

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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(1), 3173; PL 2017 ch. 407
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 17**, Community Support Services
Filing number: **2021-130**
Effective date: 7/1/2021
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 the following changes to 10-144 CMR ch. 101, *MaineCare Benefits Manual*, ch. II section 17, Community Support Services.

This adopted rule enhances safeguards and protections of client rights under the *Bates, et al. v. Commissioner, DHHS, et al*, consent decree. The rule addresses referrals to and terminations from Community Integration Services and Assertive Community Treatment (ACT) Services for members with Serious and Persistent Mental Illness. Prior to terminating a member’s services, providers must receive written approval from the Office of Behavioral Health (OBH); must issue a 30-day advanced written termination notice to the member, with an exception for cases involving imminent harm; and must assist the member in obtaining clinically necessary services from another provider prior to termination. In addition, providers must accept Department referrals for services within seven (7) calendar days and may only decline referrals with written approval from OBH.

The adopted rule also removed the “temporary transition period” from the timeliness and duration of care provisions that were added in a prior rulemaking pursuant to Resolves 2015 ch. 82.

This rule additionally removed the definition and requirement to complete the Adult Needs and Strengths Assessment (ANSA). The Department has determined the ANSA is no longer a viable option for assessment and treatment, and this assessment is not being used in practice.

The Department also updated formatting, citations, and references where necessary, including changing “Office of Substance Abuse and Mental Health Services” to “Office of Behavioral Health” and removed potentially stigmatizing language based on recommendations from the Maine’s opioid task force and legislation passed in 2018 to minimize stigma (PL 2017 ch. 407).

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 amended the term “Department referrals” to “referrals” under 17.08-5 D in the adopted rule.

Fiscal impact of rule:

No fiscal impact expected for this rule.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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; PL 2019 ch. 616 (emergency, effective March 20, 2020); 42 CFR §441.301; Resolves 2019 ch. 104

Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II and III Section 19**, Home and Community Benefits for the Elderly and Adults with Disabilities

Filing number: **2021-090**

Effective date: 5/2/2021

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

This adopted rule aligns and complies with 42 CFR441.301(c), the federal Home and Community Based Settings (HCBS) rule (the “Settings Rule”). Additionally, the changes update certain Personal Support Services (PSS) and other reimbursement rates pursuant to the State supplemental budget, PL 2019 ch. 616. Pursuant to Resolves 2019 ch. 104, the changes permit spouses to be reimbursed as Personal Support Specialists for eligible members that need Extraordinary Care. The rule clarifies roles and responsibilities of the Service Coordination Agency (SCA), the Fiscal Intermediary (FI), and the Assessing Services Agency (ASA) Assessor. It adds or clarifies definitions for Extraordinary Care, and the Person-Centered Planning Process.

The Settings Rule specifies that service planning for HCBS waiver members must be developed through a Person-Centered Planning (PCP) process that addresses health and long-term services and support needs in a manner that reflects individual preferences and goals. Moreover, the rule requires that this process be member-directed. This adopted rule adds language to further define the PCP process as it relates to recipients of Section 19 services. Separately, the Department is developing a Global HCBS Settings Rule that will make changes to all the HCBS MaineCare rules to implement in more detail the requirements of the Settings Rule.

Additionally, the adoption defines Extraordinary Care to support comprehensive planning and service delivery processes and more readily meet members’ needs.

Furthermore, the rule updates Section 19 rates to comply with 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 the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2020 and June 30, 2021. Many of the changes are effective retroactive to April 1, 2020. In light of this increased reimbursement for providers, to protect members, the program cap in Section 19.06(A) has been increased to \$6,565, effective retroactive to April 1, 2020.

The adopted rule also transitions reimbursement for the SCA, which provides care coordination services, from fee for service to a per member per month reimbursement; this shall take effect prospectively. Due to this change in reimbursement, the Department seeks to remove the limits on care coordination in Section 19.06; members may receive care coordination services as appropriate to their medical needs, without limits to the amount.

Additionally, the adopted rule clarifies roles and responsibilities of the SCA, the Fiscal Intermediary (FI), and the ASA Assessor. The rule outlines the responsibilities of the SCA to

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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promote the Person-Centered Planning process and clarifies the authority of the SCA to reduce, suspend, and deny members' services. Additionally, the adopted rule outlines the qualifications and role of the ASA Assessor. Further, the rule identifies and outlines the data and reports required of the SCA and the FI to ensure collection and tracking of quality data in support of the transition to Per Member Per Month reimbursement for care coordination.

As reflected in the adopted rules, certain changes in the rule have a retroactive effective date of either April 1, 2020, or July 1, 2020, while the remainder are effective with this final adoption of the rule pursuant to 5 MRS §8052(6). Further, the Department has received final approval from the Centers for Medicare and Medicaid Services (CMS) on amendments to the Section 1915(c) waiver to implement same.

Finally, as a result of public comments and further review by the Department and the Office of the Attorney General, there were additional minor changes to the adopted rule language for purposes of clarity. Importantly, the Department increased the reimbursement for Respite Services in chapter III from \$163.49 to \$219.76, in order to be consistent with the waiver amendment approved by CMS. The Summary of Public Comments and Department Responses document identifies more specifically all changes that were made to the final rule.

Fiscal impact of rule:

The Department does not anticipate any fiscal impact as the changes proposed are cost neutral.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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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, 42(8); 5 MRS §8054; PL 2019 ch. 616 part A §A-7

Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 21**, Allowances for Home and Community Benefits for Adults with Intellectual Disabilities or Autism Spectrum Disorder

Filing number: **2021-069**

Effective date: 4/7/2021

Type of rule: Major Substantive

Emergency rule: Yes

Principal reason or purpose for rule:

The emergency adopted rule implements rate increases in accordance with PL 2019 ch. 616 part A §A-7, for four services, Supported Employment Services, Career Planning Services, Employment Specialist Services and Home Support-quarter Hour Services.

These rate increases have a retroactive application date of January 1, 2021. The Maine Legislature has authorized the Department to adopt rules with a retroactive application where the change does not have an adverse financial impact on any MaineCare provider or Member. 42 MRS §42(8). The Department has determined that these rate increases are necessary to avoid an immediate threat to public health, safety, or general welfare. The Department's findings of an emergency are as follows: Delivery of Medicaid services is predicated on an adequate provider pool to treat and meet the unique needs of the most vulnerable populations of members; and the rate increases will seek to ensure reimbursement rates are adequate to provide members with access to important services through an adequate provider pool.

This emergency major substantive rule is effective upon adoption and filing with the Secretary of State. Pursuant to 5 MRS §8054(3), this emergency major substantive rule may be effective for up to 12 months, or until the Legislature has completed its review. The Department intends to proceed with major substantive rulemaking, which will be provisionally adopted, and then submitted to the Legislature for its review.

Basis statement:

The Department is adopting this emergency major substantive rule in accordance with PL 2019 ch. 616 part A §A-7, *An Act Making Supplemental 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, 2020 and June 30, 2021*. The Act provides funding to increase reimbursement rates for specific procedure codes in ch. III §21, "Allowances for Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder".

The Department has determined that these rate increases are necessary to avoid an immediate threat to public health, safety, or general welfare. The Department's findings of an emergency are as follows: Delivery of Medicaid services is predicated on an adequate provider pool to treat and meet the unique needs of the most vulnerable populations of members; and the increases will seek to ensure reimbursement rates are adequate to provide members with access to important services through an adequate provider pool.

The emergency major substantive rule increases the rates effective January 1, 2021 for four (4) services: Supported Employment Services, Career Planning Services, Employment Specialist Services, and Home Support-Quarter Hour Services. The Maine Legislature has authorized the Department to adopt rules with a retroactive application where the Department

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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has sought CMS approval for such changes, and where the change does not have an adverse financial impact on any MaineCare provider or Member. 42 MRS §42(8).

This emergency major substantive rule is effective upon adoption and filing with the Secretary of State. Pursuant to 5 MRS §8054 (3), this emergency major substantive rule may be effective for up to 12 months, or until the Legislature has completed its review. The Department intends to proceed with major substantive rulemaking, which will be provisionally adopted, and then submitted to the Legislature for its review.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$1,653,993 in SFY 2021, which includes \$598,745 in state dollars and \$1,055,248 in federal dollars.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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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, 42(8), 3173; 5 MRS §8054; PL 2019 ch. 616 part A §A-7

Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 29**, Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder

Filing number: **2021-070**

Effective date: 4/7/2021

Type of rule: Major Substantive

Emergency rule: Yes

Principal reason or purpose for rule:

In accordance with PL 2019 ch. 616 §A-7, this emergency major substantive rule increases the rates with a retroactive application date of January 1, 2021 for four (4) services including: Supported Employment Services, Career Planning Services, Employment Specialist Services, and Home Support-Quarter Hour Services.

The Maine Legislature has authorized the Department to adopt rules with a retroactive application where the Department has determined that the change does not have an adverse financial impact on any MaineCare provider or Member. 42 MRS §42(8). Here, the rule change is a positive change for the providers.

The Department has determined that these rate increases are necessary to avoid an immediate threat to public health, safety or general welfare. The Department's findings of an emergency are as follows: delivery of Medicaid services is predicated on an adequate provider pool to treat and meet the unique needs of the most vulnerable populations of members, and the increases will seek to ensure reimbursement rates are adequate to provide members with access to important services through an adequate provider pool.

This emergency major substantive rule is effective upon adoption and filing with the Secretary of State. Pursuant to 5 MRS §8054(3), this emergency major substantive rule may be effective for up 12 months, or until the Legislature has completed its review. The Department intends to proceed with major substantive rulemaking, which will be provisionally adopted, and then submitted to the Legislature for its review.

Basis statement:

The Department is adopting this emergency major substantive rule in accordance with PL 2019 ch. 616 part A §A-7, *An Act Making Supplemental 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, 2020 and June 30, 2021*. The Act provides funding to increase reimbursement rates for specific procedure codes in ch. III §29, "Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder".

The Department has determined that these rate increases are necessary to avoid an immediate threat to public health, safety or general welfare. The Department's findings of an emergency are as follows: delivery of Medicaid services is predicated on an adequate provider pool to treat and meet the unique needs of the most vulnerable populations of members, and the increases will seek to ensure reimbursement rates are adequate to provide members with access to important services through an adequate provider pool.

The emergency major substantive rule increases the rates with a retroactive application date of January 1, 2021 for four (4) services including: Supported Employment Services,

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Career Planning Services, Employment Specialist Services, and Home Support-Quarter Hour Services. The Maine Legislature has authorized the Department to adopt rules with a retroactive application where the Department has determined that the change does not have an adverse financial impact on any MaineCare provider or Member. 42 MRS §42(8). Here, the rule change is a positive change for the providers.

This emergency major substantive rule is effective upon adoption and filing with the Secretary of State. Pursuant to 5 MRS §8054(3), this emergency major substantive rule may be effective for up to 12 months, or until the Legislature has completed its review. The Department intends to proceed with major substantive rulemaking, which will be provisionally adopted, and then submitted to the Legislature for its review.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$886,584 in SFY 2021, which includes \$267,748 in state dollars and \$565,641 in federal dollars.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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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), 3173; PL 2017 ch. 407
Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 92**, Behavioral Health Home Services
Filing number: **2021-131**
Effective date: 7/1/2021
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 the following changes to 10-144 CMR ch. 101, *MaineCare Benefits Manual*, ch. II section 92, Behavioral Health Home Services.

This adopted rule enhances safeguards and protections of client rights under the *Bates, et al. v. Commissioner, DHHS, et al*, consent decree. The rule addresses referrals to and terminations from Behavioral Health Home Services for members with Serious and Persistent Mental Illness. Prior to terminating a member's services, providers must receive written approval from the Office of Behavioral Health (OBH); must issue a 30-day advanced written termination notice to the member, with an exception for cases involving imminent harm; and must assist the member in obtaining clinically necessary services from another provider prior to termination. In addition, providers must accept Department referrals within seven (7) calendar days and may only decline referrals with written approval from OBH.

Additionally, in furtherance of consent decree principles, this rule added language for timeliness standards for Adults with Serious and Persistent Mental Illness, consistent with those in Section 17 Community Support Services for this population. These standards require that providers must conduct an initial face-to-face intake or initial assessment visit within seven (7) calendar days of the date of referral. This rule also gives members the option to request to “hold for service” if providers are unable to meet the seven (7) calendar day face-to-face requirement of new referrals but the member would still like to wait until that provider can accept their referral. Members may elect to hold for service only after an agency has adequately informed the member of their other area service options.

The Department also updated formatting, citations, and references where necessary, including changing “Office of Substance Abuse and Mental Health Services” to “Office of Behavioral Health” and removing potentially stigmatizing language based on recommendations from Maine’s opioid task force and legislation passed in 2018 to minimize stigma (PL 2017 ch. 407).

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

- The Department has amended the term “Department referrals” to “referrals” under 92.02-3 D in the adopted rule.

Fiscal impact of rule:

No fiscal impact expected for this rule.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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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. II, Section 97**, Private Non-Medical Institution Services
Filing number: **2021-129**
Effective date: 7/1/2021
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule is proposed in order to provide clarity and consistency in processes and record-keeping across MaineCare policies and enhance safeguards and protections of client rights under the *Bates, et al. v. Commissioner, DHHS, et al.* consent decree.

Basis statement:

The Department of Health and Human Services (the “Department”) adopts these rule changes to 10-144 CMR ch. 101, *MaineCare Benefits Manual*, Chapter II, Section 97 to enhance safeguards and protections of client rights under the *Bates, et al. v. Commissioner, DHHS, et al.* consent decree by creating new provisions addressing terminations from and referrals to Appendix E Private Non-Medical Institutions.

First, under Section 97.07-10, Termination, prior to terminating a member’s services, providers must receive written approval from the Office of Behavioral Health (OBH); must issue a 30-day advanced written termination notice to the member, with an exception for cases involving imminent harm; and must assist the member in obtaining clinically necessary services from another provider prior to termination. This adoption will protect members from inappropriate discharge from these services.

Second, under Section 97.07-11, Referrals, providers must acknowledge receipt of Department referrals within three business days for members eligible for Appendix E services and must accept or request permission to decline referrals in accordance with a Department-defined process within five business days of receipt of referral. Providers can only decline a referral with written approval from OBH, otherwise they must admit members within thirty days of receipt of the referral. This adopted language will assist members in receiving timely access to Appendix E services.

This adopted rule also provides clarity and consistency in record-keeping processes to align with other MaineCare policies. Specifically, the adopted rule changes the frequency requirement for entering and signing progress notes from a monthly to a daily expectation within Appendix E facilities. Adoption of this rule will improve accuracy and quality within member records.

In addition, as a result of further review by the Department and the Office of the Attorney General following the comment period, this adopted rule updates offensive terminology throughout the rule. This includes replacing references to “substance abuse” with “substance use” per Public Law 2017 ch. 407 part B sec. B-1.

Finally, this adopted rule include non-substantive technical, grammatical, and other minor changes, including updating the outdated references to current Department office names. The Summary of Public Comments and Department Responses document identifies changes that were made to the final rule following the comment period.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

This rulemaking will take effect on July 1, 2021 to coincide with the anticipated adoption of changes to the MaineCare Benefits Manual, Section 17 and Section 92, which similarly enhance and safeguard client rights under the Bates consent decree.

Fiscal impact of rule:

The Department does not anticipate any fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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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; 22 MRS §8110; 42 USC §671(20); PL 2019, ch. 407; *The Family First Prevention Services Act*, Public Law 115-123 (as part of Division E in the *Bipartisan Budget Act of 2018* (HR 1892) (eff. Feb. 9, 2018) (as amended through PL 116-260, enacted December 27, 2020)

Chapter number/title: **Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 97**, Private Non-Medical Institution Services

Filing number: **2021-223**

Effective date: 11/1/2021

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 the following changes to 10-144 CMR ch. 101, *MaineCare Benefits Manual* (MBM), chapter II section 97, “Private Non-Medical Institution Services”.

