federal dollars. These sums include changes made in the first COVID emergency rule filed on March 20, 2020 combined with all additional changes contained within this rule.

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Agency name: Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42(8), 3173; 5 MRS §8054; PL 2019 ch. 343; Resolves 2019 ch. 110; PL 2019 ch. 616
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III §65**, Behavioral Health Services
Filing number: **2020-121**
Effective date: 5/21/2020
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

The Department of Health and Human Services (Department) adopts the following emergency rule changes in 10-144 CMR ch. 101, *MaineCare Benefits Manual*, ch. II and III section 65, “Behavioral Health Services”.

In ch. III, the Department is increasing the rate of reimbursement for Medication Assisted Treatment with Methadone (MAT) retroactive to July 1, 2019. Pursuant to PL 2019 ch. 343, *An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2019, June 30, 2020 and June 30, 2021*, (effective June 17, 2019), the Legislature increased funding for the weekly reimbursement rate for MAT services for the FY2020 and FY2021 state budgets. In light of the state’s ongoing opioid crisis, the Department finds that the immediate adoption of the MAT rate increase is necessary to avoid an immediate threat to public health, safety, or general welfare under 5 MRS §8054. The emergency rate increase benefits both providers and members and will further support the delivery of these critical services to those in need.

The Department is seeking and anticipates approval from the Centers for Medicare and Medicaid Services (CMS) for the MAT rate increase. The Department published a Notice of MaineCare Reimbursement Methodology Change on June 28, 2019 notifying providers of this increase and is awaiting approval of a state plan amendment. Pending that approval, the Department will reimburse MAT services at the increased rate retroactive to July 1, 2019.

Additionally, this rulemaking will increase the rates of reimbursement in ch. III for Functional Family Therapy (FFT), Multisystemic Therapy (MST), Multisystemic Therapy for Problem Sexualized Behaviors (MST-PSB) by 20% effective January 1, 2020 in accordance with Resolves 2019, Ch. 110, *Resolve, To Increase Funding for Evidence-based Therapies for Treating Emotional and Behavioral Problems in Children* (effective January 12, 2020). In approving this legislation (which became law without the Governor’s signature), the Legislature determined that an immediate effective date was necessary given the rates had “not been adjusted in more than 8 years” and the rates were “insufficient to enable some providers to continue to provide services.” The Department agrees with and incorporates these findings in support of this emergency rulemaking under 5 MRS §8054.

The Department is seeking and anticipates CMS approval for the 20% rate increases for FFT, MST, and MST-PSB services. The Department published a Notice of MaineCare Reimbursement Methodology Change on June 28, 2019 of the intended 20% rate increases with the expectation that the Legislature would approve the increases effective July 1, 2019. The Department believes this notice is sufficient despite the legislation not taking effect until January 12, 2020. Pending CMS approval, the Department will reimburse FFT, MST, and MST-PSB services at increased rates retroactive to January 1, 2020.

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Additionally, following the completion of the rate study directed by Resolves 2019 ch. 110 and completed by Burns and Associates, the Department has developed new increased rates for MST, MST-PSB, and FFT. The additional funding has been approved for the FY2021 state budget pursuant to PL 2019 ch. 616, *An Act Making Supplemental Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2020 and June 30, 2021* (effective March 18, 2020). Through the rate study process and in line with the Legislature's directive in the Resolve, the Department has made the determination to switch reimbursement from quarter hour billing to a weekly case rate to reflect the requirements for the evidence-based models. Concurrent with these rate changes in ch. III, in ch. II the Department has ended Collateral Contacts for MST, MST-PSB, and FFT as these services have been incorporated into the new weekly case rate. The Department has also adopted minimum contact standards for providers to provide guidance to providers accessing this new weekly case rate. In ch. III, the Department has deleted the prior quarter hour codes and added in the new weekly codes and rates. In response to financial challenges and civil emergency created by the COVID-19 pandemic, the Department has advanced the increased rates from the anticipated July 1, 2020 start date retroactively to May 1, 2020, in order to provide financial relief, to support stability in the workforce, and to increase access to members in need. Because of this, the Department has determined emergency rulemaking is necessary to support these providers and members receiving these services under 5 MRS §8054

The Department published a Notice of MaineCare Reimbursement Methodology Change on April 30, 2020 of the intended rate increases and intends to file a State Plan Amendment within the quarter. Pending CMS approval, the Department will reimburse MST, MST-PSB, and FFT at increased weekly rates retroactive to May 1, 2020.

Finally, PL 2019 ch. 616 also included funding for the Department to increase rates for certain services effective July 1, 2020. In response to the COVID-19 emergency and hardships created during this period of civil emergency, the Department has made the decision to advance these rate increases to be effective retroactively to April 1, 2020. The rate changes include an increase for physicians delivering medication management, and an increase for Behavioral Health Professionals providing Home and Community-based Treatment (HCT) services. In order for physicians to access the increased rate of reimbursement, they will be required to use the AF modifier on their claims. The Department has determined emergency rulemaking is necessary to support these providers and members receiving these services under 5 MRS §8054.

The Department published a Notice of MaineCare Reimbursement Methodology Change on March 31, 2020 of the intended rate increases and intends to file a State Plan Amendment within the quarter. Pending CMS approval, the Department will reimburse Behavioral Health Professionals delivering HCT and physicians delivering Medication Management at increased rates retroactive to April 1, 2020.

This emergency rulemaking will take effect upon filing with the Secretary of State and will remain in effect for ninety days. 5 MRS §§ 8052(6), 8054(3). To avoid a lapse, the Department is concurrently proposing non-emergency routine technical changes.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$4,237,264 in SFY 2020, which includes \$1,491,405 in state dollars and \$2,745,859 in federal dollars, and \$6,595,787 in SFY 2021, which includes \$2,183,171 in state dollars and \$4,412,616 in federal dollars.

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Agency name: Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173; 5 MRS §8054; PL 2019 ch. 4 *and* 343; Resolves 2019 ch. 99 *and* 110; PL 2019 ch. 616
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III §65**, Behavioral Health Services
Filing number: **2020-178**
Effective date: 8/19/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

The Department of Health and Human Services (“the Department”) adopted this rule to finalize the following changes to 10-144 CMR ch. 101, *MaineCare Benefits Manual*, ch. II and III sec. 65, “Behavioral Health Services”.

In ch. II, the Department proposes to remove the twenty-four (24) month lifetime limit for reimbursement for Medication Assisted Treatment (“MAT”) with Methadone for opioid addiction to align with changes in state law which took effect on March 14, 2019 under PL 2019 ch. 4, *An Act To Make Supplemental Appropriations and Allocations for the Expenditures of State Government and To Change Certain Provisions of Law Necessary to the Proper Operations of State Government for the Fiscal Year Ending June 30, 2019*, and which were previously announced via the Department’s list serv to interested parties on March 22, 2019. The Act repealed 22 MRS §§ 3174-SS and 3174-VV which had set limitations on these services. By removing the lifetime limit, members may access MAT with Methadone for as long as medically necessary, with no lifetime cap on services. The Department’s removal of the 24-month cap has already been approved by the Centers for Medicare and Medicaid Services (CMS).

Additionally, in ch. III the Department adopts this rule to finalize the increased rate of reimbursement for MAT with Methadone retroactive to July 1, 2019. Pursuant to PL 2019, ch. 343, *An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2019, June 30, 2020 and June 30, 2021* (effective June 17, 2019), the Legislature increased funding for the weekly reimbursement rate for MAT services for the FY2020 and FY2021 state budgets. The Department emergency adopted the rate increase on May 21, 2020 after finding the adoption of the MAT rate increase was necessary to avoid an immediate threat to public health, safety, or general welfare under 5 MRS §8054.

The Department is seeking and anticipates approval from CMS for the MAT rate increase. The Department published a Notice of MaineCare Reimbursement Methodology Change on June 28, 2019 notifying providers of this increase and is awaiting approval of a state plan amendment. Pending that approval, the Department will reimburse MAT services at the increased rate retroactive to July 1, 2019.

Additionally, the Department finalized adoption of increases of the rates of reimbursement in ch. III for Functional Family Therapy (FFT), Multisystemic Therapy (MST), Multisystemic Therapy for Problem Sexualized Behaviors (MST-PSB) by 20% effective January 1, 2020 in accordance with Resolves 2019, ch. 110, *Resolve, To Increase Funding for Evidence-based Therapies for Treating Emotional and Behavioral Problems in Children* (effective January 12, 2020). In approving this legislation (which became law without the

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Governor's signature), the Legislature determined that an immediate effective date was necessary given the rates had "not been adjusted in more than 8 years" and the rates were "insufficient to enable some providers to continue to provide services."

The Department is seeking and anticipates CMS approval for the 20% rate increases for FFT, MST, and MST-PSB services. The Department published a Notice of MaineCare Reimbursement Methodology Change on June 28, 2019 of the intended 20% rate increases with the expectation that the Legislature would approve the increases effective July 1, 2019. The Department believes this notice is sufficient despite the legislation not taking effect until January 12, 2020. The Department will reimburse FFT, MST, and MST-PSB services at increased rates retroactive to January 1, 2020.

Additionally, following the completion of the rate study directed by Resolves 2019 ch. 110 and completed by Burns and Associates, the Department adopted new increased rates for MST, MST-PSB, and FFT. The additional funding has been approved for the FY2021 state budget pursuant to PL 2019 ch. 616, *An Act Making Supplemental Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2020 and June 30, 2021* (effective March 18, 2020). Through the rate study process and in line with the Legislature's directive in the Resolve, the Department has made the determination to switch reimbursement from quarter hour billing to a weekly case rate to reflect the requirements for the evidence-based models. In ch. II, the Department has ended Collateral Contacts for MST, MST-PSB, and FFT as these services have been incorporated into the new weekly case rate, and the Department has also adopted minimum contact standards for providers accessing this new weekly case rate. Following public comment, the Department reviewed and updated the minimum contact requirements to add flexibility and consistency to the evidence based model for the final rule.

In ch. III, the Department has finalized adoption of deleting the prior quarter hour codes and adding in the new weekly codes and rates. In response to financial challenges and civil emergency created by the COVID-19 pandemic, the Department has advanced the increased rates from the anticipated July 1, 2020 start date approved in the FY2021 budget retroactively to May 1, 2020, in order to provide financial relief, to support stability in the workforce, and to increase access to members in need. The Department further found that the immediate adoption of the MST, MST-PSB, and FFT rate increases was necessary to avoid an immediate threat to public health, safety, or general welfare under 5 MRS §8054, and adopted an emergency rule May 21, 2020.

The Department published a Notice of MaineCare Reimbursement Methodology Change on April 30, 2020 of the intended rate increases and filed a State Plan Amendment with CMS on June 30, 2020. The Department will reimburse MST, MST-PSB, and FFT at increased weekly rates retroactive to May 1, 2020.

The rate study described above also developed a rate for an evidence-based modality of outpatient therapy, Trauma Focused Cognitive Behavioral Therapy (TF-CBT). The Department has adopted a service description and provider requirements in ch. II and rate in ch. III for this evidence-based practice. Following public comment, the Department added psychiatrists to the list of qualified professionals delivering TF-CBT. The Department will be seeking and anticipates CMS approval for these new services that are intended to benefit providers and members alike.

In addition, this rulemaking adopts coverage in ch. II and reimbursement in ch. III for three evidence-based parenting programs for children with disruptive behavior disorders: Positive Parenting Program (Triple P), the Incredible Years (IY), and Parent-Child Interaction Therapy (PCIT). Following public comment, the Department added language for fidelity monitoring, updated the eligibility criteria for consistency with the evidence-based models and

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to add the “other specified” and “unspecified” disorders to aid in qualifying young children where it may otherwise be inappropriate to render a full diagnosis. The Department has also updated the rate methodology to assure the rate assumptions use current wage data for the appropriate education level determined by the model. This update in methodology resulted in an increase to the final rates for all three services. The Department will be seeking and anticipates CMS approval for these new services that are intended to benefit providers and members alike.

With this rule, the Department adopted coding changes to comport with coding updates per the National Correct Coding Initiative for certain Neuropsychological testing services effective January 1, 2019. The reimbursement table for these codes in ch. III have been adjusted to reflect billing as of January 1, 2019. The changes were made in the system and the public notified via list serve of the coding changes on January 31, 2019, and now the Department wishes to update policy for consistency. Coverage language in ch. II has been updated to reflect the intent of the new codes.

Additionally, the Department adopted changes to the educational requirements for Behavioral Health Professionals in accordance with Resolves 2019, ch. 99, *Resolve, To Change the Educational Requirements of Certain Behavioral Health Professionals* (effective Sept. 19, 2019), creating three educational levels: high school diploma or equivalent with a minimum of 3 years direct experience working with children in a behavioral health with a specific plan for supervision and training; a minimum of 60 higher education credit hours in a related field of social services, human services, health or education; and a minimum of 90 higher education credit hours in an unrelated field with a specific plan for supervision and training. The Department has received CMS approval for these changes.

The Department finalized adoption of increased rates for certain services in accordance with PL 2019 ch. 616. In response to the COVID emergency and hardships created during this period of civil emergency, the Department made the decision to advance these rate increase to be effective retroactively to April 1, 2020. The rate changes include an increase for physicians delivering medication management, and an increase for Behavioral Health Professionals providing Home and Community-based Treatment (HCT) services. In order for physicians to access the increased rate of reimbursement, they will be required to use the AF modifier on their claims. The Department found that the immediate adoption of the medication management and HCT rate increases was necessary to avoid an immediate threat to public health, safety, or general welfare under 5 MRS §8054, and adopted this change through an emergency rule on May, 21, 2020.

The Department published a Notice of MaineCare Reimbursement Methodology Change on March 31, 2020 of the intended rate increases and filed a State Plan Amendment with CMS on June 30, 2020. The Department will reimburse Behavioral Health Professionals delivering HCT and physicians delivering Medication Management at increased rates retroactive to April 1, 2020.

The Department also adopted new coverage for Adaptive Assessments, namely the Vineland, ABAS, Bayley, and Battelle rating scales, adding coverage language within ch. II and coding within ch. III of this section. The Department has been allowing coverage for these assessments via the Comprehensive Assessment (code H2000) and wishes to clarify coverage, coding, and rate per assessment.

In addition to the above changes, the Department adopted changes in ch. II to:

- Added protections for Adults with Serious and Persistent Mental Illness regarding providers terminating services and accepting referrals for this population as defined in the rule;
- Modified HCT language regarding team requirements to allow for flexibility when clinically appropriate;

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- Added background check requirements for staff having direct interaction with members within the provision of services;
- Updated the Comprehensive Assessment and Individualized Treatment Plan (ITP) sections to clearly note what services do not require these documents, and to include in the ITP section a schedule of development and review of the new services;
- Updated Appendix I and II to reflect the changes proposed in this rulemaking; and
- Updated formatting, citations, and references where necessary, including changing “Office of Substance Abuse and Mental Health Services” to “Office of Behavioral Health” throughout the rule.

For ch. III, the Department adopted a modifier to Medication Management for Treatment with Suboxone to more clearly show coverage of that medication, which will aid in the Department’s licensing efforts for these programs.

Considering public comment, in addition to the changes to the final rule described above, the Department made the following changes to the final rule:

- The Department has added “Providers shall participate with the Department in fidelity monitoring according to the Department determined process” to 65.06-17.
- The Department updated the contact standard for MST and MST-PSB as follows:

MST

“Providers must meet a minimum of two (2) contacts per week, met by one (1) face-to-face or interactive telehealth contact, and either a second face-to-face or interactive telehealth contact or clinically substantive telephonic contact.”