The Department adopts these rule changes to align section 97 requirements with the *Family First Prevention Services Act* (FFPSA), which establishes standards for children’s residential treatment programs in order to improve quality and oversight of services. The adopted changes are specific to Private Non-Medical Institution (PNMI) Appendix D Facilities, and are reflected in the definitions, eligibility for care, covered services and policies and procedures sections of this rule. Additionally, as directed under the FFPSA, the adopted rule includes requirements for Appendix D providers to meet Qualified Residential Treatment Programs (QRTM) standards, which include obtaining and maintaining specified licensing and accreditation standards, as well as delivering trauma-informed treatment.

For compliance with the FFPSA related to improving quality and oversight of services, the Department amended Appendix D language referring to Child Care Facility Services and Models of Child Care Facilities, to be replaced with the term, “Children’s Residential Care Facilities” (CRCFs). The adopted rule distinguishes models of residential care that address specific treatment needs of different member populations. CRCF models include Intellectual Disabilities/Developmental Disabilities (ID/DD-CRCF), Mental Health (MH-CRCF), Crisis Stabilization (CS-CRCF), and Child and Adolescent Therapeutic Foster Care. This rule further adopts amended language referring to “Intensive Temporary Residential Treatment Services” by replacing this with the term “Temporary High Intensity Services” and including language clarifying the covered services while also establishing the requirement for a Prior Authorization process.

The rule also adopts the use of Department-approved, age appropriate Level of Care/Service Intensity tools, which is required as a component of eligibility determination for ID/DD, MH, and CS CRCFs. The Level of Care/Service Intensity tools replace outdated instruments, to include the Child and Adolescent Functional Assessment Scale (CAFAS), the Children’s Global Assessment Scale (C-GAS), the Global Assessment Functioning (GAF), and the Children’s Habilitation Assessment Tool (CHAT); and streamline the process by utilizing one tool that is evidence based and clinically appropriate by age, to include the Early Childhood Service Intensity Instrument (ECSII), the Child and Adolescent Level of

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Care/Service Intensity Utilization System (CALOCUS-CASII) and the Level of Care Utilization System for Psychiatric and Addiction Services (LOCUS).

Additionally, this rule adopts various new covered services, including Aftercare Support Services, which are designed to promote a continuation of treatment gains with the goal of supporting the child in their home and community environment, and must be provided to youth for at least six (6) months post discharge from MH and ID/DD-CRCFs. The Department is additionally requiring a new position, a Family Transition Specialist (FTS), to aid in the delivery of aftercare and transition services for the youth and family.

To further align with the FFPSA to achieve improved quality and oversight of services, this adopted rule clarifies Appendix D requirements for the CRCF assessment, Individual Treatment Plan, progress notes, and discharge summary as well as adding various new defined terms.

The Department additionally adopted language that requires providers operating under Appendix D and Adolescent Residential Rehabilitation Services operating under Appendix B, to demonstrate utilization of the Federal Substance Abuse and Mental Health Services Administration's (SAMHSA) System of Care Principles. The rule requires delivery of trauma-informed care through the completion of a Trauma-Informed Agency Assessment, staff training and incorporation of these principles into program policy and procedures.

The Department also adopts specific requirements regarding background checks for providers operating under Appendix D and Adolescent Residential Rehabilitation Services providers operating under Appendix B. Children's residential facility providers must follow the requirements set forth in 22 MRS §8110 and 42 USC §671(20). Behavioral Health Services providers must conduct background checks every five (5) years and fingerprinting. The adopted rule requires completed background checks for all staff and all adults providing services to a member within ninety (90) days of the effective date of this rule and that all background checks are to be completed every five (5) years thereafter.

The Department further adopts, under Appendix D, the addition of Behavioral Health Professionals (BHP) and Family Transitional Specialists (FTS) as Other Qualified Residential Treatment Facility Staff as well as including Board Certified Behavior Analyst services, Registered Behavior Technician services and Board Certified Assistant Behavior Analyst services. The Department is requiring confirmation that prospective BHPs are not annotated in the registry (per 10-144 CMR ch. 128, Certified Nursing Assistant and Direct Care Worker Registry Rule) prior to qualifying as a staff member under this rule.

In addition to the above adopted changes, the Department adopted language increasing access to necessary services by removing the 'single admission' limitation and increasing the number of allowable covered days for Halfway House and Extended Care Services under PNMI Appendix B of this rule. The Department also adopted edits to language to accurately reflect current practices as well as updates to formatting, citations, and references where necessary, including changes to address potentially stigmatizing language based on recommendations from Maine's opioid task force and legislation passed in 2018 to minimize stigma (PL 2017, ch. 407).

The Department shall seek CMS approval for the new covered services and provider requirements, as specifically noted in various adopted rule changes.

In addition, the Department intends to implement corresponding changes as needed in the MBM, chapter III section 97, to ensure adequate reimbursement for providers to deliver all new covered services and meet QRTP standards and other chapter II-related updates. For example, chapter III appendix D sec. 2400.1 must be updated in order to ensure that rates cover the costs of Board Certified Behavior Analysts and the other new types of direct service staff. The chapter III section 97 rule is major substantive, and the upcoming changes shall be

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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filed as an emergency rule no later than Nov. 1, 2021, so that they will be effective at the same time the changes in chapter II section 97 are finally adopted.

Considering public comment and legal advice from the Office of Attorney General, the Department made various changes to the final rule from what was proposed.

Changing requirements for Appendix D providers, service delivery, and provisions of treatment to provide more specificity and allow for more flexibility for providers, include:

- Updating language related to accreditation under 97.07-2(F)(h)(2) to allow for accreditation to be completed within 12 months.
- Extending the Prior Authorization for Temporary High Intensity Services (97.02-5(C)) from a seven (7) day authorization to “up to thirty (30) days.”
- Including language under 97.08-2.G(6) to address exemptions related to Aftercare Support Services.
- Adding language under 97.06-3 (Non-Reimbursable Days), to include, “Members receiving services in an emergency department are exempt from this provision when emergency treatment is sought at 8:00pm or later and the member returns to the facility the following day.”
- Removing references that limit telehealth services and reducing the frequency of required in-person contact for Aftercare Support Services.
- Clarifying that both ITPs and FBAs are reviewed minimally every thirty (30) days.
- Updating language, under 97.08-2(C)(2), to include more flexibilities for behavioral and/or rehabilitative therapies.
- Clarifying language related to family involvement in treatment under Appendix D CRCFs to include more involvement by the Department’s Office of Child and Family Services (OCFS) and specific requirements.

Changing requirements for Appendix D CRCF staff include:

- Allowing for, under 97.07-2(H)(2), a bachelor’s degree in an unrelated field with at least one (1) year of related professional experience, extending time for staff to obtain BHP certification for new hires to six (6) months from the date of hire and staff currently employed to one (1) year from the effective date of the rule.
- Updating CRCF staff supervision requirements to include a minimum of three (3) hours per month includes one (1) hour of individual and one (1) hour of clinical supervision conducted by a Clinician as defined in 97.01-4.

All changes are specifically listed in the separate document, Summary of Comments and Responses and List of Changes to the Final Rule.

Fiscal impact of rule:

The Department intends to address the fiscal impact of all ch. II -related updates and related budget initiatives identified in PL 2021 ch. 398 with corresponding changes in the MBM, ch. III section 97.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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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. III Section 97**, Private Non-Medical Institution Services
Filing number: **2021-224**
Effective date: 11/1/2021
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 the following emergency major substantive rule changes in 10-144 CMR ch. 101, *MaineCare Benefits Manual*, chapter III section 97, “Private Non-Medical Institution Services”, including chapter III (the “Main Rule”) and appendices B (Substance Abuse Treatment Facilities) and D (Child Care Facilities).

In chapter III, the Department is updating the main rule and corresponding appendices for appendix B and appendix D to support the final adopted changes in chapter II section 97, with the rules intended to be filed simultaneously. The chapter II rule changes implement various new requirements on appendix D providers per the *Family First Prevention Services Act* (FFPSA), and also adds new covered MaineCare services. Chapter II also imposes new requirements on Appendix B providers and broadens those covered services.

In recognition of these new requirements, the Department implements these emergency major substantive reimbursement rate increases. The new rates were authorized by the Legislature pursuant to PL 2021 ch. 29, *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, 2022 and June 30, 2023* (the “Budget”) and PL 2021 ch. 398, *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, 2021, June 30, 2022 and June 30, 2023* (the “Supplemental Budget”). The rates are also consistent with independent rate studies completed for Appendix B and Appendix D services.

Section GGGG-1 of the Supplemental Budget provides the Department with authority to enact these changes on an emergency basis, without the need to make findings in support of an emergency per 5 MRS §8054. Emergency major substantive rules are effective for up to 12 months or until the Legislature has completed review of the provisionally adopted major substantive rule. 5 MRS §8073. The Department shall seek approval from the Centers for Medicare and Medicaid Services (CMS) for the increased appendix B and appendix D rates. The Department shall file the corresponding chapter III section 97 proposed major substantive rules in order to begin the process for implementing these changes permanently.

In addition to the above, the Main Rule and relevant Appendices has been updated to reflect changes to certain services in order to gain consistency with chapter II, including updating “Crisis Residential” services to “Crisis Stabilization” services, “Treatment Foster Care” to “Therapeutic Foster Care,” and “Substance Abuse treatment” to “Substance Use treatment.”

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Appendix B implements rate updates from an independent rate study, recommending substantial increases, consistent with appropriations approved by the Budget and the Supplemental Budget. Additional changes are required to ensure that the terminology in appendix B is consistent with what is utilized in the finally adopted chapter II rule; for example, “Detoxification” programs are changed to “Medically Supervised Withdrawal Services.” This rulemaking creates two tiers of reimbursement, one tier incorporating all medical personnel, and another tier as an exception rate for low nursing staff, given substantial workforce challenges. Lastly, service components of the rate in 2400.1 were updated to clarify social workers as licensed clinical social workers and to add licensed marriage and family therapists, to align with changes adopted in chapter II.

Appendix D updates the name from “Childcare Facilities” to “Children’s Residential Care Facilities” in order to align with changes adopted in chapter II. In section 2400.1, board certified behavioral analyst services, board certified assistant behavior analyst services, and registered behavior technician services were added to align with changes in chapter II. Following the independent rate study, rate recommendations are incorporated, including consolidating Mental Health Level I and Level II services into a single Mental Health level of reimbursement, and consolidating Intellectual Disabilities and Autism Spectrum Disorder Levels I and II into a single Intellectual Disabilities/Developmental Disabilities residential treatment rate. Due to the rate changes and finally adopted changes in chapter II section 97, this rule removes language from section 6000 because the referenced member assessment is no longer required. Chapter III also establishes rates for a proposed new MaineCare covered service, Aftercare Services, for the service itself and for mileage reimbursement. Aftercare is a required component of the FFPSA, and establishing the rate is necessary in order to meet the requirements of the FFPSA and the changes adopted in chapter II section 97. The Department shall seek approval from CMS for the new Aftercare Services and the additional practitioners allowable under this Appendix.

Finally, in order to be consistent with the changes that will be finally adopted in chapter II, the Department implements necessary updates to further address potentially stigmatizing language pursuant to PL 2017 ch. 407, and to update references to the Office of Behavioral Health from the Office of Substance Abuse.

Fiscal impact of rule:

The Department anticipates that this rulemaking will cost approximately \$14,037,296 in SFY 2022, which includes \$5,007,768 in state dollars and (9,029,528 in federal dollars, and \$21,055,945 in SFY 2023, which includes \$7,996,483 in state dollars and \$13,059,462 in federal dollars.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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. VII Section 5**, Estate Recovery
Filing number: **2021-240**
Effective date: 11/24/2021
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis statement:

This emergency rulemaking implements PL 2021 ch. 398, *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, 2021, June 30, 2022 and June 30, 2023*, part A §A-1, pg. 99, an initiative that provides funding to modify MaineCare estate recovery rules to conform with the minimum mandatory federal requirements (*The Omnibus Budget Reconciliation Act of 1993* (PL 103-66)).

Chapter VII section 5, “Estate Recovery”, of the *MaineCare Benefits Manual* (MBM), is modified as follows: Effective November 24, 2021, the Department’s claim is limited to the amount paid by MaineCare for all nursing facility services, home and community-based services, and related hospital and prescription drug services paid on behalf of the Member prior to their death. These services for which recovery is required under federal law.

Pursuant to Act, the Legislature provided the Department with rulemaking authority to implement these services on an emergency basis, per 5 MRS §8054, without the necessity of demonstrating that immediate adoption is necessary to avoid a threat to public health, safety, or general welfare. Emergency rules are effective immediately and valid for ninety days. The Department shall hereafter initiate “regular” routine technical proposed rulemaking to implement this rule permanently.

Fiscal impact of rule:

The Legislature appropriated state General Funds to the Department of Health and Human Services in the amounts of \$416,870 in fiscal year 2021-22 and \$415,946 in fiscal year 2022-23, and appropriated federal Expenditures Funds in the amounts of \$738,535 in fiscal year 2021-22 and \$739,459 in fiscal year 2022-23.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Division of Licensing and Certification**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 7853, 42, and 3173
Chapter number/title: **Ch. 113**, Regulations Governing the Licensing and Functioning of Assisted Housing Programs, Infection Prevention and Control
Filing number: **2021-119**
Effective date: 6/4/2021
Type of rule: Major Substantive
Emergency rule: No

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

Basis statement:

This is a new, separate rule, that constitutes the 10th Part of 10-144 CMR ch. 113 (Regulations Governing the Licensing and Functioning of Assisted Housing Programs. This Infection Prevention and Control Rule Part is applicable to, and governs, the other nine Parts of the Chapter 113 rule: Assisted Living Programs, Level I Residential Care Facilities; Level II Residential Care Facilities; Level III Residential Care Facilities; Level IV Residential Care Facilities; Level I Private Non-Medical Institutions; Level II Private Non-Medical Institutions; Level III Private Non-Medical Institutions and Level IV Private Non-Medical Institutions. Pursuant to 22 MRS §7853, this rule is a major substantive rule.

This new rule institutes measures to improve and clarify infection surveillance, control, mitigation, and crisis staffing planning in Maine's assisted housing facilities, including assisted living, residential care facilities, and private non-medical institutions.

The provisions related to Infection Prevention and Control apply to all types of Assisted Housing Programs subject to licensure under 22 MRS §7801. These provisions are consistent with State and Federal Center for Disease Control guidance, in response to the increased spread of the 2019 Novel Coronavirus (COVID-19) and will help to mitigate any future outbreaks of novel contagious illnesses. These provisions on infection prevention and control measures necessary for these settings were drafted in consultation with infection control experts from the Maine Center for Disease Control and the Office of Aging and Disability Services.

The Department adopted similar provisions in the recent revision of 10-144 CMR ch. 110, *Regulations Governing the Licensing and Functioning of Skilled Nursing Facilities and Nursing Facilities*, effective August 1, 2020. This rulemaking addresses the likelihood of potential similar incidence of COVID-19 in in Maine's assisted housing facilities, including assisted living and residential care facilities and private non-medical institutions, and the mortal impact of transmission.

In compliance with 22 MRS §7853(1), the Department developed this rule in consultation with the Long-Term Care Ombudsman Program (LTCOP). On June 25, 2020, the Department submitted draft rules to Brenda Gallant, Executive Director of the LTCOP, for her review and input. Department staff and LTCOP Executive Director Gallant and staff discussed the rulemaking on or about June 26, 2020, at which time Executive Director Gallant expressed no concerns regarding the draft rule.

The Department, through OADS, had requested federal Covid Relief Funding (CRF) under the Coronavirus Aid, Relief, and Economic Security Act to hire an infection control consultant, who worked with facilities to help them develop an Infection Control and Prevention plan, as required by this rule. The Department received approval for the CRF at the end of September 2020. The facilities' plan development/infection control consultation costs were defrayed

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

though the CRF. The rule provides a requirement for PPE and supplies, but these measures have been in place in the facilities in response to the COVID-19 pandemic.

Because this is a major substantive rule, the APA required a public hearing be held. 5 MRS §8052(1). Due to the Covid public health emergency, the public hearing was held virtually via ZOOM on Thursday, November 12, 2020.