MST-PSB

“Providers must meet a minimum of three (3) contacts per week, met by one (1) face-to-face or interactive telehealth contact per week with MST clinician (master’s or bachelor-level) and additional contacts met by a combination of face-to-face or interactive telehealth, or clinically substantive telephonic contact. Contacts may include individual therapy sessions for identified child, family therapy sessions, scheduled team meetings, or home or community-based skill-building sessions.”

- The Department struck “home or community skill building sessions” from the contact minimums stated in 65.08-9.
- The Department amended 65.08-9 to reflect “clinical intervention” vs “session” and has amended the description of qualifying contacts in this section.
- The Department added “FFT therapists” to the list of “Other qualified Staff” in 65.09-1.
- The Department updated the minimum contact standards in 65.08-9 to reflect minimum contacts delivered on an average of required weekly contacts per month.
- The Department amended the minimum contact language for MST and MST-PSB to update language from “sessions” to “contacts” and “scheduled team meetings” to “clinically necessary team or stakeholder meetings.”
- The Department updated 65.02-22, the definition of Functional Family Therapy, as recommended by the commenter.
- The Department updated 65.03-2 and 65.03-4 to clarify agencies are licensed by the Division of Licensing and Certification and to add that notification of changes in the level of licensure must go to DHHS, including the Office of MaineCare Services, the Office of Child and Family Services, and/or the Office of Behavioral Health.
- The Department updated 65.09-7 to remove inconsistencies and to reflect the current requirements of 22 MRS §§ 9051-9065 (the *Maine Background Check Center Act*), and the *Maine Background Check Center* rule, 10-144 CMR ch. 60.

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- The Department updated 65.02-40 to reflect the “current version of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM).
- The Department updated 65.06-7 to remove the formal training in the ethical administration, scoring, and interpretation of clinical assessments requirements of this section, focusing more on licensed clinicians acting within their scope of practice.
- The Department updated 65.06-9.A to update the list of assessment tools currently approved by the Department for determining eligibility for Home and Community Based Treatment.
- The Department updated ch. III and the description of H2021 HN, HN U1, and G9007 HN to reflect Behavioral Health Professional, and not a specific education level.
- The Department added “and current” employees to the Background Check requirements in 65.09-7.
- The Department added “with the member’s consent” as suggested for 65.09-A.1.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$4,237,264 in SFY 2020, which includes \$1,491,405 in state dollars and \$2,745,859 in federal dollars, and \$7,685,519 in SFY 2021, which includes \$2,689,369 in state dollars and \$4,999,150 in federal dollars.

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Agency name: Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173; PL 2019 ch. 530 part B
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 5**, Ambulance Services
Filing number: **2020-215**
Effective date: 10/12/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement.)

Basis statement:

The Department adopts changes to ch. III section 5, “Ambulance Services”, to comply with PL 2019 ch. 530 part B, *An Act to Prevent and Reduce Tobacco Use with Adequate Funding and by Equalizing the Taxes on Tobacco Products and To Improve Public Health*, by increasing the MaineCare reimbursement rate for ambulance services to a level that is not less than the average allowable reimbursement rate under Medicare for such services and to reimburse for neonatal transport services under MaineCare at the average rate for critical care transport services under Medicare, effective retroactive to January 1, 2020.

The Department used HCPCs code A0433 (ALS 2) to develop the rate for A0225 (neonate) through the proposed rulemaking. Based on comments received and additional analysis, the Department determined that it is more appropriate to utilize HCPCs code A0434 (specialty care transport) to develop the rate for A0225 (neonate). Section 5.07(E) was edited to reflect this change.

The Department shall submit to CMS and anticipates approval for a State Plan Amendment related to these provisions.

Fiscal impact of rule:

The Department anticipates this rulemaking will cost the Department approximately \$7,664,916 in SFY 2019, which includes \$2,770,101 in state dollars and \$4,894,815 in federal dollars. The Department anticipates this rulemaking will cost the Department \$9,197,899 in SFY 2020, which includes \$3,329,640 in state dollars and \$5,868,259 in federal dollars.

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Agency name: Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173; PL 2019 ch. 530
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 103**, Rural Health Clinic Services
Filing number: **2020-242**
Effective date: 12/8/2020
Type of rule: Routine Technical
Emergency rule: No.

Principal reason or purpose for rule:

This rule is proposed to comply with PL 2019 ch. 530, *An Act to Prevent and Reduce Tobacco Use with Adequate Funding and by Equalizing the Taxes on Tobacco Products and To Improve Public Health*. Part C sec. C-4, of the Act requires the Department to amend the Rural Health Clinic services reimbursement methodology to provide rural health clinics with an alternative payment methodology option.

Basis statement:

This rule is adopted to comply with PL 2019 ch. 530, *An Act to Prevent and Reduce Tobacco Use with Adequate Funding and by Equalizing the Taxes on Tobacco Products and To Improve Public Health*. Part C sec. C-4, of the Act requires the Department to amend the rural health clinic services reimbursement methodology to provide rural health clinics with an alternative payment methodology option. Each rural health clinic must be given the option to be reimbursed under the existing prospective payment system methodology, or as of January 1, 2020, the alternative payment methodology of being reimbursed on the basis of 100% of the average of the reasonable costs of providing MaineCare-covered services during calendar years 2016 and 2017, as long as reimbursement is no less than reimbursement received under the current prospective payment system.

The current reimbursement method is based on 100% of the average of the reasonable costs of providing MaineCare-covered services during calendar years 1999 and 2000, with historical Medicare Economic Index (MEI) adjustments.

The resulting average, under both methods, is adjusted to account for any increase or decrease in the approved scope of services furnished during the provider's fiscal year 2001 or 2018, respectively, calculating the amount of payment on a per visit basis.

Between the filing of the proposed rule and the adoption of this final rule, the Department submitted to CMS the State Plan Amendment request for these provisions. As such, the referenced language in the final rule regarding the Department's submittal to CMS was changed to state the submission has been made.

The Department submitted to CMS and anticipates approval of a State Plan Amendment (SPA) related to these provisions effective retroactive to January 1, 2020. A retroactive effective date is permissible under federal Medicaid law because the SPA was submitted in February, and pursuant to 22 MRS §42(8) because these changes benefit providers.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$2,318,603 in SFY 2020, which includes \$739,449 in state dollars and \$1,579,154 in federal dollars, and \$4,637,205 in SFY 2021, which includes \$1,499,185 in state dollars and 3,138,020 in federal dollars.

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Agency name: Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42(1)&(8), 3173
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 45**, Principal of Reimbursement: Hospital Services
Filing number: **2020-233**
Effective date: 11/23/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

The Department adopts the following changes to 10-144 CMR ch. 101, *MaineCare Benefits Manual*, ch. III Section 45, “Principles of Reimbursement, Hospital Services”: As directed by PL 2019 ch. 530, *An Act to Prevent and Reduce Tobacco Use with Adequate Funding and by Equalizing the Taxes on Tobacco Products and To Improve Public Health*, the Department adopts the following changes:

1. Pursuant to sec. C-2, the Department establishes two subsets of Private Acute Care Non-Critical Access Hospitals; Rural Hospitals and Non-Rural Hospitals. The Department’s definition of “Rural Hospital” follows the Legislative directive so that the definition reflects the regional access to hospital care and the population density of the public health district in which the hospital is located. The definition of a private Acute Care Non-Critical Access “Rural” Hospital is a hospital, as reported on the hospital’s Medicare cost report, which is either: a “Sole Community Hospital”, OR a “Medicare -Dependent Hospital”, OR is a hospital participating in the Medicare “Rural Community Hospital Demonstration”. As required by the law, the following hospitals meet the “Rural Hospital” definition: Northern Light A.R. Gould Hospital in Presque Isle; Cary Medical Center in Caribou; Franklin Memorial Hospital in Farmington; Northern Light Inland Hospital in Waterville; Northern Light Maine Coast Hospital in Ellsworth; and Northern Maine Medical Center in Fort Kent.
2. Pursuant to sec. C-2, the Department will reimburse Private Acute Care Non-Critical Access Rural Hospitals at 100% of inpatient hospital-based physician costs, outpatient emergency room hospital-based physician costs, outpatient non-emergency room hospital-based physician costs, and graduate medical education costs. Pursuant to Legislative directive and funding, this provision is effective retroactive to January 1, 2020. The retroactive application of this provision is authorized pursuant to 22 MRS §42(8), which allows retroactive application where there is a benefit to a provider, as is the case with this rule.
3. Pursuant to Sec. C-2, the Department will reimburse Private Acute Care Non-Critical Access Non-Rural Hospitals at 93.3% of inpatient hospital-based physician costs, 93.4% of outpatient emergency room hospital-based physician costs, and 83.8% of outpatient non-emergency room hospital-based physician costs. Pursuant to Legislative directive and funding, this provision is effective retroactive to January 1, 2020. The retroactive application of this provision is authorized pursuant to 22 MRS §42(8), which allows retroactive application where there is a benefit to a provider, as is the case with this rule.
4. Pursuant to sec. C-3, the Department will reimburse Acute Care Critical Access Hospitals for 100% for all hospital-based physician costs. Pursuant to Legislative directive and funding, this provision is effective retroactive to January 1, 2020. The retroactive application

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of this provision is authorized pursuant to 22 MRS §42(8), which allows retroactive application where there is a benefit to a provider, as is the case with this rule.

As directed by PL 2019 ch. 343, *An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund, and Other Funds, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years ending June 30, 2019, June 30, 2020, and June 30, 2021, part A sec. 129*, the Department is adopting the following change:

The Supplemental Pool for the Acute Care Critical Access Hospitals, and also for Non-Critical Access Hospitals, Hospitals Reclassified to a Wage Area Outside Maine, and Rehabilitation Hospitals was increased.

In addition: The Department has clarified that each hospital's year, as used for the calculation, is the hospital's fiscal year that ended during calendar year 2016.

The Department updated Appendix B by removing invalid ICD-10 codes for non-emergency use of the emergency department.

Between the filing of the proposed rule and the adoption of this final rule, in June 2020, the Department obtained CMS approval of various SPA requests. As such, various changes to the rule from what was proposed were made to remove references to CMS approval of SPA changes. Where references to CMS remain in the rule, in order to be consistent, the Department updated the language to reflect current standard format for such references that is being used in all MaineCare rules.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$12,965,956 in SFY 2019-20, which includes \$5,161,036 in state dollars and \$7,804,920 in federal dollars, and \$15,355,821 in SFY 2020-21, which includes \$6,054,811 in state dollars and \$9,301,010 in federal dollars.

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Agency name: Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 3173
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. VII Section 5**, Estate Recovery
Filing number: **2020-234**
Effective date: 11/30/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

The Department of Health and Human Services (the “Department”) adopts this rule to clarify when an estate recovery claim is subject to recovery in accordance with guidance from the federal Centers for Medicare and Medicaid Services (CMS). Specifically, it changes the requirement in Section 5.04-1, “Processing Claims Against Assets”, part D, to state that any surviving child who is blind or permanently and totally disabled, be disabled at the time the Department seeks recovery. The previous marker was set at the time of the member’s death.

The Department also proposes the following changes:

- Adding language to 5.04-1(D) to define the phrase, “the time the Department seeks recovery” to mean the earlier of (1) the date of the Department’s notice of claim to the legally authorized representative of the estate or known family members or heirs; or (2) the date on which the Department files a claim in Probate Court.
- Adding numbering to 5.07(A) to clarify the application process requirements for all waivers.
- Adding language to 5.08(A)(1)(b) to provide guidance on how the 180% of the Federal Poverty level is determined by the Department and what income and asset information is required by the applicant for evaluation.
- Adding language for clarification to 5.08(B)(2)(a) to specify 24-hour a day care must be provided to the member and adding an additional requirement that the member could not be receiving in home services.
- Adding clarification to 5.08(B)(2) that an applicant will receive the highest allowable waiver in instances when an applicant may qualify for more than one care given hardship waiver.
- Updating language in 5.09(B) for clarification of the current Departmental reference.
- Adding clarification to 5.10(A) to incorporate limits of allowable expenses following the Member’s death and the requirement the decedent’s property was vacant.
- Finally, the Department is proposing minor language, clerical, and reference number edits.
- Following review as to form and legality, the Department is adding language in various provisions of the final rule to indicate that the Department shall submit and anticipates CMS approval of the changes via a State Plan Amendment.

Fiscal impact of rule:

This change is cost neutral.

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Agency name: Department of Health and Human Services
Umbrella-Unit: 10-144
Statutory authority: PL 2019 ch. 472 (5 MRS ch. 167 and 22-A MRS §205)
Chapter number/title: Ch. 104, Maine State Services Manual: Section 8, Wholesale Prescription Drug Importation Program
Filing number: 2020-118
Effective date: 6/14/2020
Type of rule: Major substantive
Emergency rule: No

Principal reason or purpose for rule:

This major substantive rule is adopted in order to implement 5 MRS ch. 167.

Basis statement:

This rule is a major substantive rule and has been approved by the Maine Legislature with specified amendments.

On January 10, 2020, the DHHS Commissioner adopted a provisionally adopted major substantive rule to implement PL 2019 ch. 472, *An Act to Increase Access to Low-cost Prescription Drugs*, as codified in 5 MRS §§ 2041-2044. That law directed the Department to develop a program to allow for the wholesale importation of prescription drugs from Canada and to submit a proposal to the federal Secretary of Health and Human Services to approve the Maine program.

The provisionally adopted major substantive rule:

1. Created a process for the design of a wholesale prescription drug importation program, in anticipation of the release of federal rules establishing an application pathway for demonstration projects allowing importation by states and other entities. On December 18, 2019 the U.S. Department of Health and Human Services and the U.S. Food and Drug Administration issued a notice of proposed rulemaking that, if finalized, would allow for the importation of certain prescription drugs from Canada by states and certain other non-federal government entities. Those regulations will be codified in 21 CFR parts 1 and 251. The federal rules will be based on 21 USC §384, the same federal law that PL 2019 ch. 472 requires the Department to comply with.
2. Provided that the Department of Health and Human Services will submit an application on behalf of the State of Maine, as soon as it is practicable after finalization of the federal rule.
3. Provided for a stakeholder engagement process, which includes public meetings hosted and facilitated by the Department, with opportunities for comments and questions from attendees, between January 1st, 2020 and July 1, 2020.

In accordance with 5 MRS §8072, the Department submitted the provisionally adopted rule to the Maine Legislature for its review and approval. The Legislature approved the provisionally adopted major substantive rule with certain changes. Resolves 2019 ch. 136, was approved by the Governor on March 18, 2020.

The Resolve required that the Department make the following changes to the rule:

- a. Amend Section 8.01 to provide that the Department shall submit an application no later than May 1, 2020, and, if the federal rule is not finalized prior to May 1, 2020, that the Department shall submit a subsequent or revised application as soon as practicable after finalization of the federal rule;
- b. Amend Section 8.02 by amending the time allowed for input from between January 1, 2020 and July 1, 2020 to between January 1, 2020 and March 16,

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2020, and to allow for additional input from stakeholders as necessary after the federal rule is finalized;

- c. Amend Section 8.03 to require the Department, following the conclusion of the stakeholder input process and as required by Title 5, section 2042, to submit an application to the U.S. Department of Health and Human Services to establish a state importation program no later than May 1, 2020. The rule must be amended to also require that, if the final federal rule is not released before May 1, 2020, the Department shall submit a subsequent or revised application to establish a state importation program as soon as is practicable after the release of the final federal rule. The rule must also be amended to require that, if the Department determines further rulemaking is necessary to implement the requirements of the program design, addition rules will be proposed.

The Department made all of those changes in this final rule.

The Legislature further determined that the Department is not required to hold hearings or undertake further proceedings prior to the final adoption of the rule. The Resolve included an Emergency Clause, to the effect that in view of the emergency cited in the Resolve preamble this legislation will take effect when approved. Governor Mills approved the Resolve on March 18, 2020.

Note: The Department did file an application on May 1, 2020, in compliance with the Resolve. As of May 1, 2020, the federal government had not finalized the federal rule.

Fiscal impact of rule:

The costs of the program will be evaluated in the process of the program design and may be significantly different depending on the requirements laid out in the anticipated federal rule creating a pathway for approval. No funds were appropriated for the creation or ongoing administration of the program, and additional appropriations may be required for implementation.

This rulemaking will not impose any costs on municipal or county governments, or on small businesses employing twenty or fewer employees.

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Agency name: Department of Health and Human Services, **Division of Licensing and Certification**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 1817, 1820
Chapter number/title: **Ch. 110**, Regulation Governing the Licensing and Functioning of Skilled Nursing Facilities and Nursing Facilities
Filing number: **2020-111**
Effective date: 4/28/2020
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

10-144 Ch.110, *Regulations Governing the Licensing and Functioning of Skilled Nursing Facilities and Nursing Facilities*, is a routine/technical rule of the Department of Health and Human Services.

Maine is facing a substantial public health threat posed by the global spread of the 2019 Novel Coronavirus (COVID-19). The increased spread of the 2019 Novel Coronavirus (COVID-19) in Maine's skilled nursing and nursing facilities has resulted in the deaths of residents, and requires new measures, effective immediately, to avoid a potentially severe and immediate threat to public health, safety, and general welfare. These new measures will improve nursing home infection control, surveillance, and infection mitigation; and improve facilities' crisis staffing plans.

Fiscal impact of rule:

There will be no additional costs to the Department as a result of this rulemaking.

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Agency name: Department of Health and Human Services, **Division of Licensing and Certification**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 1817, 1820
Chapter number/title: **Ch. 110**, Regulation Governing the Licensing and Functioning of Skilled Nursing Facilities and Nursing Facilities
Filing number: **2020-169**
Effective date: 8/1/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

10-144 CMR ch. 110, *Regulations Governing the Licensing and Functioning of Skilled Nursing Facilities and Nursing Facilities*, is a routine/technical rule of the Department of Health and Human Services.

The Department of Health and Human Services, Division of Licensing and Certification, conducted emergency rulemaking to make changes to ch. 21 of this rule in response to a substantial public health threat posed by the global spread of the 2019 Novel Coronavirus (COVID-19). The increased spread of the 2019 Novel Coronavirus (COVID-19) in Maine's skilled nursing and nursing facilities resulted in the deaths of residents and required new measures to avoid a potentially severe and immediate threat to public health, safety, and general welfare.

This rulemaking permanently adopts the measures that became effective on April 28, 2020, in order to retain improvements to nursing home infection control, surveillance, infection mitigation and facilities' crisis staffing plans. The adopted rule expands the scope of the provisions related to Infection Control to include all potential future outbreaks of infectious diseases.

The adopted rule also expands the scope of non-nursing personnel that a skilled nursing facility or nursing facility may employ, to address ongoing staffing shortages.

The adopted rule has been reformatted, condensing 21 documents into a single Word document, to enable easier use by licensees and surveyors. The divisions of the rule formerly labelled "Chapters" have been retitled "Sections".

Fiscal impact of rule:

There will be no additional costs to the Department as a result of this rulemaking.

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Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Maine Center for Disease Control and Prevention**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42, 1951, 3173
Chapter number/title: **Ch. 124**, Emergency Medical Services Personnel Reporting Rule
Filing number: **2020-099**
Effective date: 4/22/2020
Type of rule: Major Substantive
Emergency rule: Yes

Principal reason or purpose for rule:

The Department is authorized to implement rules to require entities to report information related to public health emergency responsiveness, including healthcare workforce capacity in the event of a potential or actual outbreak of a notifiable condition, public health emergency or extreme public health emergency. (22 MRS §820 (1)(C).) Pursuant to 5 MRS §8054, the emergency adoption of this major substantive rule establishes reporting requirements to collect information from emergency medical service (EMS) organizations and emergency medical dispatch (EMD) centers, specific to EMS personnel who have been removed from service due exposure or potential exposure of a notifiable disease, or the onset of signs and symptoms of a notifiable condition or disease. Reporting must be in the form prescribed by the Department. This rule requires electronic reporting within 24 hours of the EMS personnel being removed from service, in accordance with Department-issued guidance, and within 24 hours of a change in status. Information collected under this rule includes, but is not limited to, license numbers of EMS personnel absent from the workforce due to exposure to, or symptoms of, a notifiable condition; the name of the service organization; dates of self-quarantine, onset of symptoms, hospitalization and return to work. Information that identifies EMS personnel is confidential and may not be further released, except as authorized by law and this rule. Reporting under this rule is in addition to any reporting required by separate agency rules, including 10-144 CMR ch. 258, *Rules for the Control of Notifiable Diseases and Conditions*. The immediate adoption of this rule is necessary to enable the surveillance of the personnel aspect of Maine emergency medical system during a state of civil emergency, to ensure that the Department can assist in responding appropriately to public health emergencies and support the Maine EMS as a comprehensive and effective system for optimizing patient care during a state of civil emergency.

Basis statement:

The Department of Health and Human Services (Department) is adopting a new rule on an emergency basis, 10-144 CMR ch. 124, *Emergency Medical Services Personnel Reporting Rule*, pursuant to 5 MRS §8054. As authorized by 22 MRS §820(1)(C), the Department is implementing this major substantive rule to establish requirements of a uniform system of reporting information to enable statewide surveillance of the response capacity of the State's healthcare workforce, specifically emergency medical service (EMS) personnel, in the event of a declared public health threat or extreme public health emergency. This rule will enable the Department to further the coordination and integration of activities and resources related to emergency medical services to inform the overall planning, evaluation, coordination, facilitation and operations of an effective comprehensive statewide emergency medical services system.

This rule establishes requirements for EMS organizations and emergency medical dispatch (EMD) centers to report information about EMS personnel who, during a declared public health threat or extreme public health emergency, have been removed from the

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workforce temporarily because they have been exposed to a notifiable condition, or because they have developed symptoms of a notifiable disease, in accordance with the guidance issued by the Department in partnership with the Department of Public Safety Maine EMS. Under this rule, EMS organizations and EMD centers are responsible for compliance with electronic reporting. Reporting must be completed within 24 hours of when the EMS personnel is removed from service. Reporting of certain subsequent events must also be completed within 24 hours. Information collected specific to EMS personnel, which includes licensed emergency medical service responders, emergency medical transportation services and dispatch, will be used for public health surveillance purposes and will inform decisions regarding healthcare workforce capacity as a key element of a comprehensive and effective emergency medical services system.

Findings of Emergency: Pursuant to 5 MRS §8054, the Department is adopting this major substantive rule on an emergency basis to immediately implement reporting requirements related to licensed personnel within Maine's emergency medical service system who function to assist in the event of public health threat or extreme public health emergency and who, by the nature of the work, are at risk of exposure to and transmission of a communicable disease. The State of Maine is currently under a state of civil emergency, which includes an extreme public health emergency under 22 MRS §802(2-A) and 37-B MRS §742(1). Accurate and reliable statewide data is essential for coordinating with municipal localities, other State offices, federal emergency management agencies and healthcare systems across the State to prepare for and respond to emergency needs with the COVID-19 response efforts. The Department determined that, as a matter of vital concern affecting the health, safety and welfare of the public, the immediate adoption of the rule to enable surveillance of the personnel aspect of Maine emergency medical system is necessary to aid emergency preparedness and responsiveness at the State and local levels to mitigate the impact of potential and declared public health threats or extreme public health emergencies and natural or man-made disasters, to manage the demands for trained, skilled emergency medical service personnel and ensure the appropriate capacity for Maine's EMS system.

In accordance with 5 MRS §8073, this major substantive rule adopted on an emergency basis is effective for up to 12 months or until the Legislature has completed review of this rule. To ensure that the rule's requirements continue after the expiration of the emergency rule period, the Department is promptly following this emergency rulemaking with a proposed major substantive rule to adopt these reporting requirements for on-going surveillance and use during a declared public health emergency.

Fiscal impact of rule:

None anticipated.

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Agency name: Department of Health and Human Services, **Maine Center for Disease Control and Prevention**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 2496, 2664, 1551-A; 32 MRS §§ 4251, 4252, 4325, 4326
Chapter number/title: **Ch. 201**, Administration and Enforcement of Establishments Regulated by the Health Inspection Program
Filing number: **2020-165**
Effective date: 7/29/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Maine CDC is adopting an increase of its licensing fees for eating places (excluding municipal licenses, schools, electrologists and senior citizen meal sites), lodging places, campgrounds, combination licenses, youth camps, public pools/spas, tattooist and body piercers. The increases that are proposed in this rule are within the statutory caps or have otherwise been designated routine technical by statute. The Maine CDC has determined that these fee increases are necessary to keep the program solvent, ensuring that inspections continue for the health and safety of people served at facilities licensed through HIP.

Basis statement:

The Department of Health and Human Services, Maine CDC (the Department), advertised a proposed rulemaking on February 19, 2020 to amend an existing rule, 10-144 CMR ch. 201, *Administration and Enforcement of Establishments Regulated by the Health Inspection Program*. A public hearing was held on March 11, 2020. Written comments were accepted until March 21, 2020.

The Maine CDC is adopting an increase of its licensing fees for eating places (excluding municipal licenses, schools and senior citizen meal sites), lodging places, campgrounds, combination licenses, youth camps, public pools/spas, and certain body artists.

Various types of businesses are required to be licensed pursuant to 22 MRS §§ 2491, *et seq.*, including, but not limited to, eating establishments, lodging places, recreational camps, youth camps, campgrounds, public pools and spas, and body artists. 22 MRS §§ 2491-2492. The Department of Health and Human Services has authority through 22 MRS §2494 to assess licensing fees within a set statutory limit for eating establishments, lodging places, recreational camps, youth camps, and campgrounds. Given that public pools and spas are explicitly referenced in section 2491, the Department interprets §2494 to include public pools and spas, and indeed, those businesses are currently assessed for and routinely pay licensing fees under this rule. These licensing fees include the cost of the license, one licensure inspection and one follow-up inspection. The Department is authorized to assess licensing fees for tattoo artists and body piercers within statutory caps set forth in 32 MRS §§ 4252, 4325. The fee increases adopted in this rule are approximately 35% and are within the applicable statutory limits. The Health Inspection Program (HIP) is partially self-funded through its license fee revenue. HIP fees have remained the same since Fiscal Year 2014 and the program is currently operating at a deficit. The Maine CDC has determined that these fee increases are necessary to keep the program solvent, ensuring that inspections continue for the health and safety of people served at establishments licensed through HIP.

Fiscal impact of rule:

These rule changes pose no fiscal impact to counties or municipalities. The Department will see an increase in Other Special Revenue Funds of \$380,055 annually. Small Businesses: Most applicants and licensees would be required to pay higher license fees, due to the proposed fee increases.

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Agency name: Department of Health and Human Services, **Maine Center for Disease Control and Prevention**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 565(3), 2602-A 2609, 2660-U, 2660-X
Chapter number/title: **Ch. 233**, Rules Relating to Testing Private Water Systems for Hazardous Contaminants (*Repeal*)
Filing number: **2020-187**
Effective date: 8/26/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
See entry 2020-188 for ch. 257.

Basis statement:
See entry 2020-188 for ch. 257.

Fiscal impact of rule:
See entry 2020-188 for ch. 257.

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Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Maine Center for Disease Control and Prevention**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 565(3), 2602-A 2609, 2660-U, 2660-X
Chapter number/title: **Ch. 257**, Schedule of Charges for Testing and Services Provided by the Maine Health and Environmental Testing Laboratory
Filing number: **2020-188**
Effective date: 8/26/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Ch. 257 rule: This rule proposes to repeal and replace the existing ch. 257 to implement requirements of the recently revised 22 MRS ch. 601 sub-ch. 8. This routine technical rule sets a new schedule of charges for services and analytical testing performed by the Health and Environmental Testing Laboratory (HETL) and formalizes HETL's rate setting methodology for charges for testing and services, including, but not limited to the chemical and microbiological testing and examination of food products, public and private drinking water samples from wells and surface water, and environmental and forensic samples; the examination of cases and suspected cases of infectious and communicable diseases; and other essential public health services. Additionally, this proposed rule adopts specific uniform testing recommendations for private residential drinking water well samples. This rule requires laboratories to use HL7 messaging; to clarify circumstances for waiver considerations; and to update administrative charges for services including licensing, manual data entry required for noncompliance, and payment collection services. This rule adopts the fee mandated for the Private Well Safe Drinking Fund collection. This rule change is necessary for the sustainability of HETL that operates to provide clinical, environmental and forensic tests related to public health and is used by federal, State, county and municipal agencies for compliance and enforcement.

Ch. 233 rule: This rule repeals 10-144 CMR ch. 233, because the information within this rule is outdated and will be clarified and addressed by the Department's rulemaking for ch. 257.

Basis statement:

The Department of Health and Human Services, Maine CDC (Department), advertised a proposed rulemaking on March 4, 2020 to repeal and replace the existing 10-144 CMR ch. 257 and repeal 10-144 CMR ch. 233. On March 25, 2020, following the Governor's March 15, 2020 proclamation of a state of civil emergency, the Department published a revised notice with an extended comment period in lieu of holding the public hearing advertised in the initial notice of rulemaking. Written comments were accepted from March 4 through April 24, 2020.

The Maine CDC is adopting this rule, pursuant to 22 MRS §565 and §2660-X, in order to update the rules specific to tests and services provided by the Maine Health and Environmental Testing Laboratory (HETL). This rule implements requirements including, but not limited to, identifying services available through HETL and those essential for public health reasons, specifying the testing recommendations for residential private drinking water wells, water sample test reporting, and setting fee schedules.

The Department is statutorily obligated to provide laboratory services for analytical testing, including, but not limited to: the chemical and microbiological testing and examination of water supplies, food products, drinking water, and environmental and forensic samples; testing and examination of cases and suspected cases of infectious and

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communicable diseases; and those services deemed essential to public health. As authorized, the Department is establishing, by adopting this rule, an updated schedule of charges for testing services rendered by HETL, based on the average costs for those services for which the cost for test supplies, instrumentation, marketplace rates, and comparable tests are among the factors. In the occasional event that the Department is required to perform testing or services not identified in the rule, the Department will estimate costs, based upon information available, to calculate an average cost at the time the test or service is provided and adjust the charges applied if less than the estimated cost. The updated fee schedule ensures the fiscal stability of HETL and sustains mandated services by defraying the costs incurred.

In accordance with the governing authority, this rule 1) specifies the menu of, and charges for, testing and services available through HETL; 2) implements the fee that is to be collected from those ordering residential private drinking water well tests and deposited into the special revenue fund established in accordance with 22 MRS §2660-W; 3) establishes the administrative charges for licensing, manual data entry for all clinical submissions not sent electronically, and collection of overdue payment; 4) establishes the combination of tests recommended by the Department for periodic testing of residential private drinking water well that labs must include in certain related written material; 5) requires labs to submit electronic orders to HETL and use HL7 messaging, as of January 2022, unless the lab has been granted a waiver based on the lab's low volume of samples submitted; 6) provides for input from the Department's advisory committee regarding recommended tests and Private Well Safe Drinking Water Fund expenditures; and 7) outlines considerations for the Department when determining whether to grant requests for financial waivers for indigent homeowners and nonprofits partnering with public agencies, and for ensuring the availability of services deemed by HETL as essential for public health.