Pursuant to 5 MRS §8072, the provisionally adopted rule was submitted to the Maine Legislature for its review. The legislative review resulted in no changes to the provisionally adopted rule. HP 421, LD 578, “Resolve, Regarding Legislative Review of Portions of Chapter 113: Regulations Governing the Licensing and Functioning of Assisted Housing Programs: Infection Prevention and Control, a Major Substantive Rule of the Department of Health and Human Services, Division of Licensing and Certification” finally passed on April 28, 2021, and enacted as an emergency resolve, and was signed into law on May 5, 2021. Resolves 2021 ch. 13, (emergency, effective May 5, 2021). Sec. 1 of the Resolve provides that: “Notwithstanding Title 5, section 8072, subsection 8, when finally adopted in accordance with this resolve, this rule takes effect immediately upon filing with the Secretary of State.”

Fiscal impact of rule:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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 §§ 820(1)(C)
Chapter number/title: **Ch. 124**, Emergency Medical Services Personnel Reporting Rule
Filing number: **2021-148**
Effective date: 8/20/2021
Type of rule: Major Substantive
Emergency rule: No

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

Basis statement:

Pursuant to 22 MRS §820(1)(C), this is a major substantive rule. Pursuant to Resolve 2021 ch. 51, the Department of Health and Human Services (Department) finally adopts this new major substantive rule, 10-144 CMR chapter 124, Emergency Medical Services Personnel Reporting Rule.

On April 22, 2020, the Department adopted an emergency major substantive rule, which, per 5 MRS §8073, was effective one year, through April 21, 2021. The Department then proposed a major substantive rule. After the comment period, the rule was provisionally adopted and submitted to the Legislature for its review pursuant to 5 MRS §8072. Resolve ch. 51 authorized final adoption of this rule and directed that immediate enactment of the Resolve was necessary, and therefore directed that the Resolve took effect when approved. The Resolve was approved by the Governor on June 11, 2021. In accordance with 5 MRS §8072(8), the Department has finally adopted this rule within 60 days of the effective date of the legislation approving this rule.

Through its authority in 22 MRS §820(1)(C), the Department is establishing a uniform system of reporting requirements, to enable statewide surveillance of the response capacity of the State of Maine's healthcare workforce, specifically emergency medical service (EMS) personnel, during a declared Extreme Public Health Emergency (22 MRS §802(2-A)). This rule ensures the Department's continued 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 requires EMS organizations and emergency medical dispatch (EMD) centers to report information about EMS personnel who, during a declared Extreme Public Health Emergency, have been removed from the workforce temporarily because they have been exposed to a Notifiable Disease or 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. Accurate and reliable statewide data is essential for coordinating with municipal localities, other State

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

offices, federal emergency management agencies and healthcare systems across the State, in order to prepare for and respond to public health emergency needs.

Fiscal impact of rule:

None anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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 §2604-B
Chapter number/title: **Ch. 234** (*New*), Lead Testing in School Drinking Water Rule
Filing number: **2021-257**
Effective date: 1/12/2022
Type of rule: Major Substantive
Emergency rule: No

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

Basis statement:

Approximately 120 of Maine's 700 schools are currently regulated as public water systems, because they serve water from their own source of water, usually a well, to at least 25 people for at least 60 days in a year. These schools regulated as public water systems must comply with State and federal drinking water requirements for lead in the *Rules Relating to Drinking Water* (10-144 CMR ch. 231). This new major substantive rule expands lead testing requirements to the remaining 580 Maine schools that receive water from districts or utilities, in order to identify and mitigate high lead levels.

The Department of Health and Human Services, Maine CDC (the Department), advertised a proposed rulemaking on December 18, 2019 to create a new rule, 10-144 CMR ch. 234, *Lead Testing In School Drinking Water Rule*. A public hearing was held on January 8, 2020. Written comments were accepted until January 18, 2020. The provisionally adopted major substantive rule, pursuant to 5 MRS §8072, was submitted to the Legislature for review on March 11, 2020. The Legislature adjourned, due to the COVID-19 pandemic before it could review the provisionally adopted rule. As a result, the Department submitted the provisionally adopted rule a second time to the Legislature for review on December 8, 2020.

Following its review of the provisionally adopted rule received in December 2020, the Legislature directed the Department to change a number of items, in the 130th Legislature's Resolve, Regarding Legislative Review Chapter 234: Lead Testing in School Drinking Water Rule, a Major Substantive Rule of the Department of Health and Human Services, Maine Center for Disease Control and Prevention (Resolves 2021 ch. 44), which became law on June 11, 2021. The Department made the following changes at the direction of the Legislature:

1. Replaced 15 ppb as the lead action level with 4 ppb in Sections 4.A, 5.A, 5.A.3, 5.B, 6.B.2, 6.B.3 and 6.B.4.
2. In Section 1.B.4, deleted the phrase "and a maximum of no more than 18 hours".
3. In Section 3.B.3, replaced the sentence "The Department, in accordance with the 3T's guidance, recommends that the water be motionless no longer than 18 hours, before the collection of samples begins." with the sentence "Excessive flushing of pipes may not take place immediately prior to the minimum 8-hour nonusage period in order to ensure that the sample represents a period of normal use".
4. In Section 6.C, replaced the phrase "within 10 days" with the phrase "as soon as practicable within 5 days".

In addition to the changes required by the Legislature, the Department also made three non-substantive edits to the rule. In the Table of Contents, the Department revised the Section 5 heading from "Abatement and Mitigation Methods" to "Abatement and Mitigation" to be consistent with the heading of Section 5 within the rule. Similarly, within the rule the Department revised the heading of Section 6 from "Public Notification to Parents" to "Public

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Notification," which is the heading of Section 6 in the Table of Contents. Finally, in Section 6(A) the Department removed an extra period from the end of the sentence.

This new major substantive rule complies with 2019 PL ch. 158, *An Act to Strengthen Testing for Lead in School Drinking Water*, codified at 22 MRS §2604-B, which directs the Department to adopt a major substantive rule and establish drinking water testing protocols for lead in schools, a standard of lead in school drinking water, abatement and mitigation methods, as well as public notification and reporting protocols.

Fiscal impact of rule:

There are no additional costs associated with this rule. The Department will utilize existing staff and resources.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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 (Maine CDC)**
Umbrella-Unit: **10-144**
Statutory authority: 5 MRS §8052; 22 MRS §§ 802(3), 821, 835
Chapter number/title: **Ch. 258**, Rules for the Control of Notifiable Diseases and Conditions
Filing number: **2021-035**
Effective date: 2/17/2021
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This routine technical rule adoption is to permanently establish requirements implemented on an emergency basis for designated health care facilities to report information related to emergency preparedness and responsiveness, and clarifying the Departments authority to access health information through the state health information exchange described at 22 MRS §1711-C(18). This rule improves the Maine CDC's ability to prepare for and respond to health emergencies related to the spread or potential spread of communicable, zoonotic, occupational or environmental diseases and conditions or widespread exposure to a toxic agent or environmental hazard. This rule change further amends 10-144 CMR chapter 258 to: 1) add the following five additional disease conditions: Acute flaccid myelitis, *Candida auris*, *Borrelia miyamotoi*, vaping-associated pulmonary illness, and Zika; 2) modify two multi drug-resistant organisms; 3) remove *Staphylococcus aureus* (MRSA) from the list; 4) update the human immunodeficiency virus (HIV) testing terminology; 5) clarify authority to access health information, including healthcare information from other entities not specified (e.g. MaineCare), as permitted by statute, to aid in epidemiological investigations; 6) clarify laboratories' electronic reporting requirements; 7) clarify temporary reporting requirements that may be issued through public notice when the disease or condition can cause serious morbidity or mortality and reporting is necessary to monitor, prevent, or control the disease or condition to protect public health; and 8) clarify enforcement actions, including referrals to licensing boards and/or the Office of the Attorney to seek injunctive relief for noncompliance with reporting Category 1 conditions, specifically, and assess civil fines for noncompliance and false reporting. Additionally, the adopted rule specifies the revised frequency in reporting of bed occupancy required outside of a declared health emergency event as it relates to emergency management planning and responsiveness. Provisions of the adopted rule ensure that the Department is consistent with disease reporting recommended nationally for conditions impacting public health and safety, and that information is accessible timely as diseases and conditions emerge and data needs evolve.

Basis statement:

The Department of Health and Human Services (Department) is adopting changes to the Control of Notifiable Diseases and Conditions Rule, a routine technical rule, pursuant to the Control of Notifiable Diseases and Conditions Act, 22 MRS §§ 801 *et seq.* The Control of Notifiable Diseases or Conditions Rule identifies those communicable, environmental, and occupational diseases and conditions the presentation of which must be reported to the Department; sets forth reporting requirements; outlines the Department's authority and practices to investigate, surveille, and control such diseases and conditions; and identifies additional interventions the Department may implement to counter public health threats during a declared health emergency or extreme public health emergency.

Amendments of the Control of Notifiable Diseases and Conditions rule adopted by the Department supplement and move the list of the notifiable diseases and conditions that must

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

be reported to the Department to a new Appendix A, and further the protection of the public health and safety through disease surveillance, investigation, and intervention. This Notifiable Diseases and Conditions Reporting Rule also implements safeguards to limit the potential for the spread of communicable, occupational, and environmental diseases and conditions and widespread exposure to a toxic agent or environmental hazard. The adopted rule also sets forth requirements for the reporting of emergency planning and critical resource capacity, and clarifies the Department's authority to directly access the statewide health information exchange in accordance with 22 MRS §1711-C (18).

The Department is designating the following additional diseases and conditions as Notifiable Diseases and Conditions: 1) acute flaccid myelitis (AFM); 2) *Borrelia miyamotoi*; 3) *Candida auris*; 4) pan drug-resistant organisms; 5) Zika virus disease; and 6) colistin-resistant organisms. This rule expands testing and reporting for Human immunodeficiency virus (HIV) to include current laboratory testing technology and reference US CDC requirement; expands carbapenem-resistant *Enterobacteriaceae* (CRE) to require carbapenem-resistant organisms (CRO), as defined by the updated Clinical Laboratory Standards Institute Performance Standards; expands *Staphylococcus aureus* with resistance to vancomycin (VRSA) to *Staphylococcus aureus* non-susceptible to VRSA; and removes *Staphylococcus aureus*, methicillin-resistant.

- The addition of AFM to Maine's notifiable disease and conditions list will increase provider awareness for the condition, improve reporting promptness and ideally improve the quality of specimen collection which are all important for such a severe disease that is currently not well understood.
- One of the missions for public health is to slow the spread of emerging drug-resistant organisms, especially in healthcare facilities. Changes to two multi drug-resistant organisms will achieve greater public health protection and consistency with the updated Clinical Laboratory Standards Institute Performance Standards and allow the public health department to respond to the threat of emerging multi-drug resistance organisms. These organisms include: 1) carbapenem-resistant *Enterobacteriaceae* (CRE), which will be modified to include germs from other bacteria families and include only carbapenemase-producing CRE/CRO, as this subset of CRE/CRO is considered to be a more significant threat to public health due to these organisms' ability to spread resistance rapidly; and 2) *Staphylococcus aureus* with resistance to vancomycin, which will be expanded to *Staphylococcus aureus* non-susceptible to vancomycin, to include *Staphylococcus aureus* with intermediate-resistance to vancomycin.
- The rule requires the reporting of organisms resistant to colistin, and organisms resistant to all drugs (pan drug-resistant organism) and *Candida auris*, the most concerning resistant germs to help Maine CDC monitor the occurrence of these organisms, assess the public health risk, and develop educational or containment activities.
- Invasive methicillin-resistant *Staphylococcus aureus* (MRSA) is removed from the rule. MRSA is now widespread throughout Maine and MRSA data for Maine are available via other state and federal reporting mandates.
- Due to the public health risks of Zika virus infection in women of childbearing age and newborns, the addition of Zika to the list of notifiable conditions will enhance public health surveillance capabilities and will allow Maine CDC to focus on prevention methods that target populations at high-risk for this disease.
- The addition of *Borrelia miyamotoi* to the list of notifiable conditions will help Maine CDC monitor and understand the distribution of this disease and prepare resources to educate communities.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

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 healthcare facility's emergency management planning and operations. Adoption of this rule amendment standardizes reporting requirements to enable ongoing statewide surveillance of hospital and other healthcare facility resources and planning to aid emergency preparedness and responsiveness at the State and local levels related to the risk or potential risk of supply shortages during a declared public health threat or extreme public health emergency, to mitigate the impact of on public health and safety and reduce system recovery periods. During and outside of any declared health emergency, reporting of bed type occupancy and medical supply inventory and the reporting of potential emerging injurious diseases or conditions for a temporary period serve as critical surveillance methods for the Department to prepare for and respond timely and appropriately to actual emergencies.

22 MRS §802(1)(C) authorizes the Department to make rules to describe its process for investigating cases, epidemics, outbreaks and occurrences of communicable, environmental, and occupational diseases. Adopted amendments clarify the Department's authority to access patient and hospital information via the statewide health information exchange network (HIN), described in 22 MRS §1711-C, to assess and verify clinical information and inform potential related contact history, improving disease surveillance and facilitating a more efficient epidemiological case investigations. Efficiencies in electronic reporting and the Department directly accessing HIN reduces administrative burden related to reporting information to the Department to conduct investigations of cases, outbreaks, epidemics, exposures, or potential epidemics or exposures of notifiable conditions and diseases. For the purpose of responding to and investigating outbreaks, epidemics, exposures, or potential epidemics or exposures of notifiable conditions and diseases, timely access to information related to an identified public health risk is critical to protecting citizens of Maine. Failure to comply with reporting requirements potentially delays response time and, to ensure timely data transmission and incident responsiveness, the rule outlines progressive enforcement actions which includes assessing fines within the range specified in statute for entities failing to report data electronically in accordance with the rule's requirement to use the Maine CDC's surveillance system, and which may also include a referral to licensing board(s) for noncompliance with reporting requirements for Category I diseases and conditions. Additionally, this rule includes new and revised definitions; a new rule title and rule construction; grammatical corrections; and other minor technical changes for improved readability and consistency with agency formatting standards.

Fiscal impact of rule:

No anticipated significant fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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 (Maine CDC)** (*jointly with the Department of Education*)

Umbrella-Unit: **10-144**

Statutory authority: 20-A MRS §§ 6352-6358; 22 MRS §806

Chapter number/title: **Ch. 261** (DOE: ch. 126), *Immunization Requirements for School Children*

Filing number: **2021-187**

Effective date: 9/25/2021

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

The Department of Health and Human Services - Maine Center for Disease Control and Prevention (DHHS) and the Maine Department of Education (DOE) are jointly adopting this routine technical rule change to implement PL 2019 ch. 154: *An Act to Protect Maine Children and Students from Preventable Disease by Repealing Certain Exemptions from the Laws Governing Immunization Requirements* (the "Act") by amending *Immunization Requirements For School Children*, a joint rule that specifies the diseases for which immunity or immunization is required for children entering elementary and secondary school. The Act prohibits the inclusion of any provision governing medical exemptions in this rule. (PL 2019 ch. 154 §7). The Act repeals the exemption from required immunization for school students who object based on a sincere religious belief or philosophical reasons, effective September 1, 2021, with exceptions for certain students, including those participating in distance learning programs and those covered by an individualized education plan. Those students who have previously declined immunizations based on religious or philosophical objection and are otherwise not eligible for exemptions permitted by law, including those attending elementary or secondary schools for pre-kindergarten instruction, will be subject to current immunization requirements for specified diseases. This rule requires schools to include in their annual reports any applicable immunization requirements adopted by ordinance or policy, in addition to the immunization status of all students, including immune students, exempt and non-immunized students. Additionally, these rule changes include new and revised definitions; add a vaccine schedule for pre-kindergarten students; clarify existing authority and responsibility to exclude an individual from school when there is a public health threat pursuant to 20-A MRS §§ 6301, 6356(1), 22 MRS ch. 250, and 10-144 CMR ch. 258 and responsibility related to non-immunized and exempt students. Finally, changes are adopted to the format of the rule for conformity with Maine CDC rulemaking standards.

Basis statement:

This joint rule is established to ensure a safe and healthful school environment for all Maine students by requiring all children entering public or private schools in the State of Maine to receive the required vaccines recommended by the Federal Centers for Disease Control (CDC) and the Advisory Committee on Immunization Practices (ACIP).