Fiscal impact of rule:

The adopted fee schedule contains increases to some fees, which may impact government, municipal and county agencies that use the State-operated laboratory, HETL, for services associated with public health, including, but not limited to, drinking water compliance testing, the testing and examination of cases and suspected cases of infectious and communicable diseases, and services deemed essential to public health. The schedule of charges is established to recover costs incurred by HETL and based on costs to the Department for performing tests and services, program cost analysis and market studies. Those ordering water tests for residential private drinking wells will be assessed an additional five percent of the cost of the testing. The Department anticipates a minimal cost associated with updating education and other material related to residential private drinking water well testing to include the Department's uniform recommendation.

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Agency name: Department of Health and Human Services, **Maine Center for Disease Control and Prevention**
Umbrella-Unit: **10-144**
Statutory authority: 5 MRS §§ 8054, 8073; 22 MRS §§ 802, 822
Chapter number/title: **Ch. 258**, Rules for the Control of Notifiable Diseases and Conditions
Filing number: **2020-117**
Effective date: 5/12/2020
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The emergency adoption of amendments to 10-144 CMR ch. 258 will immediately require designated health care facilities to report the number and type of available beds and medical supply inventory to improve emergency management operations, which has been voluntary. Another reason for these immediate amendments is to clarify Section 2(H) to enable the Department to directly access hospital and provider records through the state health information exchange described at 22 MRS §1711-C(18). This access to the same case records already shared by providers during an epidemiological investigation will help the Department retrieve this information related to symptom onset and potential exposure information more efficiently than the current method of the Department directly contacting each provider to send the clinical records to the Department.

Basis statement:

The Department of Health and Human Services Maine Center for Disease Control and Prevention (“Department”) is adopting, on an emergency basis, partial amendments to 10-144 CMR ch. 258, *Rules for The Control of Notifiable Diseases And Conditions*, to achieve two urgent goals. First, the Department is seeking to solidify emergency planning efforts and reporting of critical resources and supplies, in light of the current COVID-19 extreme public health emergency, which is a critical component of the epidemiological tasks of investigating cases, outbreaks, epidemics, exposures, or potential epidemics or exposures of notifiable conditions and diseases like COVID-19. Second, the Department is intending to clarify its authority to articulate another method of accessing hospital and provider records to include directly accessing a statewide health information exchange in accordance with 22 MRS §1711-C(18), to more effectively facilitate epidemiological investigations. The Department is also changing the title of the rule to align with Maine CDC formatting conventions.

Title 22 MRS §822, as amended by Public Law 2020 ch. 617, *An Act to Implement Provisions Necessary to the Health, Welfare, and Safety of the Citizens of Maine in Response to the COVID-19 Public Health Emergency. Safety of the Citizens of Maine in Response to the COVID-19 Public Health Emergency* (effective March 18, 2020), grants the Department authority to amend Ch. 258, which is in accordance with the Department’s emergency rulemaking authority under 5 MRS §§ 8054 and 8073, and in response to the Governor’s proclamation, *Proclamation of State of Civil Emergency to Further Protect Public Health* (March 15, 2020).

As amended, 22 MRS §822 authorizes the Department to require designated health care facilities to report specific information to the Department, including, but not limited to, bed capacity within the facility and the health care facility’s emergency management planning and operations. Adoption of this rule amendment standardizes reporting requirements to enable surveillance of resources critical to State and local responsiveness to minimize infections and morbidity rates by relying on accurate and reliable statewide data to prepare for, and respond to, emergency needs.

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Maine statute (22 MRS §802(1)(C)) authorizes the Department to make rules to describe its process for investigating cases, epidemics, and occurrences of communicable, environmental, and occupational diseases. The emergency amendment to Section 2(H) clarifying the Department's authority to access patient and hospital information to include a statewide health information exchange, described in 22 MRS §1711-C. Such access of the exchange would occur during epidemiological investigations of known cases of notifiable conditions and diseases, to determine clinical information, to include confirmation of information obtained from other sources, identify potential contact history related to the specific condition or disease being investigated.

Findings of Emergency: The Department is adopting amendments to this routine technical rule on an emergency basis to immediately implement reporting requirements during this current state of civil emergency resulting from COVID-19. The Department has determined that immediate adoption of both rule amendments is necessary to ensure timely access to accurate and reliable information, to respond to public health emergencies and investigate cases more efficiently. Emergency adoption of these changes will help protect the health, safety and wellbeing of citizens of Maine.

Fiscal impact of rule:

No anticipated impact.

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Agency name: Department of Health and Human Services, **Maine Center for Disease Control and Prevention**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §1904

Chapter number/title: **Ch. 287**, Rules for Family Planning Funding (*Repeal*)

Filing number: **2020-051**

Effective date: 3/16/2020

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

This rule was enacted to ensure that all State contracts for family planning services included assurances that State contractors were in compliance with federal Title X Program Guidelines for Project Grants for Family Planning Services. Recent changes to the federal Title X Program Guidelines would prevent Maine health care providers who receive Title X funding to discuss all possible health care options with their clients and prohibit them from making referrals for abortion services. The Department's repeal of 10-144 CMR ch. 287 ensures continued access to reproductive health care services by allowing the State to set its own requirements for program standards through contract negotiations with providers. The *Rules for Family Planning Funding* do not contain enforcement mechanisms, nor does the rule cite any statutory authority for requiring recipients of state family planning funds to comply with federal Title X Program Guidelines.

Basis statement:

The *Rules for Family Planning Funding* did not contain enforcement mechanisms, nor was there any statutory authority for this rule. This rule was established to ensure that all State contracts for family planning services include assurances that State contractors are in compliance with federal Title X Program Guidelines for Project Grants for Family Planning Services. The adoption of the repeal of this rule mirrors the repeal currently in place since December 4, 2019, through emergency rulemaking.

Recent changes to the federal Title X Program Guidelines would not permit Maine health care providers who receive Title X funding to discuss all available health care options, including abortion services, with their patients. Therefore, the Department found the repeal of 10-144 CMR ch. 287 is necessary to ensure continued access to all health care services in accordance with program standards and requirements established within provider contracts. Providers can continue to treat patients through services as currently offered. The repeal of this rule does not create additional restrictions on providers.

The Department determined that there is no impact to the clients served as a result of this rule being repealed. Clients already benefit from program language and standards within provider contracts. Program requirements are defined by contract on a case-by-case basis. In addition, there is no impact to providers based on the repeal of this rule as providers are already familiar with the service (and are currently providing that service to their contract requirements). Services will continue in the same manner, as program standards and requirements within existing provider contracts remain unchanged.

Fiscal impact of rule:

None anticipated.

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Agency name: Department of Health and Human Services, **Maine Center for Disease Control and Prevention**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 1320,1320-A, 1323; 5 MRS §8054
Chapter number/title: **Ch. 292**, Rules Relating to the *Lead Poisoning Control Act*
Filing number: **2020-088**
Effective date: 4/1/2020
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Department is adopting this rule on an emergency basis to immediately implement the revised federal dust-lead hazard standards that went into effect January 2020 (40 CFR §745.65). Lead-contaminated dust standards are used by the Department to identify lead hazards in dwellings and child-occupied facilities that must be abated. These standards require immediate updating, to align with the new lower U.S. Environmental Protection Agency (EPA) dust-lead contamination levels of 10 µg/ft² on floors and 100 µg/ft² on window sills. The scope and extent of this rule change is limited to a change in the existing definition of “lead-contaminated dust,” which, based on prior federal standards, currently allows concentration levels of lead up to 40 µg/ft² on floors and 250 µg/ft² on window sills for identifying dust-lead hazards. This rule permits the Department to require abatement of unsafe lead-dust levels on floors and window sills based on the lower threshold, reducing the risk of lead poisoning for young children exposed to lead dust.

Basis statement:

The Department of Health and Human Services (Department) is adopting emergency changes to the *Rules Relating to the Lead Poisoning Control Act*. These changes adopt the new lower federal dust-lead hazard standards to identify the presence of environmental lead hazards that must be removed in accordance with the *Maine’s Lead Poisoning Control Act* (22 MRS ch. 252). The Department’s current rules (10-144 CMR ch. 292) define lead contaminated dust as a surface dust concentration of lead equal to or exceeding 40 µg/ft² on floors, 250 µg/ft² on window sills, last amended October 2016. The U.S. Environmental Protection Agency (EPA) has since adopted new federal dust-lead hazard standards of 10 µg/ft² on floors and 100 µg/ft² on window sills that update their prior standards of 40 µg/ft² on floors and 250 µg/ft² on window sills. These new federal standards became effective January 6, 2020, as codified in 40 CFR §745.65.

Emergency Justification: Pursuant to 5 MRS §8054, the Department has determined that immediate adoption of this rule is necessary to avoid an immediate threat to public health, safety, or general welfare by immediately adopting these federal standards to identify the presence of environmental lead hazards and require these hazards to be removed to protect children from lead poisoning, as required by the *Maine Lead Poisoning Control Act*. There is strong scientific evidence that the dust-lead hazard standards of 40 µg/ft² and 250 µg/ft² on floors and window sills, respectively, present a significant risk of lead poisoning for young children exposed to these lead dust levels. As these standards are used by the Department to identify lead hazards in dwellings that must be abated, delay in adopting these new standards will result in the Department being prohibited from requiring abatement of unsafe lead-dust levels on floors and window sills. The Department’s own published findings indicate that use of these new lower EPA dust-lead standards will result in an increase in dwellings associated with lead poisoned children being identified as having hazards that must be abated for presence of environmental lead hazards (86% of inspected homes using the new standards

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versus 79% using existing standards).¹ Use of the new standards will also result in a significant increase in floors (66% versus 38%) and window sills (53% versus 38%) identified as having lead dust hazards that must be abated.

The Department is promptly following this emergency rulemaking with proposed rulemaking. Additionally, the Maine Department of Environmental Protection will be undertaking rulemaking to adopt these new federal standards, ensuring that these related rules are consistent.

Fiscal impact of rule:

The Department may anticipate costs of approximately \$30,000 per year in additional lead abatement services.

¹ Cluett R. et al., Findings of a Statewide Environmental Lead Inspection Program Targeting Homes of Children With Blood Lead Levels as Low as 5 µg/dL. *Journal of Public Health Management and Practice*. February 2019 • Volume 25, Number 1 Supp.

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Agency name: Department of Health and Human Services, **Maine Center for Disease Control and Prevention**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 1320,1320-A, 1323
Chapter number/title: **Ch. 292**, Rules Relating to the *Lead Poisoning Control Act*
Filing number: **2020-168**
Effective date: 7/29/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Pursuant to 5 MRS §8054, the Department is proposing this rule change to ensure that the changes recently adopted on an emergency basis will permanently implement the revised federal dust-lead hazard standards that went into effect January 2020 (40 CFR §745.65). Lead-contaminated dust standards are used by the Department to identify lead hazards in dwellings and child-occupied facilities that must be abated. The most recent emergency adoption and this proposed change are necessary to align with the new lower U.S. Environmental Protection Agency (EPA) dust-lead contamination levels of 10 µg/ft² on floors and 100 µg/ft² on window sills. The scope and extent of this proposed rule change, consistent with the current emergency rule in effect, is limited to a change in the existing definition of “lead-contaminated dust,” which, based on prior federal standards, currently allows concentration levels of lead up to 40 µg/ft² on floors and 250 µg/ft² on window sills for identifying dust-lead hazards. This proposed rule change would permit the Department to require abatement of unsafe lead-dust levels on floors and window sills based on the lower threshold, reducing the risk of lead poisoning for young children exposed to lead dust.

Basis statement:

The Department of Health and Human Services (Department) is adopting routine technical rule changes to the Rules Relating to the *Lead Poisoning Control Act*, pursuant to 5 MRS §8052, to coincide with the expiration of the existing rule adopted on an emergency basis (5 MRS §8054). This rule permanently implements standards adopted by emergency rule to align with the recently revised federal dust-lead hazard standards (40 CFR §745.65). The U.S. Environmental Protection Agency (EPA) established dust-lead hazard standards of 10 µg/ft² on floors and 100 µg/ft² on window sills, updating prior standards of 40 µg/ft² on floors and 250 µg/ft² on window sills. The Department will apply these lower thresholds to identify the presence of environmental lead hazards that must be removed in accordance with the Maine’s *Lead Poisoning Control Act* (22 MRS ch. 252).

This rule requires the continued application and enforcement of the thresholds for lead-contaminated dust that the Department had determined needed immediate implementation through emergency rulemaking to avoid a threat to public health and safety. Lower thresholds (10 µg/ft² on floors and 100 µg/ft² on window sills) are in place to identify lead hazards that are unsafe in dwellings, requiring abatement to protect children from lead poisoning, as required by the Maine *Lead Poisoning Control Act*. There is strong scientific evidence that previous standards for lead-dust hazard presented a significant risk of lead poisoning for young children exposed to these levels of lead contamination. The Department’s own published findings indicate that use of these new lower EPA dust-lead hazard standards will result in an increase in dwellings associated with lead poisoned children being identified as having hazards that must be abated (86% of inspected homes using the new standards versus

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79% using existing standards).² Use of the new standards will also result in a significant increase in floors (66% versus 38%) and window sills (53% versus 38%) identified as having dust-lead hazards that must be abated.

Additionally, the Maine Department of Environmental Protection will be undertaking rulemaking to adopt these recently updated federal dust-level hazard standards, ensuring that these related rules are consistent.

Fiscal impact of rule:

Costs to modify systems to reference the new dust-lead hazard standards will be minimal. The expected small-to-modest increase in staff time to provide the necessary regulatory oversight of an increase in abatement orders and inspection referrals is expected to be handled by the recent increase in Department staff, in response to the universal blood lead testing initiative.

² Cluett R. et al., Findings of a Statewide Environmental Lead Inspection Program Targeting Homes of Children With Blood Lead Levels as Low as 5 µg/dL. *Journal of Public Health Management and Practice*. February 2019 • Volume 25, Number 1 Supp.

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Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §42(1); 7 USC §2015(s)(1)-(3); 7 CFR §§ 273.11(r), 273.12, 273.17
Chapter number/title: **Ch. 301**, Food Supplement Program, **FS Rule #211A** (2019 Updates to the Lottery Rule): **Sections 444-12, 666-6**
Filing number: **2020-137**
Effective date: 7/1/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this rule is to bring the eligibility requirements for Maine's Food Supplement program in line with federal requirements articulated in the 2014 Farm Bill, PL 113-79, and the subsequent clarifying rules, 7 USC §2015 (s)(1)-(3).

Per 22 MRS §3104(16), Maine's rule disqualifies households with \$5,000 in net lottery or gambling winnings in a month. Under the new federal requirement, the disqualification also applies to households with a member or members with gross winnings from a single game that exceed the elderly and disabled asset limit (adjusted annually). This rule change adds the federal requirement to the requirement set in Maine statute.

The rule adds language to reporting requirements (consistent with federal rules) requiring households experiencing such winnings to report them by the 10th day of the following month.

Basis statement:

The purpose of this rule is to bring the eligibility requirements for Maine's Food Supplement program in line with federal requirements articulated in the 2014 Farm Bill, PL 113-79, and the subsequent clarifying rules, 7 USC §2015(s)(1)-(3).

Per 22 MRS §3104(16), Maine's rule disqualifies households with \$5,000 in net lottery or gambling winnings in a month. Under the new federal requirement, the disqualification also applies to households with a member or members with gross winnings from a single game that exceed the elderly and disabled asset limit (adjusted annually). This rule change adds the federal requirement to the requirement set in Maine statute.

The rule adds language to reporting requirements (consistent with federal rules) requiring households experiencing such winnings to report them by the 10th day of the following month.