This rule prescribes the dosage for required immunization for students enrolled in or attending in-person classes or remote learning program instruction for pre-kindergarten through grade 12, clarifies circumstances requiring exclusions from school, and refines record-keeping and reporting requirements for school officials specific to children enrolled in or attending a school, including immune students, students exempt from immunization requirements in accordance with 20-A MRS §6355 and the rule, and non-immunized students. The adopted rule includes changes made based on public comment and recommendations by

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

the Office of Attorney General, which the Department determined further clarify proposed provisions and, as non-substantive in nature, do not meet the threshold to require further public comment.

Public Law ch. 154 (introduced as LD798): *An Act to Protect Maine Children and Students from Preventable Disease by Repealing Certain Exemptions from the Laws Governing Immunization Requirements* was signed by Janet Mills on May 24, 2019. This new law, which takes effect September 1, 2021, removes the provisions permitting exemption from immunization requirements, based on religious and philosophical objection, and prohibits the rule from including provisions governing medical exemptions. This rule implements the requirement that all students provide a complete immunization record or a signed medical exemption that is provided by a Maine-licensed physician, nurse practitioner (NP) or physician assistant (PA) to enroll and/or attend a public or private elementary or secondary school in the State of Maine, unless otherwise exempt in accordance with this law and the adopted rule.

The Department determines that this rule adoption has no significant financial impact. This rule is supported by the Maine Immunization Program providing vaccines at no cost for children in the State, including all required school vaccines. Additionally, the rule provides for a child who has not receive vaccinations in accordance with the rule, to consult with a Maine-licensed physician, NP or PA to advise on a revised immunization schedule to catch up on required vaccination doses.

Fiscal impact of rule:

No significant financial impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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 (Maine CDC)**
Umbrella-Unit: **10-144**
Statutory authority: 20-A MRS §6359(6)
Chapter number/title: **Ch. 262**, Post-Secondary Immunization Rule
Filing number: **2021-154**
Effective date: 8/11/2021
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

10-144 CMR Chapter 262 implements 20-A MRS §6359, which identifies certain preventable diseases for which immunization is required of all students attending public or private post-secondary schools in the State, unless exempt under Maine law, and states dosing requirements consistent with federal recommendations for the specified immunizing agents. The Department is proposing amendments to the rule to implement PL 2019 ch. 154, *An Act to Protect Maine Children and Students from Preventable Disease by Repealing Certain Exemptions from the Laws Governing Immunization Requirements*, enacted by the 129th Maine Legislature and effective June 16, 2020 (the “Act”). The Act prohibits the Department from including any provision governing medical exemptions in this rule. (PL 2019 ch. 154, §7.) The Act repeals the exemption from required immunization for post-secondary school students who state a sincere religious belief or philosophical reasons for opposing immunization, effective September 1, 2021. (PL 2019 ch. 154 §6.) Consistent with the Act, this rule proposes to remove language describing authorized exemptions in law, to minimize potential confusion and the need for subsequent rulemaking. The proposed rule amendments will clarify authority and responsibility regarding the exclusion of students when there is a public health risk related to a disease outbreak and will specify the required documentation in students’ health records for recording immunization status for all students, including immune students, exempt and non-immunized students. The Department is proposing language to clarify the definition of ‘*School*’ and language to clarify that students who do not physically attend classes or programs at the school are permitted to be enrolled in a distance learning program without documented evidence of immunization or immunity.

Basis statement:

Pursuant to 20-A MRS §6359(6), this rule is routine technical, as defined in 5 MRS §8071(2)(A), except for those provisions that specify the diseases for which immunization is required, which are major substantive, as defined in 5 MRS §8071(2)(B). The adopted amendments implement PL 2019 ch. 154, *An Act to Protect Maine Children and Students from Preventable Disease by Repealing Certain Exemptions from the Laws Governing Immunization Requirements*, enacted by the 129th Maine Legislature and effective June 16, 2020. This Act prohibits the Department from including any provision governing medical exemptions in this rule and repeals the exemption from required immunization for post-secondary school students who state a sincere religious belief or philosophical reason for opposing immunization, effective September 1, 2021.

Consistent with this Act, the Post-Secondary School Immunization Rule removes specific language concerning exemption requirements, to ensure that the rule can remain consistent with provisions in law that include varying effective dates for medical, religious and philosophical exemptions, avoiding potential confusion and subsequent rulemaking. The final adopted rule clarifies the authority and responsibility regarding the exclusion of students, when there is a public health risk related to a disease outbreak and specifies the required

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

documentation in students' health records for recording immunization status for all students, including immune students, exempt and non-immunized students, as well as required content of the school's annual report.

Student immunization information may be accessed by the Department for the purpose of monitoring compliance with the law and to inform, for public health purposes, control measures for certain communicable diseases and potential outbreaks. Nothing in this rule may be construed to preclude the governing board of a public or private post-secondary school from adopting immunization requirements that are more stringent than the provisions set forth in statute or this rule, which is in alignment with 20-A MRS §6359 (6).

Fiscal impact of rule:

None

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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 (Maine CDC)**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 802(1)(D), 802 (3), PL 2019 ch. 154 §11
Chapter number/title: **Ch. 264**, Immunization Requirements for Healthcare Workers
Filing number: **2021-068**
Effective date: 4/14/2021
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule is established to ensure a safe and healthful environment for Maine healthcare workers and patients by requiring all healthcare workers employed at a designated healthcare facility in the State of Maine to receive required vaccines. Rule changes amending 10-144 CMR ch. 264, *Immunization Requirements For Healthcare Workers*, include 1) adding language that refers to the statutory authority governing exemptions in place of duplicative or outdated language in rule specifying the reasons for which a healthcare facility employee may be exempt from immunization requirements (2019 PL ch. 154); 2) updating the definition of *Intermediate Care Facility for the Mentally Retarded (ICF/MR)* to *Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID)*; 3) adding definitions for additional terms, *public health threat* and *extreme public health emergency*; 4) removing outdated H1N1 2009-10 reporting language; and 5) adding seasonal influenza to the list of vaccine-preventable diseases for which healthcare facilities must require all employees to provide proof of immunization, or immunity, or documentation of an authorized exemption. The rule changes clarify that, in addition to required vaccines listed in rule, healthcare workers may be subject to control measures instituted due to public health emergencies. Rule changes also include minor technical changes to conform to agency standards.

Basis statement:

This routine technical rule is established pursuant to 22 MRS ch. 250, to ensure a safe and healthy environment for Maine healthcare workers and patients by requiring all healthcare workers employed at a designated healthcare facility in the State of Maine to receive certain required vaccines. Unlike rules promulgated pursuant to 20-A MRS ch. 223 sub-ch. 2, this rule's statutory designation as routine technical, pursuant to 22 MRS §802(3), is not affected by PL 2019 ch. 154. The Department adopted the following amendments to this *Immunization Requirements for Healthcare Workers* rule:

- 1) Added and updated references to the statutory authority for the rule;
- 2) Clarified, in the Summary, that the rule is purposed to reduce the risk for exposure to and transmission of vaccine-preventable diseases;
- 3) Updated the definition of *Designated Healthcare Facility* to clarify the term applies to facilities subject to licensure by the Department;
- 4) Updated the term *Intermediate Care Facility for the Mentally Retarded (ICF/MR)* to *Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID)*;
- 5) Added definitions for *Public Health Emergency*, *Public Health Threat*, and *Extreme Public Health Emergency*;
- 6) Removed outdated H1N1 2009-10 reporting language;
- 7) Added influenza to the list of vaccine-preventable diseases for which healthcare facilities must require all employees to provide proof of immunization, or immunity, or documentation of an authorized exemption;

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

- 8) Added a description of the Department's authority during a declared Extreme Public Health Emergency, to impose additional disease prevention control measures, including mandatory and mass vaccinations and recommended dosages therefor; and
- 9) Clarified that records of Designated Healthcare Facility employee vaccinations must be maintained by the facility for six years following termination.

The Department determined that these rule changes promote additional safety and health for Maine healthcare workers and patients. Adding seasonal influenza to the list of required vaccines ensures this preventative measure to control vaccine-preventable diseases is in place across healthcare provider settings, to further protect public health by reducing the potential spread of this communicable disease. The amendments also bring the rule into compliance with recent Maine statutory changes and the elimination of the religious and philosophical exemptions. In addition, this rule change more accurately aligns with present State immunization laws.

Finally, changes prompted by public comments reorder the listed diseases for consistency within the document; clarify application of the rule by specifying it is only those facilities that, by statute, are designated facilities that must comply with this rule – i.e., facilities subject to licensure by the Department's Division of Licensing and Certification; and clarify that employers are to retain employee medical records for six years, minimally, after termination.

Fiscal impact of rule:

(No response)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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 (Maine CDC)**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 802(1), 802(3)
Chapter number/title: **Ch. 264**, Immunization Requirements for Healthcare Workers
Filing number: **2021-166**
Effective date: 8/12/2021
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Department finds that vaccination against COVID-19 prevents severe illness, hospitalization, and death, and that it helps to reduce the spread of the virus, including the Delta variant, in communities. The presence of the highly contagious Delta variant in Maine constitutes an imminent threat to public health, safety, and welfare. The Department finds that immediate adoption of this rule is necessary to avoid further spread of COVID-19 in all healthcare settings in order to prevent infection, illness, hospitalization, and death. The Department further finds that immediate adoption of this rule on an emergency basis is necessary to prevent further strain on the state's healthcare system as a result of increased COVID-19-related hospitalizations, as well as reduced capacity caused by illnesses among members of the workforce.

Basis statement:

In accordance with 5 MRS §8054, the Department is amending 10-144 CMR chapter 264, *Immunization Requirements For Healthcare Workers* on an emergency basis to immediately add COVID-19 to the list of vaccine-preventable diseases for which employees of a licensed nursing facility, residential care facility, Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID), multi-level healthcare facility, hospital, or home health agency subject to licensure by the State of Maine, Department of Health and Human Services Division of Licensing and Certification must be immunized. In addition, the Department is also requiring Emergency Medical Services Organizations and Dental Health Practices to require all employees to provide proof of immunization against COVID-19. Employees who do not provide proof of immunization must be excluded from the workplace for the duration of the Department's declared public health emergency, which began on July 1, 2021 and is currently in effect.

Findings of Emergency

Cases of COVID-19 have increased over 300% nationally between June 19, 2021 and July 23, 2021. This increase has been driven by the highly transmissible B.1.617.2 (Delta) variant of SARS-CoV-2, the virus that causes COVID-19. The Delta variant is now believed to be the predominant variant of the virus in the country. Like the rest of the nation, Maine is experiencing a rapid increase in the number of COVID-19 infections as a result of the Delta variant, which is significantly more contagious than previous versions of the virus and more likely to cause serious illness, hospitalization, and death. The Delta variant represented more than 86% of positive COVID-19 samples sequenced in Maine in July 2021. Across the United States, only a very small amount of transmission can be traced to individuals who have been fully vaccinated against COVID-19. Virtually all hospitalizations and deaths caused by COVID-19 are occurring among the unvaccinated. In Maine, less than 2% of all confirmed cases since January 18, 2021 have been among fully vaccinated individuals; less than 4% of COVID-related hospitalizations and less than 6% of COVID-related deaths have been among fully

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

vaccinated people. Since July 21, 2021, Maine has opened outbreak investigations associated with two hospitals and three long-term care facilities. As of August 11, 2021, outbreak investigations associated with hospitals and long-term care facilities account for just more than one third of all open outbreak investigations in Maine.

The Department finds that getting vaccinated against COVID-19 prevents severe illness, hospitalization, and death, and that it helps to reduce the spread of the virus, including the Delta variant, in communities. The presence of the highly contagious Delta variant in Maine constitutes an imminent threat to public health, safety, and welfare. The Department finds that immediate adoption of this rule is necessary to avoid further spread of COVID-19 in these healthcare settings within this rule, in order to prevent infection, illness, hospitalization, and death. The Department further finds that immediate adoption of this rule on an emergency basis is necessary to prevent further strain on the state's healthcare system as a result of increased COVID-19-related hospitalizations, as well as reduced capacity caused by illnesses among members of the workforce.

Fiscal impact of rule:

(No response)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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 (Maine CDC)**
Umbrella-Unit: **10-144**
Statutory authority: 22 MRS §§ 802(1), 802(3)
Chapter number/title: **Ch. 264**, Immunization Requirements for Healthcare Workers
Filing number: **2021-226**
Effective date: 11/10/2021
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The adopted rule includes changes from the proposed rule. The adopted rule is establishing to prevent the spread of vaccine-preventable disease in certain healthcare settings, The Department proposed to amend the rule to add COVID-19 to the list of vaccine-preventable diseases for which employees of Designated Healthcare Facilities must show proof of immunization or documented exemptions allowed by statute. In addition, the Department removed the EMS Organizations and Dental Health Practices proposed to be added to the list of healthcare settings where employees are required to be immunized for COVID-19. Adoption of this rule is necessary to avoid spread of COVID-19 in these healthcare settings, in order to prevent infection, illness, hospitalization, and death. Additionally, adoption of this rule will help to prevent further strain on the state's healthcare system as a result of increased COVID-19 relate hospitalizations.

Basis statement:

These routine technical rule changes are adopted pursuant to 22 MRS §802, to control the spread of COVID-19 among Maine healthcare workers and patients by requiring healthcare workers employed in Designated Healthcare Facilities in the State of Maine to be vaccinated against COVID-19. This rulemaking is routine technical pursuant to 22 MRS §802(3).

Although the Department initially proposed amendments that would broaden the scope of this rule to include EMS Organizations and Dental Health Practices, the Department has decided not to include them in this final adopted rule, as set forth in the Department's Response to Comments and List of Changes. On November 3, 2021, the Maine Board of Emergency Services (EMS Board) proposed a rule that would make permanent its August 23, 2021 emergency rule requiring its licensees to required COVID-19 vaccination for all "Covered Emergency Medical Service Persons." The Department has decided not to include EMS Organizations in this rule so as to avoid any conflict or confusion between this rulemaking and the EMS Board's rulemaking efforts. With respect to Dental Health Practices, the Department has removed them due to no evidence of outbreaks initiated in dental practices.

The 2019 Novel Coronavirus (COVID-19) is a respiratory illness caused by a coronavirus, known as SARS-CoV-2. The COVID-19 outbreak was first identified in January 2020 in Wuhan City, China and has since spread to 222 countries and territories. On January 31, 2020, the United States Department of Health and Human Services determined that the COVID-19 virus constituted a nationwide public health emergency, effective January 27, 2020 (the "Public Health Emergency"). On March 11, 2020, the World Health Organization declared the COVID-19 virus to be a global pandemic. On March 13, 2020, the President of the United States issued a proclamation that the COVID-19 outbreak in the United States constitutes a national emergency (the "Federal Proclamation of Emergency"). The Public Health Emergency has been renewed several times, most recently on July 20, 2021. The Federal Proclamation of Emergency was continued by the President on February 24, 2021.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

As of October 19, 2021, there have been approximately 241,000,000 cases of COVID-19 detected worldwide, including 4,910,000 COVID-19 deaths. As of October 19, 2021, there have been 98,607 probable and confirmed cases of COVID-19 in Maine, including 1,102 deaths. In Maine, 6,598 self-identified health care workers have contracted COVID-19. Of those, approximately 2,849 have occurred since COVID-19 vaccines first became available on January 18, 2021.

The COVID-19 virus spreads when an infected person exhales droplets and/or very small aerosol particles that contain the virus. These droplets and/or aerosols can be inhaled by other people or land in their eyes, nose, or mouth. People who are closer than 6 feet from the infected person for more than 15 cumulative minutes are most likely to get infected. COVID-19 is spread in three main ways: breathing in air when close to an infected person who is exhaling small droplets and particles that contain the virus; having these small droplets and particles that contain virus land on the eyes, nose, or mouth, especially through splashes and sprays like a cough or sneeze; and touching eyes, nose, or mouth with hands that have the virus on them.

Variants of the COVID-19 virus that circulated at the beginning of the pandemic had an incubation period of up to 14 days. A person could be infected and spread the virus during that entire time period, sometimes without experiencing any symptoms during that time. This phenomenon, known as “asymptomatic transmission,” makes control of COVID-19 especially challenging because individuals can transmit the disease before knowing that they have it. An analysis by the USCDC concluded that approximately 40% of all COVID-19 transmission of the early variants could occur while individuals were asymptomatic, and approximately 35% of all COVID-19 patients did not have symptoms at all.

Given the length of the pandemic, several variants of the virus that causes COVID-19 have emerged over time. All variants of the virus spread easily between people at a rate faster than influenza spreads. An even more contagious variant of the virus, known as the Delta variant, emerged in 2021. According to the USCDC, the Delta variant is more than twice as contagious as previous variants and may cause more severe illness than previous variants in unvaccinated people. It is possible for an infected individual to begin spreading the Delta variant to others within 24 to 36 hours of exposure. Like other variants, the Delta variant exhibits asymptomatic transmission.

The gold standard to prevent the spread of communicable diseases, including COVID-19, is vaccination. Population-level immunity, colloquially referred to as “herd immunity,” is an epidemiological phenomenon whereby even unvaccinated individuals are protected against an infectious disease by virtue of being in an environment with sufficiently high vaccination levels. When population-level immunity is achieved, an individual who is not able to be vaccinated can enjoy the benefits of being vaccinated because others around them are vaccinated and can block the virus from spreading from person to person. The level of vaccination required to achieve population-level immunity varies with the contagiousness of the disease: the higher the contagiousness, the higher the vaccination rate required to achieve population-level immunity. In light of the Delta variant, epidemiological models suggest that at least 90% of a population would need to be vaccinated in order to achieve population-level immunity.

For the monthly reporting period ending July 31, 2021, the rate of voluntary uptake of COVID-19 vaccines among healthcare workers was as follows:

Ambulatory Surgical Centers: 85.9%

Assisted Housing Facilities: 74.7%

Hospitals: 80.3%

Intermediate Care Facilities for Individuals with Intellectual Disabilities: 68.2%

Nursing Homes: 73.0%

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

All facilities fell significantly below the minimum 90% threshold needed to reduce the likelihood of facility-based outbreaks.

The rationale for requiring immunization in healthcare settings is that high vaccination rates prevent the spread of disease through the population and amongst vulnerable populations. When vaccination rates fall below the level necessary for population-based immunity, the health of individuals with weakened immune systems, infants and children too young to be vaccinated, and persons unable to be vaccinated are put in jeopardy.

There are three COVID-19 vaccines that are generally available to the public. The Pfizer-BioNTech COVID-19 vaccine received Emergency Use Authorization for adults from the FDA on December 11, 2020; it received full authorization for adults on August 23, 2021. As of February 27, 2021, both the Moderna and Janssen COVID-19 vaccines also received FDA Emergency Use Authorization for adults. The Pfizer vaccine received Emergency Use Authorization for children between the ages 12-17 on August 23, 2021. As of October 19, 2021, none of these vaccines is authorized or approved for administration to children under the age of 12.

In Maine, the rate of COVID-19 infection in those in the 12 and up population is 7.1 times higher among the unvaccinated, as compared with those who are fully vaccinated. According to recent nationwide data published by the USCDC, unvaccinated individuals are at least 10 times more likely to be hospitalized with COVID-19 than those who have been vaccinated. The same data showed that unvaccinated individuals are 11 times more likely to die of the virus as compared with vaccinated individuals. In Maine, unvaccinated individuals are about 23 times more likely to be hospitalized with COVID-19 than those who have been vaccinated.

As of October 19, 2021, out of the 1,287 COVID-19 outbreaks that have been investigated by Maine CDC since the beginning of COVID-19, 28 outbreaks occurred in hospitals and 209 occurred in long-term residential care facilities. Most Designated Healthcare Facility outbreaks are the result of healthcare workers who bring COVID-19 into the facility. Outbreaks have continued to occur in healthcare settings, particularly hospitals, nursing homes, and long-term care facilities, even despite the widespread use of personal protective equipment (PPE) in these settings.

In light of the above, and given its experience and expertise in matters of public health, the Department has determined that requiring COVID-19 vaccinations for healthcare workers in certain settings is necessary to protect public health including, but not limited to, for the following reasons:

Protection of individual patients. Many patients receiving care in the settings covered by this rule are particularly vulnerable to developing serious illness as a result of COVID-19, including the elderly and those with underlying health problems. Preventing the spread of COVID-19 to these patients is a paramount concern.

Protection of individual workers. Workers in high-risk healthcare settings are likely to interact with many patients in any given day, increasing the risk that they will be exposed to an individual with COVID-19. Because employees interact with not just their patients, but also with each other, they are at risk of transmitting the disease amongst themselves.

Protection of the State's healthcare infrastructure, including the workforce. In some areas of Maine, an outbreak among healthcare workers requiring them to quarantine, or to be absent for a longer period as a result of illness caused by COVID-19, could cripple the facility's ability to provide care. Combined with increasing infection rates in the community, this could lead to an insufficient workforce to respond to the state's healthcare needs. Even before the onset of COVID-19, Maine's healthcare system was fragile due to understaffing. An outbreak of COVID-19 amongst ICU nurses in a

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

rural hospital, for example, could incapacitate the hospital's ability to care for seriously ill patients. Considering the unique circumstances of the state of Maine, it is necessary to take every available precaution to limit the spread of COVID-19 both in healthcare settings and among their workers.

Reducing the likelihood of facility outbreaks. As noted above, most COVID-19 outbreaks in facilities are caused by an infected healthcare worker bringing the virus into the facility. Reducing the number of unvaccinated healthcare workers statewide lowers the likelihood of outbreaks in healthcare settings. Limiting the number of infections in healthcare settings is essential to slowing the spread of COVID-19 across the state and reducing the incidence of illness and death.

The Department considered whether there were other, less restrictive measures that might be appropriate for protecting against COVID-19 and determined that there were none. For example, the Department considered possibly periodic testing of health care workers. But given the speed with which the Delta variant is transmitted, and the time lapse for receiving results, even daily testing would be ineffective to preventing transmission.

The Department has determined that these rule changes, including those listed in the Summary of Comments and Response to Comments, are necessary to reduce the spread of COVID-19 and to prevent infection, illness, and death among healthcare workers, patients, and the public. In reaching the decision to finally adopt these rule changes, the Department has considered whether there were other, less restrictive measures that might be appropriate to adequately achieve this goal and, for the reasons described above, has concluded that there are none.

Fiscal impact of rule:
(No response)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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 (Maine CDC)**
Umbrella-Unit: **10-144**
Statutory authority: 20-A MRS §210
Chapter number/title: **Ch. 283**, Newborn Bloodspot Screening Rule
Filing number: **2021-063**
Effective date: 3/11/2021
Type of rule: Routine Technical *and* Major Substantive
Emergency rule: Yes

Principal reason or purpose for rule:

This is an emergency routine technical rule, except for Section 14 (Fees), which is an emergency major substantive rule, pursuant to 5 MRS §8071(3)(B).

Emergency Routine Technical Rule Changes:

The Department is adding the following conditions to Appendix A (Core Conditions)

- Mucopolysaccharidosis Type I (MPS-1)
- Pompe
- Spinal Muscular Atrophy (SMA)
- X-linked Adrenoleukpdysrophy (X-ALD)

Emergency Major Substantive Changes:

The filter paper fee is being increased from \$110/per infant tested, to \$220/per infant tested.

Findings of Emergency:

(1) **Adding the four Appendix A Core Conditions:**

Early detection and timely diagnosis of certain congenital genetic disorders impact health outcomes for newborns, reducing the mortality and morbidity from certain heritable disorders. Beginning July 1, 2001, Maine began mandatory newborn testing to include nine disorders and, because of the importance of screening early detection and treatment and coordination of services for long-term care, the Maine CDC Newborn Screening Program, with the support of Maine's Joint Advisory Committee for Maine Newborn Screening (JAC), has since continued to expand the panel of disorders and revise requirement for screenings for certain conditions to be consistent with the U.S. DHHS Recommended Universal Screening Panel (RUSP). Disorders on the RUSP are chosen based on evidence that supports the potential net benefit of screening the ability to screen for the disorder, and the availability of effective treatments.

These four conditions were added to the RUSP in the following years:

- Pompe (2013)
- MPS-1 (2015)
- X-ALD (2015)
- SMA (2018)

The Maine Joint Advisory Committee for Newborn Bloodspot Screening recommended that the Department add Pompe, MPS-1 and X-ALD to the Core Conditions for screening, in October 2018 and in May 2019 recommended adding SMA.

The Department has determined that adding these four conditions for newborn screening immediately is necessary to avoid an immediate threat to public health, safety or general welfare, as it will reduce mortality and morbidity from certain heritable conditions.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

(2) **Increasing the filter paper fee:**

This fee increase is necessary to offset anticipated costs corresponding to the added conditions (i.e., genetic clinic contracts, resource material, follow-up services and other related program operations.)

This emergency routine technical/emergency major substantive rule will take effect immediately upon filing with the Secretary of State's office. 5 MRS §8002(3-A).

The emergency routine technical rule will be in effect for up to ninety (90) days, in accordance with 5 MRS §8054(3). To avoid any lapse in policy, the Department is concurrently engaged in the routine technical rulemaking process.

The emergency major substantive rule provision (Section 14-Fees), in accordance with 5 MRS §8073, may be in effect for up to 12 months, or until the Legislature has completed review. Pursuant to 5 MRS §8072, the Department is concurrently involved in rule making procedures so that it can provisionally adopt the major substantive rule and submit it to the Legislature for its review and approval.

Basis statement:

This rule is a routine technical rule, EXCEPT for Section 14 (Fees), which is a major substantive rule, pursuant to 5 MRS §8071(3)(B).

Emergency Routine Technical Rule Changes: The Department is adding the following to APPENDIX A, Core Conditions, **with an effective application date of April 1, 2021:**

- Mucopolysaccharidosis Type 1 (MPS-1)
- Pompe
- Spinal Muscular Atrophy (SMA)
- X-linked Adrenoleukpdysrophy (X-ALD)

Emergency Major Substantive Rule Changes: The filter paper fee is being increased from \$110/per infant tested, to \$220/per infant tested in Section 14 – Fees, **with an effective application date of April 1, 2019.**

Fiscal impact of rule:

The additional conditions will increase the costs for contracted NBS testing services. Consistent with the national cost for lab services, the 100% increase in the cost to purchase the required NBS filter paper is anticipated to offset additional laboratory charges that the Department estimates to be close to \$500,000, and other related cost increases (i.e. genetic clinic contracts, resource material, follow-up services and other related program operations) corresponding to the additional new conditions on the bloodspot screening panel. The Department provided 30-days' notice, before it imposes this cost increase.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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 (Maine CDC)**
Umbrella-Unit: **10-144**
Statutory authority: 20-A MRS §210
Chapter number/title: **Ch. 283**, Newborn Bloodspot Screening Rule
Filing number: **2021-118**
Effective date: 6/1/2021
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Early detection and timely diagnosis of certain congenital genetic disorders impact health outcomes for newborns, reducing the mortality and morbidity from certain heritable disorders. Beginning July 1, 2001, Maine began mandatory newborn testing to include nine disorders, and because of the importance of screening, early detection and treatment, and coordination of services for long-term care, the Maine CDC Newborn Bloodspot Screening Program, with the support of Maine’s Joint Advisory Committee for Maine Newborn Screening (JAC), has since continued to expand the panel of disorders and revise requirements for screenings for certain conditions to be consistent with the U.S. DHHS Recommended Universal Screening Panel (RUSP). Disorders on the RUSP are chosen based on evidence that supports the potential net benefit of screening, the ability to screen for the disorder, and the availability of effective treatments.

The Department is proposing to add the following conditions listed for Maine’s newborn bloodspot screening (NBS) panel in the rule’s Appendix A (Core Conditions), to be effective April 1, 2021, to allow for laboratories to accommodate these additional conditions. These four conditions were added to the RUSP in recent years, and the JAC has approved adding all four conditions to this Maine rule.

- Mucopolysaccharidosis Type I (MPS-1)
- Pompe
- Spinal Muscular Atrophy (SMA)
- X-linked Adrenoleukpdysrophy (X-ALD)

Major Substantive Proposed Rule Changes: Additionally, the Department is proposing a major substantive rule change to increase the filter pay fee from \$110 to \$220, in order to off-set the cost of testing these four additional conditions.

On March 11, 2021, the Department adopted an Emergency Routine Technical/Major Substantive Rule with these changes to the fee and also adding the four conditions. Although the emergency rule was effective on March 11, 2021, the changes to the fee and also adding the four conditions had an effective application date of April 1, 2021, to allow impacted parties to prepare for the financial cost increase and to allow laboratories to adjust to these changes. The purpose of this rulemaking is to make permanent the changes made in the Emergency routine technical rule and to provisionally adopt the Major Substantive Rule.

Basis statement:

This rule is a routine technical rule, EXCEPT for Section 14 - Fees, which is a major substantive rule provision, pursuant to 5 MRS §8071(3)(B).

On March 11, 2021, the Department adopted, and filed with the Secretary of State’s office, an emergency Routine Technical/Major Substantive ch. 283 (*Newborn Bloodspot Screening Rule*) rule. The emergency routine technical rule changes can be effective for no more than 90 days, consistent with 5 MRS §8054(1). Accordingly, the emergency routine

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

technical changes will have no legal effect after June 9, 2021. The emergency major substantive rule changes can be effective for up to 12 months or until the Legislature has completed its review, as provided by 5 MRS §8072.

On March 17, 2021, the Department filed with the Secretary of State's office a proposed rulemaking to make the changes provided for in the hybrid emergency routine technical/major substantive rule.

This rulemaking permanently adopts the emergency routine technical rule changes, as shown below.

In addition, this rulemaking provisionally adopts the emergency major substantive rule changes. The Department will proceed to submit the provisionally adopted major substantive rule changes to the Legislature for its review and approval. Pending that review and approval, the emergency major substantive rule changes will remain in effect.

Routine Technical Adopted Rule Changes:

The Department expanded the conditions on Maine's newborn bloodspot screening panel to include the following conditions to APPENDIX A, Core Conditions, in this rule. These conditions were added on March 11, 2021 by emergency rule for 90 days, pursuant to 5 MRS §8072:

- Mucopolysaccharidosis Type 1 (MPS-1)
- Pompe
- Spinal Muscular Atrophy (SMA)
- X-linked Adrenoleukpdysrophy (X-ALD)

Early detection and timely diagnosis of certain congenital genetic disorders impact health outcomes for newborns, reducing the mortality and morbidity from certain heritable disorders. Beginning July 1, 2001, Maine began mandatory newborn testing to include nine disorders and, because of the importance of screening, early detection and treatment, and coordination of services for long-term care, the Maine CDC NBSP, with the support of Maine's Joint Advisory Committee for Maine Newborn Screening (JAC), has since continued to expand the panel of disorders and revise requirements for screenings for certain conditions to be consistent with the U.S. DHHS Recommended Universal Screening Panel (RUSP). Disorders on the RUSP are chosen based on evidence that supports the potential net benefit of screening, the ability to screen for the disorder, and the availability of effective treatments.

These four conditions were added to the RUSP in the following years:

- Pompe (2013)
- MPS-1 (2015)
- X-ALD (2015)
- SMA (2018)

The Maine Joint Advisory Committee for Newborn Bloodspot Screening recommended that the Department add Pompe, MPS-1 and X-ALD to the Core Conditions for screening, in October 2018, and in May 2019, the Committee recommended adding SMA.

The Department adopted the four additional conditions to this rule to reduce mortality and morbidity from certain heritable conditions.

Major Substantive Rule Changes Provisionally Adopted:

Increasing the filter paper fee:

This fee increase is necessary to off-set anticipated costs corresponding to the added conditions (i.e. genetic clinic contracts, resource material, follow- up services and other related program operations).

The emergency adoption of the routine technical and major substantive rule changes became effective on March 11, 2021. 5 MRS §8002(3-A).