This rule will not have an impact on municipalities or small businesses.

Fiscal impact of rule:

None anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2020 to December 31, 2020
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §42(1), 7 CFR §273.18
Chapter number/title: **Ch. 301**, Food Supplement Program, **FS Rule #213A: Section 777-3**, Administrative Procedures Claims and Collections
Filing number: **2020-198**
Effective date: 9/1/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

The purpose of this rule is to update procedures regarding the establishment, compromise and collection of Food Supplement overpayment claims. This rule will more closely align Maine policy with that of other states in the Northeast SNAP Region.

Due to cost effectiveness, Maine will no longer establish overpayment claims equal to or less than \$200 for households still participating in the Food Supplement program or \$500 for households no longer participating in the program. Maine will now compromise unintentional household errors. Maine may compromise agency and unintentional household errors at the time the claim is established. Additionally, when calculating unintentional household errors Overpayment Specialist will now go back two years from discovery rather than six years.

Fiscal impact of rule:

None anticipated. The collection thresholds are being more closely aligned to the actual cost of recoupment. The result should be revenue neutral

Annual List of Rulemaking Activity
Rules Adopted January 1, 2020 to December 31, 2020
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42(1), 3104; 5 MRS §8054; 7 CFR §273.9(d)
Chapter number/title: **Ch. 301**, Food Supplement Program, **FS Rule #215E: Section 999-3** (Charts), FFY 2021 Budgeting Figures
Filing number: **2020-213**
Effective date: 10/1/2020
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:
(See Basis Statemen.)

Basis statement:

This emergency rule implements annual, federally required updates to the federal poverty levels; maximum allotments; the standard, homeless and maximum shelter deductions for the Food Supplement program. As a result, Food Supplement benefits will change for some households beginning October 1, 2020. 7 CFR §273.9 requires that Food Supplement Program income and asset limits, maximum and minimum allotments, standard deductions, maximum shelter deductions, homeless shelter deductions, standard utility allowances (SUAs) and income change reporting thresholds be updated each year, effective October 1. This year, the United States Department of Agriculture (USDA) COLA Memo FY2021 provided more generous income limits, maximum allotments, standard deductions (for most households), maximum shelter deduction, and homeless shelter deduction. The same memo showed no change in minimum allotments, the standard deductions for households of one to three members, asset limits or income change reporting thresholds. Each state agency is charged with determining standard utility allowances and having those approved by USDA. The utility allowance values were calculated to remain the same using The *Consumer Price Index* published by the Bureau of Labor Statistics of the Department of Labor and were submitted to and approved by USDA.

Findings of Emergency

Pursuant to 5 MRS §8054, the Department finds that emergency rulemaking is necessary for the health, safety, and general welfare in order to ensure that Food Supplement benefits are issued appropriately, accurately, and in a timely fashion consistent with federal law.

An emergency rule change is necessary to remain in compliance with Federal regulation 7 CFR §273.9(d), which requires annual calculation of federal poverty levels, the standard deduction and standard utility allowances (SUAs).

The USDA memoranda providing these figures were not provided in a timeframe that would allow the Department to comply with the non-emergency rulemaking process and still implement by the required date of October 1, 2020. Therefore, the Department finds that an emergency rule change is necessary to remain in compliance with Federal regulation 7 CFR §273.9(d), which requires annual calculation of federal poverty levels, the standard deduction and SUAs. Non-compliance could result in federal penalties or loss of federal funds.

Fiscal impact of rule:

This rule will not have an impact on municipalities or small businesses.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2020 to December 31, 2020
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42(1), 3104-A
Chapter number/title: **Ch. 301**, Food Supplement Program, **FS Rule #214A**
Filing number: **2020-244**
Effective date: 12/17/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

7 CFR 273.24 provides that no individual shall be eligible to participate in the Supplemental Nutrition Assistance Program (SNAP) as a member of any household if the individual received program benefits for more than 3 months during any 3-year period in which the individual was subject to but did not comply with the ABAWD work requirement.

PL 116-127 (*Families First Corona Virus Response Act*) §2301 suspended these requirements from April 1, 2020 through the month following the month the public health emergency (PHE) declaration by the Secretary of Health and Human Services, based on an outbreak of COVID-19 is lifted. The PHE declaration has not been lifted, as of the date of this proposed rulemaking.

The proposed rule implements the national suspension of the ABAWD requirements under the Families First Corona Virus Response Act, for the period of September 1, 2020 through September 30, 2020.

7 CFR 273.24(f) provides that, upon the request of the State agency, the Secretary may waive the applicability of the 3-month ABAWD time limit for any group of individuals in the State if the Secretary makes a determination that the geographic area in which the individuals reside has an unemployment rate of over 10 percent, or does not have a sufficient number of jobs to provide employment for the individuals.

The proposed rule implements the July 15, 2020, ABAWD geographic state-wide waiver approval, pursuant to 7 CFR §273.24(f)(2) and Section 6(o) of the *Food and Nutrition Act of 2008*, for the period October 1, 2020 through September 30, 2021, or until the date at which the new waiver standards become effective, whichever occurs earlier. The Department's waiver request was approved by the U.S. Department of Agriculture, Food and Nutrition Service (FNS), on July 15, 2020. USDA: Able-Bodied Adults Without Dependents (ABAWD) Waiver Response, Serial Number 2190025.

In the July 15, 2020 FNS Waiver Response, FNS determined that the Department met the waiver requirement by providing a copy of the Department of Labor Trigger Notice No. 2020-17, effective May 10, 2020, showing that, state-wide, Maine qualified for extended unemployment benefits.

This rule change will enhance nutritional stability and consistency for thousands of Maine households at a time of financial and health uncertainty.

The Department is proposing to adopt this rule with a retroactive application to September 1, 2020. Retroactive rulemaking is authorized by the Legislature in accordance with 22 MRS §42(8) because this rule provides a benefit to recipients or beneficiaries and does not have an adverse financial effect on either providers or beneficiaries or recipients.

Basis statement:

7 CFR 273.24 provides that no individual shall be eligible to participate in the Supplemental Nutrition Assistance Program (SNAP) as a member of any household if the individual received program benefits for more than 3 months during any 3-year period in which the individual was subject to but did not comply with the ABAWD work requirement.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2020 to December 31, 2020
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

PL 116-127 (*Families First Coronavirus Response Act*) §2301 suspended these requirements from April 1, 2020 through the month following the month the public health emergency (PHE) declaration by the Secretary of Health and Human Services, based on an outbreak of COVID-19 is lifted. The PHE declaration has not been lifted as of the date of this rulemaking. The current PHE is set to expire January 20, 2021, though the Secretary has authority to extend the PHE.

This rule implements the national suspension of the ABAWD requirements under the Families First Coronavirus Response Act, for the period of September 1, 2020 through September 30, 2020.

7 CFR 273.24(f) provides that, upon the request of the State agency, the Secretary may waive the applicability of the 3-month ABAWD time limit for any group of individuals in the State if the Secretary makes a determination that the geographic area in which the individuals reside has an unemployment rate of over ten percent, or does not have a sufficient number of jobs to provide employment for the individuals.

This rule implements the July 15, 2020, ABAWD geographic state-wide waiver approval, pursuant to 7 CFR §273.24(f)(2) and Section 6(o) of the *Food and Nutrition Act of 2008*, for the period October 1, 2020 through September 30, 2021, or until the date at which the new waiver standards become effective, whichever occurs earlier. The Department's waiver request was approved by the U.S. Department of Agriculture, Food and Nutrition Service (FNS), on July 15, 2020. USDA: Able-Bodied Adults Without Dependents (ABAWD) Waiver Response, Serial Number 2190025.

In the July 15, 2020 FNS Waiver Response, FNS determined that the Department met the waiver requirement by providing a copy of the Department of Labor Trigger Notice No. 2020-17, effective May 10, 2020, showing that, state-wide, Maine qualified for extended unemployment benefits.

This rule change will enhance nutritional stability and consistency for thousands of Maine households at a time of financial and health uncertainty.

The Department is adopting this rule with a retroactive application to September 1, 2020. Retroactive rulemaking is authorized by the Legislature in accordance with 22 MRS §42(8) because this rule provides a benefit to recipients or beneficiaries and does not have an adverse financial effect on either providers or beneficiaries or recipients.

This rule will not have an adverse impact on municipalities or small businesses.

Fiscal impact of rule:

More than 98% of ABAWDs receiving Food Supplement benefits in Maine receive federally funded benefits. Federal Food Supplement benefits are paid directly to merchants and do not pass through State budgets, so this will not have a direct cost to the Department.

Direct costs to the Department include the cost of rulemaking activity, and necessary technology changes such as changes to ACES (all of which are covered by the existing budget for such changes). State-funded Food Supplement benefits will have an increase of not more than \$92,538 which will be absorbed with current General Fund budgeting.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2020 to December 31, 2020
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §42(1), (8); 3107; 7 CFR §273.9(d)
Chapter number/title: **Ch. 301**, Food Supplement Program, **FS Rule #215A: Section 999-3**, Charts (FFY 2021 Budgeting Figures)
Filing number: **2020-250**
Effective date: 12/30/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

A rule change is necessary to remain in compliance with Federal regulation 7 CFR §273.9(d). 7 CFR §273.9 requires that Food Supplement Program income and asset limits, maximum and minimum allotments, standard deductions, maximum shelter deductions, homeless shelter deductions, standard utility allowances (SUAs) and income change reporting thresholds be updated each year, effective October 1. This year, the United States Department of Agriculture (USDA) COLA Memo FY2021 provided more generous income limits, maximum allotments, standard deductions (for most households), maximum shelter deduction, and homeless shelter deduction. The same memo showed no change in minimum allotments, the standard deductions for households of one to three members, asset limits or income change reporting thresholds. Each state agency is charged with determining standard utility allowances and having those approved by USDA. The utility allowance values were calculated to remain the same using The Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor, and were submitted to and approved by USDA. Non-compliance could result in federal penalties or loss of federal funds.

The Department implemented these changes on an emergency basis on October 1, 2020, most of which were effective October 1, 2020, in Rule No. FS215E. Changes that applied to 185% FPL were effective retroactive to January 14, 2020. Because the emergency rule is effective for only 90 days, this rulemaking is necessary to make the changes permanent.

Retroactive rulemaking is necessary to keep Maine's policies in line with federal requirements, and is authorized under 22 MRS §42(8) as it benefits Food Supplement recipients and does not have an adverse financial impact on any provider, member, recipient or beneficiary.

Basis statement:

This rule implements annual, federally required updates to: the federal poverty levels; maximum allotments; the standard, homeless and maximum shelter deductions for the Food Supplement program as of October 1, 2020. It also implements an update to the 185% federal poverty level as of January 14, 2020. As a result, Food Supplement benefits will change for some households.

A rule change is necessary to remain in compliance with Federal regulation 7 CFR §273.9(d). 7 CFR §273.9 requires that Food Supplement Program income and asset limits, maximum and minimum allotments, standard deductions, maximum shelter deductions, homeless shelter deductions, standard utility allowances (SUAs) and income change reporting thresholds be updated each year, effective October 1. This year, the United States Department of Agriculture (USDA) COLA Memo FY2021 provided more generous income limits, maximum allotments, standard deductions (for most households), maximum shelter deduction, and homeless shelter deduction. The same memo showed no change in minimum allotments, the standard deductions for households of one to three members, asset limits or income change

Annual List of Rulemaking Activity
Rules Adopted January 1, 2020 to December 31, 2020
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

reporting thresholds. Each state agency is charged with determining standard utility allowances and having those approved by USDA. The utility allowance values were calculated to remain the same using The Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor, and were submitted to and approved by USDA. Non-compliance could result in federal penalties or loss of federal funds.

The Department implemented these changes on an emergency basis on October 1, 2020, most of which were effective October 1, 2020, in Rule No. FS215E. Changes that applied to 185% FPL were effective retroactive to January 14, 2020. Because the emergency rule is effective for only 90 days, this rulemaking is necessary to make the changes permanent.

Retroactive rulemaking is necessary to keep Maine's policies in line with federal requirements, and is authorized under 22 MRS §42(8) as it benefits Food Supplement recipients and does not have an adverse financial impact on any provider, member, recipient or beneficiary.

This rule will not have an adverse impact on municipalities or small businesses.

Fiscal impact of rule:

Direct costs to the Department include the cost of rulemaking activity, and necessary technology changes such as changes to ACES (all of which are covered by the existing budget for such changes). State Funded Food Supplement benefits are estimated to cost an additional \$146,000 for Federal Fiscal Year 2021. These same changes will result in an estimated additional \$20,000,000 in federal funds flowing to Maine residents and grocers. The increase in federally funded benefits will reduce (by an indeterminate amount) the amount of TANF block grant funded food benefits issued pursuant to 22 MRS §3762(3)(B)(7-E).

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Rules Adopted January 1, 2020 to December 31, 2020
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §42(1); 22 MRS §4301 sub-§5A; 22 MRS §4308 sub-§2
Chapter number/title: **Ch. 323**, Maine General Assistance Manual, **General Assistance Rule #23A** (Changes Pursuant to LD 459): **Sections II, IV, VI**
Filing number: **2020-145**
Effective date: 7/1/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule implements changes to the General Assistance (GA) program required by SP 137 – LD 459 as codified by PL 2019 ch. 515.

Basis statement:

This rule amends sections II, IV, and VI of the *Maine General Assistance Manual*.

SP 137 – LD 459 Section 1 amended 22 MRS §4301 sub-§5-A to include a definition of homelessness. This term was not previously defined within the Manual. This rule adopts the definition in the law.

SP 137 – LD 459 Section 2 amended 22 MRS §4308 sub-§2 to specify that “experiencing or facing homelessness” constitutes an emergency. This rule amends the definition within the Manual to more closely comport with the statutory definition.

SP 137 – LD 459 Section 3 amended 22 MRS §4309 sub-§5 to instruct municipal overseers to presume that residents of emergency shelters are eligible for General Assistance for up to 30 days. It further specifies that during the 30-day period of presumptive eligibility, no other municipality will be determined to be the municipality of responsibility. This rule adopts the conditions in the Manual and allows -- but does not require -- municipalities to deputize the shelter to make this determination.

This rule makes other adjustments to the Manual (10-144 CMR ch. 323) to more closely comport with the relevant statutory provisions. Manual Section IV (A)(1) is amended to clarify that an initial applicant cannot have applied for assistance before without regard to the time frame, consistent with §4308. Manual Section IV (D)(4)(a)(iv) is amended to more closely align the verbiage of the start date of the lump sum penalty with the language of 22 MRS §4301.

To enhance program integrity, clarification was added that a narrative statement is required any time action is taken on an application

The Department was not able to precisely determine the fiscal impact of this rule and estimates that this rule will result in an additional expenditure of \$3,900,000 to \$15,600,000 per year. 70 percent of that cost (\$2,730,000 to \$10,920,000) will be paid by the State. This expense can be absorbed by existing and carryover funds from previous years through State Fiscal Year 2021. A formal request for funding will be submitted, when needed, once additional data is available to determine the fiscal impact. 30 percent (\$1,170,000 to \$4,680,000) will be an expense for municipalities. The Department anticipates that a large portion of these funds will be paid to small businesses such as local landlords and motels.