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Fiscal impact of rule:

The additional conditions will increase the costs for contracted NBS testing services. Consistent with the national cost for lab services, the 100% increase in the cost to purchase the required NBS filter paper is anticipated to offset additional laboratory charges that the Department estimates to be close to \$500,000, and other related cost increases (i.e. genetic clinic contracts, resource material, follow-up services and other related program operations) corresponding to the additional new conditions on the bloodspot screening panel. The Department provided 30-days' notice, before it imposes this cost increase.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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; 36 MRS 5219-DD
Chapter number/title: **Ch. 297**, Dental Care Access Credit Program Rule
Filing number: **2021-221**
Effective date: 11/3/2021
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department is amending the Maine CDC *Dental Care Access Credit Program Rule*. The Dental Care Access Credit Program provides limited credits against state income tax liability to eligible dentists practicing full time in underserved areas in Maine.

Basis statement:

The Department of Health and Human Services, Maine CDC (the Department), advertised a proposed rulemaking on May 19, 2021 to amend an existing rule, 10-144 CMR ch. 297, *Dental Care Access Credit Program Rule*. A 30-day public comment period was posted from May 19 through June 18, 2021, no comments were received.

The Department is adopting updates and clarifying requirements for the Dental Care Access Credit Program Rule. These changes include specifying the application-submission deadline, establishing when the applications process ends, outlining the competitive order of receipt process for initial applicants, and extending the certification period for eligible dentists, following the deadline for applications. The Department is also adopting updated responsibilities for certificate holders and further clarification of the Department's notification process of certificate award recipients. These rule amendments align the rule with statutory changes in 36 MRS § 5219-DD. The Dental Care Access Credit Program provides limited credits against state income tax liability to eligible dentists practicing full time in underserved areas in Maine.

Fiscal impact of rule:

There is no anticipated fiscal impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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; 22-A MRS §205; 36 MRS §5215-LL
Chapter number/title: **Ch. 298**, Primary Care Tax Credit Certification Rule
Filing number: **2021-201**
Effective date: 10/12/2021
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department is adopting changes to the *Primary Care Tax Credit Certification Rule*. The Primary Tax Credit Program is purposed to recruit and retain professionals who provide access to primary health care in underserved areas of Maine.

Basis statement:

The Department of Health and Human Services, Maine CDC (the Department), advertised a proposed rulemaking on May 19, 2021 to amend an existing rule, 10-144 CMR ch. 298, *Primary Care Tax Credit Certification Rule*. A 30-day public comment period was posted from May 19 through June 18, 2021, no comments were received.

The Primary Care Tax Credit Program is purposed to recruit and retain professionals who provide access to primary health care in underserved areas of Maine. The Department of Health and Human Services, Maine CDC is adopting changes to the *Primary Care Tax Credit Rule*, in order to clarify application requirements and align with statutory changes in 36 MRS §5219-LL. These amendments reflect current processes and standards in a clearer way.

Fiscal impact of rule:

There is no anticipated impact.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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) and (8), 3104(1); 5 MRS §8054; PL 116-260
Chapter number/title: **Ch. 301**, Food Supplement Program, **FS Rule #217E: Section 999-3** (Charts), Increases Pursuant to PL 116-260
Filing number: **2021-032**
Effective date: 2/1/2021
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis statement:

This emergency rule implements increases to the maximum and minimum allotments from January 1, 2021 through June 30, 2021. As a result, Food Supplement benefits will increase for some households.

An emergency rule change is necessary to remain in compliance with the federal law. The *Consolidated Appropriations Act, 2021* (PL 116-260) requires that Food Supplement Program maximum and minimum allotments be increased by 15 percent for the period of January 1, 2021 through June 30, 2021. Food and Nutrition Services (FNS) provided the exact figures and guidance in a December 28, 2020 memo.

Findings of Emergency

Pursuant to 5 MRS §8054, the Department finds that emergency rulemaking is necessary to immediately provide this essential support during the current health emergency and in order to ensure that Food Supplement benefits are issued appropriately, accurately, and in a timely fashion consistent with federal law. Even prior to the pandemic, Maine had serious challenges with food insecurity. COVID-19 has led to an increase in Maine's Seasonally adjusted unemployment rate of 1.9 to 7 percentage points, or 12,252 to 48,672 additional Maine residents unemployed (<https://www.maine.gov/labor/cwri/laus.html>). Furthermore, it has resulted in increased food insecurity (<https://www.cnn.com/2020/08/05/business/grocery-prices-rising/index.html> and <https://www.foxnews.com/food-drink/quarter-americans-food-insecurity-amid-coronavirus-pandemic-survey-suggests>) and "put an unimaginable amount of stress on Maine's food industry" according to the Maine Grocers and Food Producers Association (<https://www.mgfpa.org/maine-dep-delays-enforcement-of-polystyrene-foam-and-plastic-bag-bans/>). The 15 percent increase in the minimum and maximum benefit levels helps all SNAP recipients, and particularly targets the neediest SNAP recipients who already received the maximum allotment for their household size. This is roughly one third of Maine SNAP 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 by providing additional food security during this public health emergency. Furthermore, non-compliance with this federal change could result in federal penalties or loss of federal funds at a time when the state is facing serious budget challenges. Following this emergency rulemaking, which is effective for 90 days, the Department shall immediately pursue proposed routine technical rulemaking for these changes, which shall provide notice and opportunity for the public to comment, and then finally adopt the rule changes pursuant to 5 MRS §8052. The *Consolidated Appropriations Act* was enacted on December 27, 2020, requiring changes to be effective January 1, 2021. Accordingly, the Department is adopting this emergency rule to

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

apply retroactively, effective January 1, 2021, to Food Supplement benefit amounts. 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.

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 \$8,300.00 to \$50,000.00 for Federal Fiscal Year 2021. These same changes will result in an estimated additional \$2,619,000.00 to \$15,717,000.00 in federal funds flowing to Maine residents and grocers.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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) and (8), 3104(1); 5 MRS §8054; PL 116-260
Chapter number/title: **Ch. 301**, Food Supplement Program, **FS Rule #219E** (Temporary Student Policy); **Section 444-7**, Households with Special Circumstances, Students
Filing number: **2021-042**
Effective date: 2/18/2021
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis statement:

This emergency rule implements expanded eligibility for post-secondary students from January 16, 2021 through any certification period begun during the COVID-19 Public Health Emergency (PHE) or within 30 days of the date the COVID-19 PHE is terminated. This temporary expansion of eligibility for students changes the previous restriction on student eligibility for Food Supplement Program benefits. 7 .SC §2015(e) and 7 CFR §273.5. As a result, Food Supplement benefits will be available to more individuals.

An emergency rule change is necessary to remain in compliance with federal law. The *Consolidated Appropriations Act, 2021* (PL 116-260) Section 702(e) requires that students enrolled at least half-time in an institution of higher education and are eligible for work study or with an expected family contribution of \$0 are not per se ineligible for Food Supplement Program benefits based on their student status. This expansion of eligibility is effective for any certification period in effect between January 16, 2021 and until 30 days after the COVID-19 PHE ends.

This emergency rulemaking is distinct from 217E which was implemented on an emergency basis on February 1, 2021, though both arise from the same *Consolidated Appropriations Act, 2021*.

Findings of Emergency

Pursuant to 5 MRS §8054, the Department finds that emergency rulemaking is necessary to immediately provide this essential support during the current health emergency and in order to ensure that Food Supplement benefits are issued appropriately, accurately, and in a timely fashion consistent with federal law. Even prior to the pandemic, Maine had challenges with food security. COVID-19 has led to an increase in Maine's Seasonally adjusted unemployment rate of 1.9 to 7 percentage points, or 12,252 to 48,672 additional Maine residents unemployed (<https://www.maine.gov/labor/cwri/laus.html>). COVID-19 has increased food insecurity across the country, including Maine (<https://www.cnn.com/2020/08/05/business/grocery-prices-rising/index.html> and <https://www.foxnews.com/food-drink/quarter-americans-food-insecurity-amid-coronavirus-pandemic-survey-suggests>). Furthermore, "College students are among those struggling the most to make ends meet while they pursue education to achieve greater economic security for themselves and their families." (<https://bangordailynews.com/2020/12/26/opinion/contributors/we-all-have-a-role-to-play-in-ending-hunger-in-maine/>). The expanded student eligibility helps ease the burden for these students and provides an economic boost for local grocers.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

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 by providing additional food security during this public health emergency. Furthermore, non-compliance with this federal mandate could result in federal penalties or loss of federal funds at a time when the state is facing serious budget challenges. Following this emergency rulemaking, which is effective for 90 days, the Department shall immediately pursue proposed routine technical rulemaking for these changes, which shall provide notice and opportunity for the public to comment, and then finally adopt the rule changes pursuant to 5 MRS §8052.

The *Consolidated Appropriations Act* was enacted on December 27, 2020, requiring expanded student eligibility be implemented no later than January 16, 2021. Food and Nutrition Services (FNS) provided the final guidance in a February 2, 2021 memo. Accordingly, the Department is adopting this emergency rule to apply retroactively, effective January 16, 2021, to Food Supplement eligibility. 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.

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 \$24,552 per year. These same changes will result in an estimated additional \$2,316,816 per year in federal funds flowing to Maine residents and grocers.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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), 3104(1); 5 MRS §8054; PL 116-260, PL 117-2
Chapter number/title: **Ch. 301**, Food Supplement Program, **FS Rule #217A: Section 999-3** (Charts), Increases Pursuant to PL 116-260, PL 117-2
Filing number: **2021-082**
Effective date: 5/1/2021
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rule change implements increases to the maximum and minimum allotments from January 1, 2021 through September 30, 2021. As a result, Food Supplement benefits would increase for some households. Furthermore, it increases eligibility thresholds. As a result, more households are eligible for Food Supplement benefits.

A rule change is necessary to remain in compliance with Division N, Title VII(A) ch. 1 §702(a) of *The Consolidated Appropriations Act, 2021* (PL 116-260), amended by *The American Rescue Plan Act, 2021* (PL 117-2) which requires that Food Supplement Program maximum and minimum allotments be increased by 15 percent for the period of January 1, 2021 through September 30, 2021. Food and Nutrition Services (FNS) provided the exact figures and guidance in a December 28, 2020 memo.

The Department implemented these changes on an emergency basis on February 1, 2021 effective January 1, 2021, in Rulemaking No. FS217E. Because the emergency rule is effective for only 90 days, this rulemaking is necessary to make the changes permanent and extend them through September 30, 2021.

This adopted rule change differs from the emergency and proposed versions in that the time frame for the 15 percent increase is extended through September 30, 2021. This extension is necessary to comply with Title I(B) §1101(a) of *The American Rescue Plan Act of 2021* (PL 117-2) which passed during the comment period.

Additionally, a rule change is necessary to remain in compliance with Federal regulation 7 CFR §273.9(a)(3), which requires that Food Supplement Program income limits be updated each year, effective October 1. Non-compliance could result in federal penalties or loss of federal funds.

Maine exercises an option for Broad Based Categorical Eligibility under 7 C.R §273.2(j)(2) which includes a 185% Federal Poverty Level (FPL) test. Since this figure is not included in the figures updated each federal fiscal year per 7 CFR §273.9(a)(4), it is updated as soon as the FPLs are published. This year, they were published at <https://aspe.hhs.gov/poverty-guidelines> on January 13. See also, Annual Update of the HHS Poverty Guidelines, 86 Fed. Reg. 7,732 (February 1, 2021) <https://www.federalregister.gov/documents/2021/02/01/2021-01969/annual-update-of-the-hhs-poverty-guidelines>. The Department is making this change retroactive to January 13, 2021. 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.

Finally, the rule change removes end dates from the last set of figures of each chart to alleviate unnecessary future rule making should the figures remain the same. Some charts

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

are, also, condensed to more clearly show where figures have been retained for an extended period of time.

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 \$8,300.00 to \$75,000.00 for Federal Fiscal Year 2021. These same changes will result in an estimated additional \$2,619,000.00 to \$23,571,000.00 in federal funds flowing to Maine residents and grocers.

Increases in the income thresholds for eligibility may result in additional households being eligible for state or federally funded benefits. The number of households and amount of benefits cannot be determined. These potential increases will be absorbed by existing budgeting.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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) and (8), 3104(1); PL 116-260
Chapter number/title: **Ch. 301**, Food Supplement Program, **FS Rule #219E**
(Temporary Student Policy): **Section 444-7**, Households with Special Circumstances, Students
Filing number: **2021-093**
Effective date: 5/19/2021
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rule implements expanded eligibility for post-secondary students from January 16, 2021 through any certification period begun during the COVID-19 Public Health Emergency (PHE) or within 30 days of the date the COVID-19 PHE is terminated. This temporary expansion of eligibility for students changes the previous restriction on student eligibility for Food Supplement Program benefits. 7 U.S.C. §2015(e) and 7 CFR§273.5. As a result, Food Supplement benefits will be available to more individuals.

A rule change is necessary to remain in compliance with *The Consolidated Appropriations Act, 2021* (PL 116-260) Division N, Title VII Nutrition and Agriculture Relief, Subtitle A Nutrition, Section 702(e) which requires that students who are enrolled at least half-time in an institution of higher education and are eligible for work study or with an expected family contribution of \$0 are not per se ineligible for Food Supplement Program benefits based on their student status. This expansion of eligibility is effective for any certification period in effect between January 16, 2021 and until 30 days after the COVID-19 Public Health Emergency (PHE) ends.

This rulemaking is distinct from 217A which was effective May 1 2021, though both arise from the same *Consolidated Appropriations Act, 2021*.

The Department implemented these changes on an emergency basis on February 18, 2021 effective January 16, 2020, in Rulemaking No. FS219E. Because the emergency rule is effective for only 90 days, this rulemaking is necessary to make the changes permanent.

The Consolidated Appropriations Act was enacted on December 27, 2020, requiring expanded student eligibility be implemented no later than January 16, 2021. Food and Nutrition Services (FNS) provided the final guidance in a February 2, 2021 memo. Accordingly, the Department is adopting this rule change to apply retroactively, effective January 16, 2021, to Food Supplement eligibility. 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.

Additionally, the Department regularly reviews rules for readability, consistency, and contemporaneousness. To these ends, the following changes are being made:

- 1) Formatting and enumeration are updated for ease of reference and consistency with other sections of this manual, and other Office for Family Independence manuals;
- 2) The list of exemptions to student ineligibility is reorganized to list them from the easiest to verify and apply to the most cumbersome;
- 3) Incorrect citations are corrected;

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

- 4) Redundant conjunctions are removed;
- 5) Names of programs are updated or added as needed;
- 6) Gender specific pronouns are replaced with gender neutral ones;
- 7) The Subsection on treatment of income is dramatically reworded to read more like a list of requirements and less like an instruction manual for Department staff, and is updated to minimize redundancies; and
- 8) A detailed example that has caused some confusion about income and expense averaging strategies is removed, and the process for that averaging is consolidated to its own paragraph for emphasis.

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 \$24,552 per year. These same changes will result in an estimated additional \$2,316,816 per year in federal funds flowing to Maine residents and grocers.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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) and (8)
Chapter number/title: **Ch. 301**, Food Supplement Program, **FS Rule #218** Updates to Card Replacement and Benefit Use and Expungement **Section FS 777-7**, Administrative Procedures, Electronic Benefit Transfer (EBT)
Filing number: **2021-147**
Effective date: 8/2/2021
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

This rule change has three components: expungement, purchasing options and card replacement. None of these changes increase the administrative burden on the Department, or participants. The changes to purchasing and replacement will, in fact, reduce the burden.

A rule change is necessary to remain in compliance with 7 USC ch. 51 §2016(h)(12)(C) as amended by PL 115-334 §4006 and subsequent amendments to 7 CFR §274.2(i). Each has reduced the threshold for expungement of unused benefits to nine months after issuance or immediately (without notice) if the Department has verified that all household members are deceased. Expungement of benefits for households in which all members are deceased will be implemented upon adoption of this rule. Expungement of benefits for households that must be given notice will be implemented as soon as possible allowing for noticing requirements. The basic process of noticing and expungement continues. The notice will now be sent after 240 days rather than 90, and the expungement will take place after 274 days instead of 365. Expungement will take place more rapidly when the Department has verified that all household members are deceased and the benefits will be rendered inaccessible immediately upon verification.