Fiscal impact of rule:

The Department estimates that this rule will result in an additional expenditure of \$3,900,00 to \$15,600,000 per year. 70 percent of that cost (\$2,730,000 to \$10,920,000) will be absorbed by the State. 30 percent (\$1,170,000 to \$4,680,000) will be an expense for municipalities. The Department anticipates that a large portion of these funds will be paid to small businesses such as local landlords and motels.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2020 to December 31, 2020
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42(1), 3762(3)(A), 3763(6), 3769-A; 5 MRS §8054
Chapter number/title: **Ch. 331**, Maine Public Assistance Manual (TANF), **Rule #115E** (TANF Relationship Changes)
Filing number: **2020-017**
Effective date: 1/30/2020
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

The Temporary Assistance for Needy Families (TANF) program and its predecessor, Aid to Families with Dependent Children (AFDC), were established to provide financial support and steps to independence for families with minor children. Federal regulations (45 CFR §206) specify individuals who must be counted as part of the child's family but do not define who can be counted as part of the child's family. In the past, the state of Maine has required the individual applying on the child's behalf to demonstrate a close biological or marital relationship to the child(ren). The nature of family structure has evolved significantly in the United States since AFDC was established in 1935. Maine law allows numerous instances where non-relatives can act in the role of a parent (*in loco parentis*), and the Department is taking steps to align TANF policy with related state law and policy which recognizes such relationships.

Findings of Emergency:

Pursuant to 5 MRS §8054 the Department finds that emergency rulemaking is necessary to implement these changes as soon as possible given the high number of low income children placed with non-relative guardians as a result of the opioid crisis. According to the Task Force to Address the Opioid Crisis in the State Final Report December 2017 presented to the 128th Legislature:

In 2016 there were a total of 376 drug-induced deaths in Maine (a 38% increase from 2015). The indisputable effects of the opioid crisis are far-reaching and have ripple effects on families and children. The average age of overdose deaths in Maine for 2016 was 41. On a given day in 2017, 9090 Mainers were receiving some form of medication assisted drug treatment. In 2016 there were 1,024 reports regarding infants exposed to substances, constituting 8.1% of all live births in Maine. 8.5% of the general public aged 18 or older have substance use disorders.

These facts demonstrate a sudden and dramatic increase in the number of Maine residents of child bearing age, who are not able or allowed to keep their children in their homes. These children, who require safe homes, often reside with adults in their community with no biological or marital relationship to the child(ren). These families require supports that the TANF program can provide. Modification of the usual rulemaking procedures under the *Maine Administrative Procedure Act* is necessary to ensure the health and general welfare of Maine citizens, specifically low income children with non-relative legal guardians and said guardians providing their housing and care.

This rule will not have an adverse impact on municipalities or small businesses.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2020 to December 31, 2020
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Fiscal impact of rule:

Direct costs to the Department include the cost of rulemaking activity, and necessary technology changes such as changes to ACES (all of which are covered by the existing budget for such changes).

The Department estimates that this rule change may result in up to 300 additional families being eligible for TANF benefits. The current average TANF benefit is \$535.42 per family per month. If 300 families were added to TANF at the average benefit, there would be an additional expense for monthly TANF/PaS benefits to the TANF block grant of \$1,927,512 annually. These expenses aid in meeting the daily needs of the child and are generally spent at local grocery stores, clothing retailers, landlords and utility companies. Additionally, adults included in these TANF/PaS cases will work with the Additional Support for People in Retraining and Employment (ASPIRE) program. ASPIRE expenses for these families would result in an additional \$1,278,072 annual expense against the TANF block grant. These funds support the caretakers in meeting their career goals and increase the likelihood that they; not only will no longer need TANF, MaineCare, Food Supplement and other supports; but will make significant contributions to Maine's tax base.

The total annual estimated impact to Maine's federal TANF block grant is \$3,205,584.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2020 to December 31, 2020
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: PL 2019 ch. 485; PL 2019 ch. 484; 22 MRS §§ 42(1) and (8), 3762(3)(A), 3763(6), 3769-A; 5 MRS §8054; 45 CFR §§ 400.301
Chapter number/title: **Ch. 331**, Maine Public Assistance Manual (TANF), **Rule #114E** (Changes to Budgeting)
Filing number: **2020-022**
Effective date: 2/4/2020
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

The Maine State Legislature enacted PL 2019 ch. 484, codified at 22 MRS §§ 3762, 3769-G, and 3788. This law was approved by the Governor on June 27, 2019 and became effective on September 19, 2019. The Maine State Legislature also enacted PL 2019 ch. 485, codified at 22 MRS §§ 3790, 3109, and 3762. This law was also approved by the Governor on June 27, 2019 and became effective on September 19, 2019.

This rule change aligns the *Maine Public Assistance Manual* with 22 MRS §3762(3)(B)(7) as amended by LD 1772 and LD 1774. This amendment requires the Department to eliminate a gross income test for TANF/PaS applicants and utilize new earnings disregards when calculating a TANF/PaS benefit.

Pursuant to 5 MRS §8054, the Department finds that emergency rulemaking is necessary to implement these changes as soon as possible. Due to the press of other business, technological challenges, and staffing issues in the Department due to a change in administrations, the Department was unable to adopt this rule prior to September 19, 2019. Therefore, the Department is adopting this emergency to apply retroactively to eligibility determinations made on or after September 19, 2019. Retroactive rulemaking is authorized by the Legislature in accordance with 22 MRS §42(8) because this rule provides a benefit to recipients or beneficiaries and does not have an adverse financial effect on either providers or beneficiaries or recipients.

Modification of the usual rulemaking procedures under the *Maine Administrative Procedure Act* is necessary to ensure the public health, safety and welfare of Maine residents.

This rule will not have an impact on municipalities or small businesses.

Fiscal impact of rule:

The estimated fiscal impact is an increase in expenditures of \$6,133,655 per year.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2020 to December 31, 2020
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42(1), 3762(3)(A), 3763(6), 3769-A; 5 MRS §8054
Chapter number/title: **Ch. 331**, Maine Public Assistance Manual (TANF), **Rule #C19E** (Change to In-person Requirements)
Filing number: **2020-053**
Effective date: 3/13/2020
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

Coronaviruses are a large family of viruses that are common in people and many different species of animals, including camels, cattle, cats, and bats. Rarely, animal coronaviruses can infect people and then spread between people. Late in 2019 a new such virus appeared, initially on the Chinese mainland, but rapidly spreading elsewhere. This virus, typically referred to as “Novel Coronavirus,” but officially named “SARS-CoV-2,” leads to the development in humans of a new disease, “coronavirus disease 2019,” typically referred to as “COVID-19.” The precise magnitude of the risk presented by this virus in terms of its communicability and range of severity is not yet determined, but the risk is clearly substantial.

The United States Centers for Disease Control and Prevention (CDC) are still investigating how the virus spreads. The CDC reports that the COVID-19 virus is spread mainly by person-to-person contact between people who are within six feet of one another, through respiratory droplets produced when an infected person coughs or sneezes. The CDC has advised that all symptomatic community members remain home to prevent further spread of the virus. More generally, public health authorities are advising against unnecessary interactions between members of the public, especially those who might be members of vulnerable populations, such as older persons or those with certain preexisting medical conditions. The *Maine Public Assistance Manual* currently requires that a face-to-face interview be completed with each TANF application and requires all mandatory ASPIRE-TANF participants to attend an orientation. A face-to-face interview is also required at the time of annual recertification for TANF. Language has been modified through this rule change to allow for all orientation and interview activities to be completed over the telephone. This rule will allow for the continuation of services in the case of DHHS regional office closures to the public.

Pursuant to 5 MRS §8054, the Department finds that emergency rulemaking is necessary to implement these changes as soon as possible to aid in the reduction of the spread of the Novel Coronavirus, while continuing to provide TANF and ASPIRE supports to some of Maine’s most vulnerable residents. This emergency rule removes the face-to-face requirement for the application and recertification interviews for TANF and ASPIRE-TANF orientation. Removal of the face-to-face component adheres to the recommendation of the CDC to prevent the spread of the virus by avoiding person-to-person contact. Modification of the usual rulemaking procedures under the Maine Administrative Procedure Act is necessary to ensure the public health, safety and welfare of Maine residents.

This rule will not have an impact on municipalities or small businesses.

Fiscal impact of rule:
None anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2020 to December 31, 2020
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 5 MRS §8054; 22 MRS §§ 42(1), 3762(3)(A), 3763(6), 3769-A; 45 CFR §400.301
Chapter number/title: **Ch. 331**, Maine Public Assistance Manual (TANF), **Rule #114A** (Changes to Household and Budgeting)
Filing number: **2020-098**
Effective date: 4/29/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

This rule change aligns the *Maine Public Assistance Manual* with 22 MRS §3762(3)(B)(7) as amended by LD 1772 and LD 1774; §3762-18 as amended by LD 1772; §3769-G as amended by LD 1772; and §3762(20) as amended by LD 1001. These amendments require the Department to eliminate a gross income test for TANF/PaS applicants, utilize new earnings disregards when calculating a TANF/PaS benefit, accept referrals from educational institutions as PaS applications, provide up to two million dollars annually to organizations to support whole family economic security initiatives, and end TANF/PaS denials based on a positive drug test.

This rule changes relationship requirements for TANF eligibility. These changes align TANF policy with related state law and policy which recognizes the additional relationships included in this rule.

This rule provides the figures for the increased Standard of Need and Maximum benefit for Federal Fiscal Year 2021, as required by Maine Statute. In calculating these figures, corrections were also made to the figures for the current Federal Fiscal Year.

As a result of comments, this rule incorporates the conditions under which Good Cause can be granted and the process for seeking Good Cause as it applies to ASPIRE-TANF, as detailed in HP 908 – LD 1247.

As a result of comments, requirements for face to face interaction between applicants, recipients and Department representatives were modified.

The Department also incorporated, into this rule, a number of formatting and grammatical changes. The Department made some adjustments to word choice with the intent of using terms more consistently from chapter to chapter and replaced words that may have taken on a different connotation since previous drafts. These changes increase the readability of the amended chapters.

This rule will not have an impact on municipalities or small businesses.

Fiscal impact of rule:

The total annual estimated impact to Maine's federal TANF block grant is \$15,724,709.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2020 to December 31, 2020
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §42(1),(8); PL 116-127; 5 MRS §854
Chapter number/title: **Ch. 332**, MaineCare Eligibility Manual, **MC Rule #298E: Part 9**, Limited Benefit Groups
Filing number: **2020-119**
Effective date: 3/18/2020
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

The *Families First Coronavirus Response Act* (FFCRA) HR 6201, 116 Cong. (2019-2020), PL No. 116-127 (3/18/2020), 134 STAT 178 *et seq.* specified in Division F, Section 6004(a)(3) that State Medicaid programs were authorized to create an optional coverage group to ensure services related to testing and diagnosis of COVID-19 are available in response to the pandemic, pursuant to Section 1902(a)(10)(A)(ii)(XXIII) of the *Social Security Act*, 42 USC 1396a(a)(10), as amended. This is a limited coverage benefit that is effective March 18, 2020 and ends on the last day of the month within which the federal public health emergency (PHE) ends, unless otherwise directed by CMS, even if that period exceeds 90 days, pursuant to the Governor's Executive Order 48, FY 19/20. Coverage under this group is available to individuals who are without health insurance, or whose health insurance coverage does not meet the requirements for minimum essential coverage. This rule change adopts the eligibility criteria established within the act into the *MaineCare Eligibility Manual*. This rule change will reduce barriers to COVID-19 testing and treatment, which will improve health outcomes for the specific individuals covered, and reduce the spread of this virus throughout the Maine population as a whole.

Due to the emergency nature of the legislation establishing this coverage group, the Department was unable to adopt this rule prior to March 18, 2020. Therefore, the Department is adopting this emergency rule to apply retroactively to eligibility determinations made on or after March 18, 2020. Retroactive rulemaking is authorized by the Legislature in accordance with 22 MRS §42(8) because this rule provides a benefit to recipients or beneficiaries and does not have an adverse financial effect on either providers or beneficiaries or recipients. Modification of the usual rulemaking procedures under the *Maine Administrative Procedure Act* is necessary to ensure the public health, safety and welfare of Maine residents.

Findings of Emergency

Pursuant to 5 MRS §8054, the Department finds that there exists a nation-wide public health emergency recognized within the State by declaration of the Governor. Maine Governor Janet T. Mills proclaimed a state of emergency due to COVID-19 on March 15, 2020, which was extended by further proclamation on April 14, 2020. On April 28, 2020, the Governor issued Executive Order No. 48 FY 19/20, *An Order Modifying Certain Procedural Requirements for Emergency Rulemaking to Maximize Federal COVID-19 Funding for MaineCare* (the "Executive Order"). Pursuant to 5 MRS §8054 and the Executive Order, emergency rulemaking is appropriate to respond to this crisis. Controlling the spread of that virus requires that testing for its presence in the Maine population be as widely and easily available as possible in order to identify positive cases, provide appropriate care, and track other possible infections. The speed with which the virus has spread and continues to spread makes compliance with

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standard *Maine Administrative Procedure Act*, 5 MRS §8001 *et seq.*, protocols inconsistent with an effective response to the public health threat. The Department has determined that emergency rulemaking is necessary to avoid an immediate threat to public health, safety, and general welfare, and that this emergency rule is designed to mitigate and alleviate the threat posed by the existing lack of such readily available testing.

This rule will not have an adverse impact on municipalities or small businesses.

Fiscal impact of rule:

Direct costs to the Department include the cost of rulemaking activity, and training (which are covered by the existing budget for such changes). This new coverage group is 100% federally funded, so the expanded coverage will not have a direct cost to the Department.

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Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §42(1)
Chapter number/title: **Ch. 332**, MaineCare Eligibility Manual, **MC Rule #292A: Part 10**, Medically Needy Coverage
Filing number: **2020-122**
Effective date: 7/1/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department regularly reviews policies to ensure clarity and conformity with state and federal requirements. Clarification was added as to which categorically needy coverage groups have a correlating Medically Needy group, and which would not qualify for Medically Needy if they exceed the income or asset limits for Categorically Needy coverage. Clarification was added where the Medically Needy budgeting process differs from the Categorically Needy budgeting process. Obsolete references to asset limits were removed. Clarification was added that the household must be liable for medical expenses and those expenses must be medically necessary for them to be applicable to a deductible. Additional changes were made to formatting and word choice for readability.

Basis statement:

The Department regularly reviews policies to ensure clarity and conformity with state and federal requirements. Clarification was added as to which categorically needy coverage groups have a correlating Medically Needy group, and which would not qualify for Medically Needy if they exceed the income or asset limits for Categorically Needy coverage. Clarification was added where the Medically Needy budgeting process differs from the Categorically Needy budgeting process. Obsolete references to asset limits were removed. Clarification was added that the household must be liable for medical expenses and those expenses must be medically necessary for them to be applicable to a deductible. Additional changes were made to formatting and word choice for readability.

This rule will not have an impact on municipalities or small businesses.

Fiscal impact of rule:

The Department does not anticipate an adverse impact on small businesses or municipalities as no changes are being made to the meaning of the policy, only clarification is being provided. Direct costs to the Department include the cost of rulemaking activity (which is covered by existing budget for such things).

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Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §42(1)
Chapter number/title: **Ch. 332**, MaineCare Eligibility Manual, **MC Rule #296A** (Transitional MaineCare 2019 Changes): **Parts 2, 3**
Filing number: **2020-138**
Effective date: 1/1/2020 (Retroactive)
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule change aligns the *MaineCare Eligibility Manual* with 22 MRS §3174-G(4) as amended by HP 1261 – LD 1774. This amendment requires the Department to provide transitional Medicaid, to individuals eligible due to increased earnings, for a twelve-month period. Previously, this assistance was provided for a six-month period with an option of two three-month extensions.

Additional changes have been made to increase the readability of the Parts in question.

Basis statement:

This rule change aligns the MaineCare Eligibility Manual with 22 MRS §3174-G(4) as amended by HP 1261 – LD 1774. This amendment requires the Department to provide transitional Medicaid, to individuals eligible due to increased earnings, for a twelve-month period. Previously, this assistance was provided for a six-month period with an option of two three-month extensions.

The Department has incorporated, into this rule, a number of formatting and grammatical changes. The Department made some adjustments to word choice with the intent of using terms more consistently from section to section and replaced words that may have taken on a different connotation since previous drafts. These changes increase the readability of the Parts in question.

The Department has removed some obsolete references in the Parts in question. These references caused undo confusion.

The Department removed language specific to internal processes that do not directly impact eligibility or client interactions. These changes included removing references to the job title of the individual in the department who would most often take a particular action. In addition to this level of specificity being unnecessary, it appeared to unduly restrict individuals with other titles who are capable of taking these actions from doing so, thereby impeding access to benefits and timely decisions for program applicants and recipients.

Due to the press of other business, technological challenges, and coordination with CMS; the Department was unable to adopt this rule prior to January 1, 2020. Therefore, the Department is adopting this rule with a retroactive application date of January 1, 2020. Retroactive rulemaking is authorized by the Legislature in accordance with 22 MRS §42(8) because this rule provides a benefit to recipients or beneficiaries and does not have an adverse financial effect on either providers or beneficiaries or recipients.

This rule will not have an impact on municipalities or small businesses.

Fiscal impact of rule:

Direct costs to the Department include the cost of rulemaking activity, and necessary technology changes such as changes to ACES (all of which are covered by existing budget for such things).

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The increased period of coverage is anticipated to cost an additional \$6,027,264 per year with \$3,841,175 covered by federal funds and \$2,186,089 covered by state funds. Based on the premiums received July 2018 through June 2019, elimination of the premiums is anticipated to result in a \$448,312 reduction in annual revenue, \$285,709 of which would have been passed to the federal government, and \$162,603 is a loss in revenue to the state.

The Department anticipates a total direct expense to the state of \$2,348,692 per year.

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Agency name: Department of Health and Human Services, **Office for Family Independence**

Umbrella-Unit: **10-144**

Statutory authority: 22 MRS §§ 42(1), 42(8), 254-D(4)(D), 254-D(7), 258(7); PL 2019 ch. 343

Chapter numbers/titles: **Ch. 332:** MaineCare Eligibility Manual, **MC Rule #293A** (MSP and DEL Income Limit Changes): **Part 8**, Medicare Savings Program (Buy-In)
Ch. 333: Low Cost Drugs for the Elderly and Disabled (DEL), **MC Rule #293A** (MSP and DEL Income Limit Changes)

Filing numbers: **2020-174, 175**

Effective dates: Ch. 332: 2/1/2020 (*Retroactive*)
Ch. 333: 7/1/2019 (*Retroactive*)

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

This rulemaking expands eligibility by increasing income thresholds for beneficiaries in the *MaineCare Eligibility Manual*, Part 8, “Medicare Savings Program (Buy-in)”, 10-144 CMR ch. 332, consistent with legislative appropriations in PL 2019 ch. 343 and approval from the Centers for Medicare and Medicaid Services (CMS). In addition, the Department has incorporated into this rule a number of formatting and grammatical changes. The Department is adopting this rule retroactive to February 1, 2020, as approved by CMS, and as authorized in accordance with 22 MRS §42(8) because this rule provides a benefit to recipients or beneficiaries and does not have an adverse financial effect on either providers or beneficiaries or recipients.

This rulemaking also expands eligibility by increasing income thresholds in the Low Cost Drugs for the Elderly and Disabled (DEL) rule, 10-144 CMR ch. 333, consistent with legislative appropriations in PL 2019 ch. 343 and resulting statutory changes in 22 MRS §254-D(4)(D). The Department is adopting this rule retroactive to July 1, 2019 as required by law and consistent with 22 MRS §42(8).

Basis statement:

The Department of Health and Human Services (Department) is adopting changes to two rules through this rulemaking.

First, the Department is amending the *MaineCare Eligibility Manual*, Part 8, “Medicare Savings Program (Buy-In)”, 10-144 CMR ch. 332, to increase the income thresholds for the various Medicare Savings Program (MSP) benefits. The Department has sought and received approval from the Centers for Medicare and Medicaid Services (CMS) for these income changes retroactive to February 1, 2020. The retroactive application of this rule is further authorized under 22 MRS §42(8) because it provides a benefit to recipients or beneficiaries and does not have an adverse financial effect on either providers or beneficiaries or recipients. In addition, the Department has incorporated into this rule a number of formatting and grammatical changes for the sake of clarity.

Second, the Department is adopting changes to the *Low Cost Drugs for the Elderly and Disabled (DEL)* rule, 10-144 CMR ch. 333, to align with changes to 22 MRS §254-D(4)(D) as amended by Part ZZ of PL 2019 ch. 343, *An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2019, June 30, 2020, and June 30, 2021* (effective June 17,

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2019). The legislation increased the income threshold for the DEL program and these increases are now adopted in rule retroactive to July 1, 2019 consistent with the legislation and with the Department's authority at 22 MRS §42(8).

For both adopted rules, the Department has made changes to the rule proposals as the result of public comment, internal Department review, and in consultation with the Office of the Attorney General. 5 MRS §8052(5). The Department has discovered that anticipated changes setting forth the MSP income threshold levels in statute were not incorporated in the final enacted legislation, and thus never implemented in 22 MRS §3174-G as previously assumed. In addition, the Department has determined that the changes to the DEL rule should be retroactive to July 1, 2019 in line with the allocations and statutory changes resulting from PL 2019 ch. 343. Setting effective dates earlier than listed in the proposed rulemaking documents benefits beneficiaries and recipients and does not adversely impact providers.

Finally, these changes to the MSP and DEL rules will not have an impact on municipalities or small businesses.

Fiscal impact of rule:

The Department does not anticipate an adverse impact on small businesses or municipalities. Direct costs to the Department include the cost of rulemaking activity and necessary technology changes (which are covered by existing budget for such things). Benefits issued under the rule will have an anticipated cost of \$49,494,733 for state fiscal year 2021. \$30,216,034 of that cost will be federally funded. \$19,278,699 will be state funded. The cost is estimated to increase each year as Part B premiums increase and the state population continues to age.

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Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §42(1); 19-A MRS §2103(3-A); *Social Security Act*, Section 454(6)(B)(ii)
Chapter number/title: **Ch. 351**, Maine Child Support Enforcement Manual: **ch. 4**, Fees (Annual Service Fee for Obligees)
Filing number: **2020-179**
Effective date: 8/18/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To meet mandatory federal requirements and state statutory requirements to adjust the annual service fee for obligees.

Basis statement:

(See Principal Reason).

Fiscal impact of rule:

We do not anticipate that the adopted rule will cost the state additional money. The proposal will increase revenue to the state, however, a firm figure is not known. This is because we cannot say exactly how many clients will be subject to the fee each year as we never know how many obligors will meet the \$550.00 threshold. This said, an estimate may be made using historical figures. For state fiscal year 2018, a service fee was paid in 7,248 cases. An increase of \$10 per case would have resulted in total additional revenue of \$72,480.00, or \$47,836.80 for the federal government and \$24,643.20 for the state.

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Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42(1), 3785-A; 45 CFR 261.62, 400.301; Resolves 2019 ch. 67
Chapter number/title: **Ch. 607**, APRIRE-TANF Program: **ASPIRE Rule #27A** (Good Cause), **Section 4**
Filing number: **2020-146**
Effective date: 7/20/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

This change is in response to Resolves 2019 ch. 67, approved by the Governor on June 13, 2019, regarding the TANF-ASPIRE Good Cause and sanction process. Pursuant to HP 908-LD 1247, the Resolve directed the Department to amend the TANF and ASPIRE-TANF program rules regarding good cause and sanctions. The changes made here, particularly to Section 4 (III), are in response to, and accordance with, those directives.

The rule also implements changes to Maine's Work Verification Plan dated September 30, 2019, to incorporate basic skills activities, including English for Speakers of Other Languages (ESOL), Adult Basic Education (ABE), General Education Diploma (GED), and High School Equivalency (HSE), into vocational educational training.

This rule will not have an impact on municipalities or small businesses.

Fiscal impact of rule:

Unable to be determined. However, if additional individuals are determined to have good cause for failing a program requirement and could remain in the program, it could increase program costs.

Changes to Vocational Education Training activities will allow more participants to meet federal work requirements, reducing the risk of federal penalties.

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Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 42(1), 3762(3)(A), 3769-A
Chapter number/title: **Ch. 607**, APRIRE-TANF Program: **ASPIRE Rule #26A** (Support Services Changes), **Sections 1, 11, 14**
Filing number: **2020-199**
Effective date: 9/1/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule increases travel reimbursement for ASPIRE participants to support their ability to engage in required work activities and is reflective of current travel related costs. Reference to repealed TANF deprivation policy was removed.

Basis statement:

Section 1 (Definitions and Descriptions)

The definition of “UP (Unemployed Parent), was deleted. This definition has not been relevant since deprivation was removed as a TANF requirement as part of Adopted Rule Number 2017-198.

Section 11 (Work Activity Services)

Sec. I(M) deleted the reference to unemployed parents. These references have not been relevant since deprivation was removed as a TANF requirement as part of Adopted Rule Number 2017-198.

Section 14 (Support Service Benefits and Payment Provisions)

Sec. II(B). The general mileage rate was increased from \$.30/mile to \$.44/mile and the weekly dollar amount cap limit was raised from \$120/week to \$140/week as part of the proposed rule to keep a consistent amount with other OFI employment and training programs at the time of proposal. In the adopted rule the mileage rate has been increased to \$.45/mile, which is consistent with the mileage rate utilized in the State of Maine/Maine Service Employee’s Association (MSEA) collective bargaining agreement. See: <https://www.maine.gov/osc/travel/mileage-other-info> .

Sec. II(B). In the final rule, the Department decided to not adopt the proposed elimination of a special mileage rate of \$.45/mile for ASPIRE participants who are disabled and who operate their own personal wheelchair lift or other specially equipped vehicle during the course of allowed ASPIRE activities. In response to a Rule Comment, this final rule keeps the special mileage for these individuals. Additionally, the final rule increased the rate to \$.55/mile. The rate is consistent with Maine’s standard mileage reimbursement rate paid by the State Controller and published by DAFS at <https://www.maine.gov/osc/travel/mileage-other-info> for Maine State Employees covered under the contract established by MSEA.

Sec. II(C)(1) (Auto Repairs). The final rule broadened the scope of vehicles for which ASPIRE will pay repairs to include vehicles registered to specified relatives who have a valid license to operate a motor vehicle in Maine, if they reside in the home of the ASPIRE participant, and who would be included in the TANF grant if otherwise eligible. The added language ensures that the automobile being repaired has a licensed operator in the home. There are other support services that can assist with license attainment for ASPIRE participants if needed.

Sec. II(D) (Auto Liability Insurance). The final rule increased the reimbursement for auto insurance from \$300 to \$600 per calendar year and includes the requirement that the

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participant must have a valid Maine driver's license. The department finds that an increase in the maximum amount of auto insurance paid per calendar year is reflective of current insurance expenses and is consistent with other Office for Family Independence programs.

Sec. II(K) (Relocation Costs). The general mileage rate was increased from \$.30/mile to \$.44/mile and the weekly dollar amount cap limit was raised from \$120/week to \$140/week as part of the proposed rule to keep a consistent amount with other OFI employment and training programs at the time of proposal. In the adopted rule the mileage rate has been increased to \$.45/mile, which is consistent with the mileage rate utilized in the State of Maine/Maine Service Employee's Association (MSEA) collective bargaining agreement. See: <https://www.maine.gov/osc/travel/mileage-other-info> .

This rule will not have an adverse impact on municipalities or small businesses.

Fiscal impact of rule:

The estimated fiscal impact is an increase in expenditures of \$741,023, including \$624,623 for mileage reimbursement and \$116,400 for the increased liability insurance cap.

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Agency name: Department of Health and Human Services, **Office for Family Independence**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §42(1); 7 CFR §273.7
Chapter number/title: **Ch. 609**, Food Supplement – Employment and Training (FSET) Program Rules (FSET Rule #FSET4A) (*Repeal and replace*)
Filing number: **2020-200**
Effective date: 10/1/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

The Department has redesigned its Food Supplement Employment and Training (FSET) Program, based on federal technical assistance. The new model has moved away from having Maine Department of Labor deliver FSET services to a model used by many other states whereby the Department contracts directly with community-based organizations and educational institutions that deliver employment and training. These providers must follow federal guidelines for SNAP Employment and Training. This repeal and replace rulemaking governs Maine's FSET program.

This new rule provides as follows:

- 1) Clarifies that FSET services are delivered by contracted providers who must deliver service components that meet federal standards;
- 2) Lays out the operating procedures including participant, contractor and Department responsibilities;
- 3) Provide a more complete and detailed list of available services and supports;
- 4) Identify priority target groups;
- 5) Section 8(I) (Support Service Limits) sets annual support service limits for participants;

After reviewing Comments, and receiving advice from the Office of Attorney General, the Department made these changes in the adopted rule:

- 1) The Department added additional language to Section 11(II) (Administrative Hearings), clarifying what Department actions and determinations can be appealed, and when the request for administrative hearing must be made. The Department added the citation for the *Food Supplement Program Rule*, 10-144 ch. 301, as this rule incorporates the Administrative Hearing process from Section FS 777-1 of that rule.
- 2) The adopted rule also modifies the FSET program, from a mandatory program to an entirely voluntary program. The proposed rule proposed a mandatory/voluntary program. Both commenters (Maine Equal Justice and Preble Street) expressed concern with a mandatory program, pointing to national studies which indicate that voluntary programs for vocational training or work experience yield more engaged participants with stronger outcomes. The Department agrees with the commenters, and is making this change in the adopted rule, to make the FSET program a voluntary program. The Department considers this to be a beneficial change for all participants.

This rule will not have an adverse impact on municipalities or small businesses.

Fiscal impact of rule:
None anticipated.

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Agency name: Department of Health and Human Services, **Maine Center for Disease Control and Prevention, Office of Data, Research, and Vital Statistics**

Umbrella-Unit: **10-146**

Statutory authority: 22 MRS §2140

Chapter number/title: **Ch. 15, Death with Dignity Act Reporting Rule** (*New*)

Filing number: **2020-173**

Effective date: 8/30/2020

Type of rule: Major Substantive

Emergency rule: No

Principal reason or purpose for rule:

The Department is adopting this rule to comply with the *Maine Death with Dignity Act* (“Act”), 22 MRS §2140, to exercise its authority to collect certain data from healthcare providers related to patient-directed care at the end of life, and to establish criteria for witnesses to written requests for life-ending medications made by patients who reside at long-term care facilities. This major substantive rule duplicates the existing *Death with Dignity Act* Reporting emergency rule, which became effective September 19, 2019 pursuant to 5 MRS §§ 8054 and 8073, with some minor revisions. The Department intends for the course of this rulemaking – including proposal, provisional adoption, legislative review, and final adoption – to coincide with the expiration of the existing emergency rule, to ensure continuity and avoid potential delay in the established processes under the Act.

Basis statement:

The Department finally adopts this major substantive rule, to comply with PL 2019 ch. 271 (*An Act to Enact the Maine Death with Dignity Act*), as codified in 22 MRS §2140, which directed the Department to adopt major substantive rules to facilitate the collection of information regarding compliance with the *Maine Death with Dignity Act*. 22 MRS §2140(17).