Additionally, purchasing power is extended to online purchases including delivery or curbside pick-up when a physical point of sale “swipe” of the card is not the best option. The Department is modifying this section to reflect the ability of participants to use EBT accounts to purchase approved foods, seeds, and seedlings from online platforms. This contactless purchasing expands access and supports the overall safety and well-being of Food Supplement recipients especially at times when travel may be challenging or impossible, or there is a heightened risk of illness such as a national public health emergency. Initially, Maine will be participating as a demonstration project under 7 U.S.C. §2016(k)(4) with the intent of full participation under paragraph 1 of the same.

Changes are also being made to card replacement. The process of requesting replacement cards will be unchanged other than participants will be able to secure their third and fourth replacement cards with the same ease as the first and second in a 12-month period. Previously, three replacement cards in a 12-month period were determined “excessive”. The Department is increasing that threshold to five cards in a 12-month period consistent with 7 CFR§274.6(b)(5). This increase improves access to benefits for individuals and reduces the administrative burden on the Department and its vendor. This change is being made

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

retroactively to April 23, 2020 to coincide with the expiration of Food and Nutrition Service's Waiver number 2180009. 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.

No fees will be charged for any replacement cards. This rule change removes any reference to collecting a fee for card replacement consistent with current practice. The cost of implementing a fee collection procedure is anticipated to exceed any savings that would result from such collections. Additionally, references to contacting a local office are being generalized to contacting the Office for Family Independence (OFI). This change reflects the statewide processing and accessibility of OFI staff and removes a geographic burden for those requesting replacement cards.

Finally, the following stylistic and grammatical changes are being made to modernize the manual and enhance readability.

- 1) Minor corrections are being made to typographical errors.
- 2) Numbering and lettering of subsections, paragraphs, etc. is being added or standardized as part of an ongoing effort to standardize them not only within this manual but across OFI manuals and facilitate easier citations and cross references.
- 3) Several terms that had been used interchangeably are being consolidated to consistent terms with preference given to terms that are defined within the manual.
- 4) Whole numbers through ten are represented only by writing out the word. All other figures are represented, only, in numerical form. This change is part of an Office wide standardization effort to improve the flow of the manual by not representing each figure twice.
- 5) Some sentences are being modified to spell out responsibilities and responsible parties instead of reading like an instruction manual for Department staff.
- 6) Gender specific pronouns are being replaced with gender neutral ones as part of an Office wide effort toward inclusivity.
- 7) Redundant language is removed where possible to enhance the readability of the manual.

While no impact to businesses was referenced at the proposed stage of this rulemaking, the ability to purchase food, seeds and seedlings from retailers already able to process online orders as a result of this rule may decrease the amount of Food Supplement Benefits spent at other retailers. However, the increased benefit for participants to engage in contactless purchasing outweighs this setback.

Furthermore, expunging benefits three months sooner, may result in decreased spending power for seasonal workers who have their income averaged over a 12-month period but need to bank their benefits for use during the lean season. Such individuals may become more dependent on other sources of aid, such as General Assistance during this lean period. However, this change is federally mandated and the potential financial penalties for non-compliance outweigh any potential expense.

Fiscal impact of rule:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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) and (8)
Chapter number/title: **Ch. 301**, Food Supplement Program, **FS Rule #216** Interview Waivers, **Sections FS 222-4, 444-5, 666-9 and 999-1**
Filing number: **2021-155**
Effective date: 8/15/2021
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rule change aligns Maine’s policy with practice approved under PL 116-159 and the Food and Nutrition Services (FNS) waiver serial number 2190019 approved on October 21, 2020.

PL 116-159 §4603(a)(1)(A)(iii) allows states to adjust interview requirements consistent with the adjustments provided in the Food and Nutrition Service’s March 26, 2020, blanket approval for adjusting interview requirements. Consistent with FNS guidance at the time, on March 27, 2020 the State of Maine notified the Secretary of Agriculture of its determination to exercise the option to not require a household to complete an interview prior to application approval or recertification through June 30, 2021, provided the applicant’s identity has been verified and all other mandatory verifications in 7 CFR§273.2(f)(1) have been completed. On April 30, 2021, FNS released a memo extending this option. Subsequently, the State of Maine notified FNS of its determination to adopt that extended time frame. This option was approved on May 26, 2021 and extended the interview waiver to the earlier of December 31, 2021, or the end of the month after the month in which the public health emergency (PHE) declaration related to COVID-19 is lifted by the U.S. Secretary of Health and Human Services.

Waiver 2190019 allows the Department to recertify households with no earned income, in which all adult members are elderly or disabled without conducting an interview. This process has been determined effective and efficient by both Maine’s Department of Health and Human Services (DHHS), and the federal Food and Nutrition Services. The current waiver is set to expire May 31, 2022. At this time the Department plans to seek an extension.

References to “appearing for” or “attending” an interview are changed to “complete” to reflect the fact that when interviews are conducted, they may not be in person. This change is consistent with Maine’s approved state plan and current practice.

This rule change reduces the administrative burden on Department staff and increases access to Food Supplement benefits for some of Maine’s most vulnerable residents. It improves food security for these individuals and decreases the likelihood that these particularly vulnerable residents would come into a DHHS office during a public health crisis.

The Department is adopting this rule with a retroactive application to December 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.

The following additional changes are being made to modernize the manual and enhance readability.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

- 1) References to “recertification” and “redetermination” are clarified to either “recertification form” when referring to the document, or “eligibility review” when referring to the overall process.
- 2) Minor corrections are made to typographical errors.
- 3) Numbering and lettering of Subsections, Paragraphs, etc. is added or standardized as part of an ongoing effort to standardize them not only within this manual but across OFI manuals and facilitate easier citations and cross references.
- 4) Several terms that had been used interchangeably are consolidated to consistent terms with preference given to terms that are defined within the manual. E.g. “client” and “participant” have been stricken and replaced with one or more of the following terms— “household” when referring to a group defined as such in FS 111-1, “applicant” when referring to an individual defined as such in FS 999-1 as amended by this rulemaking, “recipient” when referring to an individual collecting a benefit, or “resident” when referring to someone who lives in a particular facility. The use of each of these terms has also been reviewed to ensure the correct meaning is conveyed in each instance. Likewise, the term “individual” has been replaced with one of the defined terms when a more precise term is appropriate.
- 5) FS 222-4 is updated to eliminate the option for Department staff to require a face to face interview for Food Supplement applications and annual eligibility reviews.
- 6) Whole numbers through ten are represented only by writing out the word. All other figures are represented, only, in numerical form. This change is part of an Office wide standardization effort to improve the flow of the manual by not representing each figure twice.
- 7) In FS 222-4(3), language is added specifying that the Department shall notify the household of its rights and responsibilities annually even if no interview is conducted.
- 8) In FS 222-4(4), references to issue resolutions are changed to clarifying questionable information. This change shifts the language to a term defined within the manual and provides greater clarity.
- 9) Wording changes are made throughout to active voice when possible to aid in readability and to phrase the manual as objective standards, not an instruction manual for OFI workers.
- 10) In FS 444-2 references to drug addiction or alcoholic rehabilitation are updated to Substance Use Disorder treatment.
- 11) In FS 444-2, a redundant reference to a work requirement exception was removed as it is addressed in FS 111-5.
- 12) Language is added to update the names of Departments and Agencies referenced.
- 13) Gender specific pronouns are replaced with gender neutral ones as part of an Office wide effort toward inclusivity.
- 14) A requirement that the household provide necessary verifications is added to Section FS 666-9(1) for clarity.
- 15) Clarification is added throughout Section FS 666-9 that the Department may make a determination that the household is ineligible or still eligible, and, for what benefit level, rather than implying that following the process will always result in continued eligibility.
- 16) Redundant language is removed where possible to enhance the readability of the manual.
- 17) Several terms in Section FS 999-1 are removed or reworded based on how or if they are used elsewhere in the manual.
 - a) “Alcohol & Drug Centers” is changed to “Centers for the Treatment of Substance Use Disorders”. The definition is modernized. Other terms that refer to these

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

centers, in portions of the chapter that have not been updated as of this rulemaking are added and reference this definition.

- b) “Case Name” is removed.
 - c) In the definition of “Mass Changes” the outdated reference to AFDC is updated to TANF.
 - d) “Mixed Funded Household” is removed.
 - e) “Prospective Budgeting” is removed.
 - f) “Shelter for Battered Persons” is added as an alternative to “Shelter for Battered Women and Children”. “Battered Persons” is the preferred term, is consistent with federal regulations, and is gender neutral. However, not all instances have been updated in the manual through this rule change.
 - g) The definitions for both “Shelter for Battered Persons” and “Shelter for the Homeless” are modernized.
 - h) The definition of “Six-Month Report” is updated to reflect some of the terminology changes above and to allow for one during the certification period following the initial application.
 - i) “Timely Notice” is removed. (“Advance Notice” is used consistently throughout the manual.)
- 18) The definition of “Applicant” is updated to clarify that it is the individual for whom benefits are requested, regardless of whether any benefits are actually issued.
- 19) A definition of “Assistance Group” is added.

The definition of “Documentation” is modified in two ways. First, to reflect not only documentation made by Department staff in the case record, but documentary verifications provided by individuals, as both uses of the term permeate other sections of the manual. Secondly, to expand documentation to not only include written documents, but electronic media such as audio recordings, digital photographs, and the like that are commonly provided as verification.

This adopted rule varies from the proposed as follows: The end date for the adjustment of interview requirements originally pursuant to PL 116-159 is extended beyond June 30, 2021 to the earlier of December 31, 2021, or the end of the month after the month in which the public health emergency (PHE) declaration related to COVID-19 is lifted by the U.S. Secretary of Health and Human Services; References to PL 116-159 were removed as the changes originally made under that authority have been extended; references to the household requesting an interview were clarified as such, where previously they simply said “requests one”; In Section 666-9(6)(A) the citation to “timely review” is clarified to “in 666-9(2)” from the more generic “above”.

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 (all of which are covered by the existing budget for such changes).

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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: **10-156**
Statutory authority: 22 MRS §§ 42(1) & 7 CFR §273-24(f)
Chapter number/title: **Ch. 301**, Food Supplement Program, **FS Rule #220A:** ABA WD FFY 2022, **Section 999-2:** Geographic Exemptions from ABAWD Work Requirements
Filing number: **2021-156**
Effective date: 10/1/2021
Type of rule: Routine Technical
Emergency rule: No

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

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.

7 CFR273.24(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.

This rule making implements ABAWD geographic state-wide waiver 2190025 approved April 28, 2021 pursuant to 7 CFR§273.24(f)(2) and Section 6(o) of the Food and Nutrition Act of 2008. This waiver excludes all Maine residents from ABAWD requirements, for the period October 1, 2021 through September 30, 2022. Reference to past exemptions under expired authority is removed.

The Department pursued and Food and Nutrition Services approved the waiver based on the Department of Labor Trigger Notice No. 2020-38, effective October 4, 2020, showing that, state-wide, Maine qualified for extended unemployment benefits.

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

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 \$109,512 which will be absorbed with current General Fund budgeting.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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 #222E, Section 999-3**, Charts
Filing number: **2021-199**
Effective date: 10/1/2021
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis statement:

This emergency rule implements updates to: maximum and minimum allotments; the standard, homeless and maximum shelter deductions; and asset limits for the Food Supplement program as of October 1, 2021. As a result, Food Supplement benefits will change for some households.

An emergency 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 FY2022 provided more generous income limits, maximum and minimum allotments, standard deductions, maximum shelter deduction, homeless shelter deduction, asset limits, and 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 increase 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.

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.

Findings of Emergency

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, pursuant to 5 MRS §8054, the Department finds that emergency rulemaking 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 necessary to administer the Food Supplement Program which supports the health and general welfare of more than 200,000 Maine residents receiving Food Supplement (including more than 75,000 children and more than 30,000 over the age of 60) and the owners and employees of the businesses where these benefits are spent. Furthermore, this year's changes all serve to increase the Food Supplement benefit amount for recipient households. Delaying these increases would pose a threat to the health and welfare of recipients who depend on these benefits to purchase nutrient rich foods that can help them achieve and maintain good health and reduce their risk of chronic disease throughout all stages of life.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

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 \$748,242 for Federal Fiscal Year 2022. These same changes will result in an estimated additional \$99,027,204 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).

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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) and (8), 3104(13),(17)
Chapter number/title: **Ch. 301**, Supplemental Nutrition Assistance Program (SNAP) Rules (formerly Food Supplement Program), **SNAP Rule #212A: 2021 Omnibus rule change (many sections)**
Filing number: **2021-256**
Effective date: 12/30/2021
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rule change implements many changes required by state statute or federal regulation. It aligns Maine policy with various federal waivers and options. It makes non-substantive changes to improve the readability and inclusivity of the manual, reduce the use of stigma inducing language, and update the names of programs such as WIOA and TANF. It corrects various citations.

The Department is changing the terms “Food Supplement” and “Food Supplement Program” to “Supplemental Nutrition Assistance Program” and, by extension, their associated abbreviations to “SNAP”. This change is consistent with the terminology used in federal law and regulation as well as signage and other materials seen throughout the state and nation. Furthermore, PL 2021 ch. 398 part OO made this change throughout Maine’s revised statutes. This change is reflected in the name of the chapter itself and all uses of the terms and abbreviations in sections included in this rulemaking (unless they refer only to a time prior to the statutory change). The “FS” is removed from all section numbers.

The Department is using person first language wherever feasible and replacing terms intended to convey the same meaning with “Substance Use Disorder”. These changes are consistent with PL 2017 ch. 407 part B, PL 2021 ch. 348, and generally accepted best practices. There are occasional exceptions to this effort where it was determined best to keep the language consistent with the relevant federal statute.

The Department is converting some phrases to active voice and simplifying the representation of numbers as part of an ongoing, office-wide effort at standardization and clarity.

The Department is adding clarity to Section 111-1 related to standards and process for determining separate household status.

This rule change aligns the chapter with the approved waiver submitted under the requirements of 22 MRS §3104(17) (as amended by PL 2019 ch. 492 §1). This waiver allows residents of state or county correctional facilities to submit an application for SNAP up to 30 days prior to release, and for the filing date of the application to be the date of release.

The Department is removing references to an application needing to be dated. This change aligns the chapter with 7 CFR §273.2(c)(1)(iii).

The Department is amending the chapter to eliminate disqualifications based on non-compliance with child support orders. This policy was in place as part of a state option authorized under 7 CFR §273.11(q). The Department is choosing to no longer exercise that option. This change is effective December 1, 2021. Retroactive rulemaking is permissible

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

under 22 MRS §42(8) as the change affords this benefit to more residents of the State of Maine and does not adversely impact applicants, participants, beneficiaries, or providers.

The Department is aligning the disqualification periods for Quality Control noncompliance with those found in 7 CFR §273.2(d)(2).

The Department is clarifying, in Section 222-5, that a “reasonable opportunity” to resolve discrepancies is 10 days.

The Department is amending the chapter to eliminate the asset limit for all households effective January 1, 2022. This change is required by PL 2021 ch. 115 and improves access for residents with low income.

The Department is removing language from Section 333-1 excluding the assets of ineligible students, non-citizens, alien sponsors as it is redundant to language in 444-4.

The Department is making a number of changes to the sections on assets. This rule change updates the asset and income lists to reflect new technologies such as non-fungible assets and crypto-currency. It further amends the language related to assets and income excluded by federal statute to reflect the fact that new statutes may be passed excluding certain resources not on the existing list. These resources are often of a temporary nature, such as those created through various legislation associated with COVID-19. To add and remove them from the chapter each time there is a federal law change would be an unnecessary administrative burden and duplicative of action already taken by Congress. Additionally, the acceptable verifications of a good faith effort to sell real property are updated to conform with 7 CFR §273.8(e)(8).

The Department is aligning the look back period for certain felonies with the one required by 7 CFR §273.11(s)(3).