On September 19, 2019, in compliance with PL 2019 ch. 271 – and in accordance with Governor Mills’ June 12, 2019 Executive Order No 9 FY 19/20 (“An Order Implementing the *Death with Dignity Act*”) - the Department adopted an emergency major substantive rule. As required by the *Maine Administrative Procedure Act*, the Department proceeded with rule-making procedures, and on January 13, 2020, the Department filed the provisionally adopted major substantive rule with the Secretary of State. At the same time the Department submitted the rule to the Maine Legislature for its review and authorization for final adoption. The Maine Legislature authorized the final adoption of the provisionally adopted rule, with no changes, in a nonemergency Resolve (Resolves 2019 ch. 130).

Resolves 2019, ch. 130 was approved by the Governor on March 18, 2020, and became effective on June 16, 2020. 5 MRS §8072(8) provides that this final major substantive rule will become effective 30 days after filing with the Secretary of State. The Department filed this rule with the Secretary of State on July 31, 2020, and therefore it will become effective on August 30, 2020. In accordance with 5 MRS §8073, the September 19, 2019 emergency major substantive rule remains in effect until August 30, 2020.

The underlying legislation establishes criteria for when a physician may prescribe medication to certain qualified patients for the purpose of the patient self-administering the medication to end the patient’s life in a humane and dignified manner. (22 MRS §2140.) In addition to setting forth numerous requirements for the patient, the attending physician, other healthcare providers and others, the law requires the Department to collect and review documentation related to patient-directed care at the end of life for compliance purposes and

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for use in compiling an annual report to the Legislature. *Id.* §2140(17). The Department is also tasked with establishing criteria for one of the two witnesses to the patient's written request for medication if the patient is residing at a long-term care facility. *Id.* §2140(5)(E). To meet these requirements, this major substantive rule sets forth protocol for healthcare providers involved in patient end-of-life decisions to produce documentation and information to the Department, describes the data to be collected through Department-generated forms, and advises providers on reporting deadlines.

This final rule provides clarification for reporting purposes and eliminates the requirement in the emergency rule for physicians to report at 6 months when the death of qualified patient has not been confirmed. Additionally, this finally adopted major substantive rule ensures that concerns outlined in the Governor's Executive Order about the implementation of the Act are addressed by providing, through major substantive rulemaking, guidance to healthcare providers so as to help reduce the potential for abuse. Consistent with the Executive Order, the rule also contemplates that the Department will act within the scope of its authority to collect additional data not prescribed in the Act, to ensure provider compliance and to aid in the Department's production of a useful and meaningful statistical report that monitors the impact of the Act.

Fiscal impact of rule:

No significant fiscal impact expected.

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Agency name: Department of Health and Human Services, **Maine Center for Disease Control and Prevention, Office of Data, Research, and Vital Statistics**

Umbrella-Unit: **10-146**

Statutory authority: 22 MRS §2705

Chapter number/title: **Ch. 16**, Gender Marker on Birth Record Rule (*New*)

Filing number: **2020-154**

Effective date: 7/13/2020

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

Pursuant to 22 MRS §2705, this rule permits the Department to issue a new birth record with the appropriate gender marker and given names without a court order for the purpose of aligning with the registrant's gender identity. Consistent with changes at the State level and nationally, this rule expands the available gender markers on vital records to include nonbinary. This rule requires that requests for the issuance of a new record for the purpose of aligning with the registrant's gender identity be completed in the manner and form prescribed by the Department. The requirements proposed in this rule are to ensure that any request for a new birth record falls within the scope of the Department's authority and this rule to prevent potential system fraud and abuse. This proposed rule promotes consistency in State identity documents and protects the privacy of individuals requesting new birth records that align with their gender identity.

Basis statement:

The adoption of this rule by the Department of Health and Human Services ("Department") establishes administrative processes within the Maine CDC Office of Data, Research and Vital Statistics (DRVS) for designating X as the gender marker on a birth record at birth and for issuing a new birth record with changes requested specifically to align with gender identity.

This rule provides for an additional gender marker option (X) that is not exclusively male or female that may be designated on a birth record at birth. Additionally, a registrant or a minor registrant's legal guardian may request a change to the assigned gender marker and to be issued a new birth record to align with gender identity. The applicant may request a change to the first and middle name on a birth record at the time of requesting a new birth record with the appropriate gender marker change. This rule requires that requests for a new birth record be notarized and completed in the manner and form prescribed by the Department.

This rule permits the Department to issue a new birth record without a court order when changes are made to the birth record for the purpose of aligning with the registrant's gender identity. The rule requires assurances before the Department may issue a new birth record for a registrant who is a minor. Notarized requests for changes to a minor's birth record must include the signature of a licensed physician or licensed mental health care provider who, within the scope of their license and through a bona fide patient-provider relationship, affirms that the requested gender marker is consistent with the minor's gender identity. Written consent of both parents/guardians is required, unless this requirement is waived upon showing of good cause when one parent is absent.

The final rule provides for an administrative hearing procedure for an aggrieved person to appeal an adverse decision issued by the Department, prior to appealing to the courts. This

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rule states that, if there is a conflict with another rule administered by DRVS, this rule applies.

10-146 CMR ch. 16, *Gender Marker Gender Marker on Birth Record Rule*, promotes consistency in State identity documents and protects the privacy of individuals requesting new birth records that align with their gender identity. This rule is consistent with changes in policy and practice at the State and federal levels to recognize “X” as a gender marker that is not exclusively male or female; X includes nonbinary, intersex and unspecified for use on birth records.

Fiscal impact of rule:

The Department may anticipate nominal costs associated with any needed modifications to its vital record data system to accommodate the addition of the nonbinary gender marker. Requests under this rule are subject to fees in accordance with the *Vital Records Fees Rule* at 10-146 CMR ch. 7.

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Agency name: Department of Health and Human Services, **Office of Child and Family Services**
Umbrella-Unit: **10-148**
Statutory authority: 22 MRS §§ 42(8), 3174-Z, 4062; 5 MRS §8073
Chapter number/title: **Ch. 21**, Rules for the Provision of Payments for Residential Programs Serving Children
Filing number: **2020-092**
Effective date: 4/10/2020
Type of rule: Major Substantive
Emergency rule: Yes

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

Coronaviruses are a large family of viruses that are common in people and many different species of animals, including camels, cattle, cats, and bats. Rarely, animal coronaviruses can infect people and then spread between people. Late in 2019, a new such virus appeared, initially on the Chinese mainland, but rapidly spreading elsewhere. This virus, typically referred to as "Novel Coronavirus," but officially named "SARS-Co V-2," has led to the development in humans of a new disease, "coronavirus disease 2019," typically referred to as "COVID-19." On March 11, 2020, the World Health Organization declared COVID-19 a worldwide pandemic.

The United States Centers for Disease Control and Prevention (CDC) is still investigating how the virus spreads. The CDC reports that the COVID-19 virus is spread mainly by person-to-person contact between people who are within six feet of one another, through respiratory droplets produced when an infected person coughs or sneezes, and has therefore advised that anyone exhibiting symptoms remain isolated to avoid infecting others. Anyone with symptoms is encouraged to stay home, by both the CDC as well as Maine officials, to slow the spread of the COVID-19 coronavirus. The CDC is also recommending cleaning and disinfecting frequently touched surfaces often. On March 15, 2020, as a result of the spread of the COVID-19 coronavirus in Maine, Governor Janet Mills declared a state of civil emergency by proclamation pursuant to 37-B MRS §742(1)(A). Pursuant to 22 MRS §743, this state of emergency continues for thirty days unless terminated earlier and may be renewed by the Governor.

Pursuant to 10-144 CMR Ch. 101 (the *MaineCare Benefits Manual*) ch. II and III Section 97 ("Private Non-Medical Institutions", or "PNMI", Services), PNMIs provide Medicaid services to various populations in Maine. Here, Section 97 Appendix D, govern the PNMIs providing residential treatment to children statewide. However, Medicaid does not reimburse for room and board, thus the state makes payments to PNMI providers to cover some of these costs. The proliferation of the COVID-19 coronavirus has created a number of challenges for PNMIs, which are an essential service in Maine as they are providing care and treatment for hundreds of children statewide. Challenges include:

- The temporary cessation of all classroom instruction statewide. This change has significantly altered the structure of PNMI providers' programming as children are no longer attending school during the day and additional daytime staffing is needed within the programs.
- The need to assure adequate staffing levels for children who need to be separated from the normal milieu due to suspected or confirmed COVID-19.
- The need to assure adequate staffing levels if members of a provider's staff are absent due to suspected or confirmed COVID-19.

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- The cost of Personal Protective Equipment (PPE) to ensure the safety of staff and children.
- The cost to increase the frequency and intensity of cleaning within the program and ensure areas are regularly sanitized.
- The need to assure adequate staffing to complete regular screening of children and staff for COVID-19 symptoms throughout the day.
- The need to furnish adequate employee compensation necessary to hire and retain qualified staff.

Other industries deemed essential during the current pandemic have begun increasing pay for their staff to compensate for the risk of contracting COVID-19.

The current rate for providers governed by this rule is a Standard Room and Board Rate of \$54.45 per occupied bed day. This rate is not in the rule. In this emergency rulemaking, the Department increases the Standard Room and Board Rate by \$54.55 to \$109.00 per occupied bed day, retroactive to March 1, 2020 and continuing until May 31, 2020.

Pursuant to 5 MRS §8073, the Department finds that emergency rulemaking is necessary to implement this change as soon as possible to ensure that Maine's PNMI providers providing residential programs serving children have sufficient resources to meet the challenges stemming from the COVID-19 coronavirus, and to continue to provide services for hundreds of children in Maine. Without this rate increase, Maine's PNMI providers may soon lack the financial resources to sustain operations, putting Maine children at risk. Emergency procedures are needed to establish this rate immediately because children's PNMI providers are already facing extreme, unanticipated financial threats to their continued operation as a result of the COVID-19 situation, detailed above. The Department is making the rate increase retroactive to March 1, 2020. This retroactive application is authorized by 22 MRS §42(8), as it provides a financial benefit to the providers.

Emergency major substantive rules are effective for up to one year, pursuant to 5 MRS §8072. The Department shall implement these changes permanently through separate major substantive rulemaking, per 5 MRS §8071.

Fiscal impact of rule:

\$1.1 million.

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Agency name: Department of Health and Human Services, **Office of Child and Family Services**
Umbrella-Unit: **10-148**
Statutory authority: 22 MRS §§ 42(1), 8302-A(1)(J),(2)(K); 5 MRS §8073; 42 USC §9858f(b)
Chapter number/title: **Ch. 34**, Child Care Provider Background Check Licensing Rule
(New)
Filing number: **2020-210**
Effective date: 9/25/2020
Type of rule: Major Substantive
Emergency rule: Yes

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

The Department of Health and Human Services (the “Department”) adopts this Emergency Major Substantive Rule, 10-148 CMR ch. 34, *Child Care Provider Background Check Licensing Rule*, on the basis that immediate adoption of the rule is necessary to avoid an immediate threat to public health, safety, and general welfare as outlined below.

Currently, the background check requirements for licensed child care providers are included in the licensing rules for those providers: 10-148 CMR ch. 32, §§ 2.21 and 11.2.3.7 (*Rules for the Licensing of Child Care Facilities*); 10-144 CMR ch. 33, §§ 2(A)(4)(e) and 6(A)-(I) (*Family Child Care Provider Licensing Rule*); 10-148 CMR ch. 36 §§ III(U) and XIII(A)(3)(g); these provisions are repealed through the instant emergency major substantive rulemaking. In the event of conflict between the *Child Care Provider Background Check Licensing Rule* and any other provisions of the licensing rules for child care providers, the terms of this rule supersede such other rules and shall apply.

These provisions add requirements to pre-employment and pre-licensure comprehensive background checks. The policy rationale is to provide greater protection for Maine children receiving child care from licensed child care providers and to comply with statutory requirements set forth in 22 MRS §8302-A 9(1)(J)(2)(K) and 42 U.S.C. §9858f(b). New requirements include:

- Mandatory fingerprinting with search of the Federal Bureau of Investigation (FBI) and State Bureau of Identification (SBI) as well as, the National Crime Information Center (NCIC) National Sex Offender Registry.
- Searching state criminal repositories, state child abuse and neglect registries/databases and state sex offender registries in each state where the individual has resided in the previous five years.
- Prescribing specific disqualifying offenses in which an individual is deemed eligible or ineligible.
- Individuals required to receive a qualifying result pursuant to a comprehensive background check as provided for in the Child Care Provider Background Check Licensing Rule now include: all current and prospective staff members, all adult household members in a family child care, and any other individual whose activities involve the care or supervision of children or who has unsupervised access to children.

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FINDINGS OF EMERGENCY

Pursuant to 5 MRS §8073, the Department has determined that immediate adoption of this rule is necessary to avoid an immediate threat to public health, safety and general welfare. The expansion of the comprehensive background check process will provide necessary protection to children who receive child care from licensed child care providers. The Department has determined that these protections must be established through emergency rulemaking to protect children receiving care from licensed child care providers from an immediate risk of abuse, neglect or exploitation. This is the primary cause of the emergency found by the Department.

Additionally, the comprehensive background check process established through this emergency rulemaking is required by federal and state law. 42 USC §9858f(b) and 22 MRS §8302-A(1)(J)(2)(K). Maine will receive a financial penalty of approximately \$800,000.00 from the federal Child Care and Development Block Grant if the additional components of the comprehensive background check established in this emergency rule are not effective by October 1, 2020. See 42 USC §9858f(j)(2)(3). Avoidance of this penalty is another ground for implementing this rule on an emergency basis, particularly in light of the financial difficulties faced by the state due to the COVID pandemic.

Emergency major substantive rules are effective for up to one year or until the Legislature has completed its review, pursuant to 5 MRS §80732. The Department shall implement these changes permanently through separate major substantive rulemaking, per 5 MRS §8071.

Fiscal impact of rule:

22 MRS §8302-A sub-§3 requires that fees for criminal background checks must be paid by the Department from the funds available under the federal *Child Care Development Block Grant Act of 1990* as amended by the federal *Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, Public Law 104-193, 110 Stat. 2105. The fees for the criminal background checks reimbursed under this subsection may not exceed the actual costs for processing and administration.

The financial impact to the Child Care Development Block Grant due to fingerprint-based background checks will be driven by the number of staff members employed by the provider, and other adults who may have unsupervised access to children in care. For the first year the Department estimates 10,000 fingerprint-based background checks will be completed at \$54 per fingerprint equating to a first year annual cost to the Child Care Development Block Grant of \$540,000. Ongoing the Department estimates 3,000 fingerprint-based background checks annualized at \$162,000.

Fingerprint-based background checks are valid for five years and will be provided at no cost to the individual or provider.

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Agency name: Department of Health and Human Services, **Office of Child and Family Services**
Umbrella-Unit: **10-148**
Statutory authority: 22 MRS §4008(6)(d)
Chapter number/title: **Ch. 202**, Child Protective Central Case Record Research Fee
Filing number: **2020-251**
Effective date: 12/23/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

The Department adopts this rule to change the fee charged for Child Protective background Checks from \$15.00 to \$13.00. The current fee for a child protective background check is \$15.00. The Department is in the process of developing an InforME portal for the processing of requests for these background checks. InforME charges a \$2.00 per transaction service fee. To ensure there is no rate increase when the Department begins using InforME to receive and process requests for child protective background checks, the adopted rulemaking would reduce the fee to \$13.00 to insure the implementation of the InforME portal is revenue neutral for providers.

Fiscal impact of rule:

There is an estimated decrease in General Fund revenue of \$50,638 and no corresponding decrease in General Fund expenditures. The \$2.00 will be paid directly to InforME for the development and maintenance costs of the electronic portal and the Department will not be responsible for paying those costs to InforME).