The Department is limiting comparable disqualifications related to disqualifications from other means tested programs to instances where the individual has been found by a court or administrative hearing to have committed an intentional program violation (IPV) or has signed an IPV waiver. Maine is one of only 13 U.S. states or territories to apply comparable sanctions for non-compliance with other program’s requirements. This change aligns Maine with the majority of other SNAP agencies. This policy was in place as part of a state option authorized under 7 CFR §273.11(k). Under that same authority, the Department is choosing to less fully exercise that option.

The Department is amending the work requirement for post-secondary students to allow for weekly hours to be averaged over the month. This change aligns this requirement with other work requirements in the chapter while remaining consistent with 7 CFR §273.5(b)(5).

A more detailed description of the Resource Guide for Families is added to Section 444-5.

The Department is updating Section 555-6 to more clearly and accurately describe the budgeting process. Accordingly, the budgeting worksheet in Section 555-7 that is redundant to the budgeting process outlined in 555-6 without adding clarity is eliminated. The Department is clarifying that, if there is an interruption in or delay of benefits as a result of household action or inaction, benefits for the month the situation is resolved will be prorated to the date of compliance. This change is required as part of Maine’s reinstatement waiver approved August 16, 2021 and guidance provided in Food and Nutrition Services memo index number 88-04.

The Department is cleaning up language in Section 666-6 that was applicable prior to the statewide conversion to simplified reporting. This language is no longer relevant and could reduce the clarity of the current requirements.

The Department is clarifying the reporting requirement related to household income exceeding 130% of the federal poverty level. This change is necessary to align the chapter with the requirements at 7 CFR §273.12(a)(5)(v).

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

The Department is clarifying the verification requirements at annual eligibility review. This change is necessary to align the chapter with the requirements at 7 CFR §273.2(f)(8). They improve access for households and reduce the administrative burden for the Department.

The Department is delaying the changes to the expungement deadline adopted as part of Food Supplement Rule Making #218A from September 1, 2021 to September 1, 2022. This change is necessary to comply with changes to 7 CFR part 274 detailed in the Federal Register Vol. 86 No. 143. These changes at the state and federal level are necessary as the national EBT vendor could not make the technology changes necessary to implement the change prior to the original deadline while, at the same time, making the changes necessary to support the various COVID-19 related initiatives.

The Department is adding a definition of public institution to add clarity to the application process in certain circumstances.

The Department is implementing various budgeting figures as required by 7 CFR §273.9(d). It requires that SNAP 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 and minimum allotments, standard deductions, maximum shelter deduction, homeless shelter deduction, asset limits, and 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 increase 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. These updates were made in Food Supplement Emergency Rulemaking #222E. This rulemaking continues these changes beyond December 30, 2021.

As proposed, Section 444-8(6) of this rulemaking would have eliminated the \$0 benefit starting March 1, 2022 and implemented over a 12-month period. Upon further review, the Department recognizes that these households benefit from SNAP Employment and Training supports. Therefore, the \$0 benefit will be retained.

A typographical error in the proposed rulemaking would have the Federal Fiscal Year (FFY) 2021 and 2022 figures in Chart 8 overlap. This error has been corrected by updating the end date of the FFY 2021 figures to September 30, 2021.

The proration of benefits when a household regains eligibility during the certification period will result in a minor decrease in the amount of benefits issued. In balance, these rule changes would be beneficial to both participants and small businesses where they spend their benefits. To the extent that the proration of reinstated benefits may have a minor impact on small businesses, there is no additional administrative burden for the business. The alternative would be to not have the reinstatement waiver which would result in a greater decrease in individual's benefits and their spending power at small businesses.

Fiscal impact of rule:

Direct costs to the Department include the cost of rulemaking activity which is covered by the existing budget for such changes. Most changes will result in reduced administrative costs.

The impact to SNAP benefits as a result of accepting applications from incarcerated individuals would be a minor increase in the prorated benefit amount for month of release. The impact of not applying comparable disqualifications would be another minor increase in the total benefits issued. Federal SNAP benefits are paid directly to merchants and do not pass through State budgets, so this would not have a direct cost to the Department. State-funded

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

SNAP benefits would have a minor increase which would be absorbed with current General Fund budgeting.

Increased issuance as a result of the annually adjusted figures would be significant. State Funded SNAP benefits are estimated to cost an additional \$748,242 for Federal Fiscal Year 2022. These same changes will result in an estimated additional \$99,027,204 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).

The proration of benefits when a household regains eligibility during the certification period would be a minor decrease in the amount of benefit issued. Again, the vast majority of the impact would be on federally funded benefits which pass directly to merchants. In balance, these rule changes would serve as a benefit for both participants and small businesses where they spend their benefits. To the extent that the proration of reinstated benefits may have a minor impact on small businesses, there is no additional administrative burden for the business. The alternative would be to not have the reinstatement waiver which would result in a greater decrease in individual's benefits and their spending power at small businesses.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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) and (18)

Chapter number/title: **Ch. 331**, Maine Public Assistance Manual (TANF - Temporary Assistance for Needy Families), **TANF Rule #117A**, FFY 2022 COLA, application process updates, and Post TANF services budgeting updates: **Introduction and General Definitions; ch. I**, Eligibility Process; **ch. V**, Post TANF Benefits; **ch. IX**, Alternative Aid Assistance Program; **Appendices**

Filing number: **2021-191**

Effective date: 10/1/2021

Type of rule: Routine Technical

Emergency rule: No

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

Basis statement:

This rule is promulgated to comply with Maine statute 22 MRS §3769-C(1)(D), which requires the Department to increase the Temporary Assistance for Needy Families (TANF) maximum benefit on an annual basis by the amount of the cost of living allowance as determined by the Social Security Administration. The statute also requires the Department to make a related increase to the standard of need, provided the funds are available.

The Department is updating the introductory text to simplify language, pertaining to the receipt of assistance that is counted toward the 60-month lifetime limit.

Additionally, the TANF and MaineCare application processes are being disentangled. The TANF manual specified that all applications for TANF benefits were to be treated as an application for MaineCare. 22 MRS §3790(3-A) as amended by HP 1261 – LD 1774 §6 newly requires the Department of Health and Human Services to accept referrals from an educational institution or program that is part of the University of Maine System; the Maine Community College System; Jobs for Maine’s Graduates; an adult education program; or the career centers as an application for the Parents as Scholars Program with limited conditions. This newly required process conflicted with Maine’s Medicaid State Plan. As such, the Department removed reference to treating the Public Assistance application as a MaineCare application from this chapter.

The previous requirement for Applicants and Participants to appear in-person for interviews and orientation meetings created an unnecessary burden for them, and an administrative burden for the Department and the Department’s contractors. While these in-person meetings may expedite the application process for those able to visit an office in-person, the requirement for most slowed or reduced access. Furthermore, at times of community transmission of illnesses or diseases such as Corona virus or Influenza, or hazardous traveling conditions due to weather, these in-person requirements can pose a risk to the health of Applicants, Participants and staff. These in-person interactions have not been proven to increase program integrity. As such, these requirements were recently reduced in rules TANF C19E, and TANF 114A. Recognizing the benefits of these adjustments, and not having experienced a demonstrable detriment, the Department removed all remaining in-person requirements from the manual.

To strengthen program integrity and reduce confusion, the Department is adding language to ch. V(A) clarifying those children who are eligible for Transitional Child Care

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

(TCC), and the reporting requirements for child care providers receiving TCC payments. The Department is clarifying language regarding TCC overpayment responsibility and recovery procedures as well.

Furthermore, the mileage reimbursement rate for Transitional Transportation Participants is updated to align with the MSEA rate at <https://www.maine.gov/osc/travel/mileage-other-info> and the rate used by other OFI supports such as the Additional Support for People in Retraining and Employment (ASPIRE), Food Supplement Employment and Training (FSET), and Higher Opportunity for Pathways to Employment (HOPE) programs.

Similarly, in compliance with 22 MRS §3762(8)(C), the Chart of Parent Fees and Subsidy Payments is updated based on Federal Poverty Level (FPL) figures published in the Annual Update of the Health and Human Services (HHS) Poverty Guidelines, 86 Fed. Reg. 7,732 (February 1, 2021) <https://www.federalregister.gov/documents/2021/02/01/2021-01969/annual-update-of-the-hhs-poverty-guidelines>. The Department is adopting this provision with a retroactive application to February 1, 2021. 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.

A clarification of good cause as it pertains to cooperation with child support requirements is being added to ch. I(D)(2)(iii).

The Department is updating the text describing the legal foundation for the Alternative Aid program to reflect the current authority and requirement to administer said program.

The Department is updating and adding various cross references for clarity.

The Department is updating the Table of Contents as a result of all proposed changes.

Finally, various changes are being made to formatting, punctuation, and word choice, that do not alter the meaning of the text, but enhance readability and inclusivity.

This rule will not have an impact on municipalities.

Transitional Child Care (TCC) provides a subsidy to eligible families to assist in paying for child care. In fiscal year 2019, it is estimated that over 650 small child care provider businesses received one or more Transitional Child Care payments. The vast majority of providers receiving payments were in-home providers. Overpayments occur for a variety of reasons, including child care provider error, specified relative error, and agency error. The updated language clarifies the reporting responsibilities of specified relatives as well as the child care providers. It also clarifies which party is responsible for the recoupment of an overpayment.

This rule adds reporting requirements for certain changes in enrollment. The Department does not anticipate that this rule would result in any additional recordkeeping or other administrative requirements or costs.

In ch. V(A)(5) the word “issue” has been updated to “divert” as result of public comment received to clarify the intent and circumstance of a TCC benefit paid directly to a child care provider.

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

Fiscal impact of rule:

Direct costs to the Department include the cost of rulemaking activity, updating staff training and resources, and necessary technology changes such as changes to the Automated Client Eligibility System (ACES) (all of which are covered by the existing budget for such changes). The increased TANF benefit amounts would result in an anticipated additional expenditure of \$316,485 per year from the Federal TANF Block Grant for federally funded

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

benefits and \$42,322 per year in State General Funds for state funded benefits. Increased mileage reimbursement is anticipated to result in an addition expenditure of \$25,062 per year from the Federal TANF Block Grant. As a result of the updated income eligibility guidelines for Transitional Child Care there is an anticipated increase to TANF Block Grant expenditures, but this increase is minimal and unable to be determined for currently enrolled households. Additional households may also become eligible, but that number cannot be predicted. All of these expenditures would primarily be realized as income for Maine businesses where they are spent.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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), and 3173-G; 42 U.S.C. §1396r-1; 22 MRS §42(8)
Chapter number/title: **Ch. 332**, MaineCare Rule #MC295 – Updates to **parts 9**, (Special Limited Benefit Groups, **and 18**, Presumptive Eligibility Determined By Hospitals.
Filing number: **2021-092**
Effective date: 5/10/2021
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The Department is making various substantive and technical changes in Part 9, as well as in Part 18 of the MaineCare Eligibility Manual, 10-144 CMR ch. 332. The primary substantive changes are regarding the presumptive eligibility determination process. The rule implements the legislature’s requirement that presumptive eligibility determinations be permitted for the limited family planning benefit group. It also reduces the penalties associated with performance standards and clarifies requirements for hospital presumptive eligibility determinations. Additionally, the Department regularly reviews policies to ensure clarity and conformity with state and federal Medicaid requirements. The Department is adding clarification to other sections of Parts 9 and 18 of this Manual to clarify eligibility criteria and processes. None of these clarifications make substantive changes to existing eligibility criteria or processes in a way that diminishes beneficiaries’ rights. Indeed, it could be that more beneficiaries are determined eligible for MaineCare services as a result of the new presumptive eligibility process for the limited family planning benefit group (Part 9, Sec. 4).

Within Part 9, Section 1, the Department is making the following changes. References to “HIV/AIDS Waiver” is changed to “Benefit for People living with HIV/AIDS” to align this manual section with the MaineCare Benefits Manual, 10-144 CMR ch. 101 ch. X. Language is added to specify that this benefit is also referred to as the Special Benefit Waiver or SBW. This term is the one used in mailings to applicants and participants and is the name by which they know the program. For clarity, and to lend consistency throughout this Part, the information in the first paragraph is reorganized to first provide a description of the program and discuss eligibility later. Changes also include specifying which type of coverage was being referenced at each step, specifying that action was being taken on benefits not the individual, and removing unnecessary words. For emphasis, the exception allowing an individual to have SBW and DEL so long as DEL is supplementing Part D is moved to its own sentence. The Department is making changes in Subsection 1(A) specifying that this requirement only applies to individuals who qualify for SSI-Related MaineCare based on disability (not age), and reorganizing the paragraph to start with the requirement and then move into ways the requirement can be met. The Assets Subsection is moved before the Income Subsection for consistency with other Parts of the manual and the flow of the eligibility determination process. Language is added to Subsection 1(C) specifying that SSI-Related budgeting procedures (in Part 7) apply. To improve specificity, the due date of premiums is added to the first paragraph of Subsection 2. Subsection 2(A)(1) is amended to clarify that multiple month payments should be made in advance of the due date. In the Example in Subsection 2(A)(1), the figures are updated to

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

current premium amounts. Subsection 2(A)(2) is amended to clarify that notice will be sent to the individual, allowing for e-noticing or mail as opposed to handing it to them. The last paragraph of Subsection 2(A)(3) is amended to clarify that the date in question is the last day of the grace period. Subsection 2(B)(2)(b) is amended to allow for a person other than a relative to be responsible for an individual's premium payments. Subsection 3(A) is amended to clarify that continuous coverage shall only be granted pending a hearing decision if the request for hearing is received during the Adverse Action Notice Period.

In part 9, section 2, the Department is making the following change to clarify that there are, in fact, two distinct Breast and Cervical Cancer programs. A sentence is added to the end of the first paragraph referencing the program available under 10-144 CMR Ch. 708.

In part 9 section 4, the Department is adding language to comply with 22 MRS §3173-G. Specifically, the rule sets forth the conditions for a provider to make a presumptive eligibility determination for the limited family planning coverage group, the process for making such a determination, the duration of the presumptive decision, and the process for securing ongoing eligibility. On September 22, 2020, the Centers for Medicare and Medicaid Services (CMS) approved a State Plan Amendment (SPA) authorizing these changes in the MaineCare program, effective October 1, 2020. Pursuant to 22 MRS §42(8), these changes shall be applied retroactive to October 1, 2020. The changes benefit both providers and MaineCare beneficiaries.

Other changes are part of a standardization of practice across all OFI rules. Enumeration and lettering of subsections, paragraphs, etc. is updated as part of a general effort to make these systems consistent throughout OFI rules and as necessary to accommodate the addition and deletion of material. Cross references are updated where information had been moved as part of a prior rule making. Changes include use of gender inclusive pronouns. Other grammatical and typographical errors are corrected. Redundant terms are removed. References to MaineCare coverage that does not limit its coverage to a specific system or condition are consistently changed to "full MaineCare". This term is familiar to applicants and participants as it is used in mailings to them. The Department finds that this term is less cumbersome and confusing than alternatives such as "Categorically Needy or Medically Needy coverage" and more accurate than some instances where one type of coverage was referenced and the other, inadvertently, left out.

Furthermore, this rulemaking makes changes in Part 18 of the Manual regarding requirements for hospitals to utilize Hospital Presumptive Eligibility, per Maine's SPA that was approved by CMS on October 28, 2020. The changes clarify the Hospital Presumptive Eligibility process and impose an 80% performance standard and a process for enforcing same.

As a result of comments, Part 9, §1(1)(A) is further amended to allow eligibility for the Special Benefits Waiver coverage group for individuals complying with any treatment regimen determined by their licensed healthcare professional.

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

Fiscal impact of rule:

This rule could increase costs to the Department of Health and Human Services as new individuals could apply for and receive MaineCare eligibility via the presumptive eligibility determinations. As it is unknown how many individuals would become eligible who would not have applied for eligibility without the presumptive eligibility determination from the provider, no fiscal estimate of these costs can be provided at this time. These additional costs would largely be seen as revenue for providers within the state.

Direct costs to the Department include the cost of rulemaking activity, necessary technology changes such as changes to ACES, and training and other outreach to the

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

providers making the presumptive eligibility determinations (all of which are covered by the existing budget for such changes).

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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(1); 19-A MRS §2302; Federal Regulation 45 CFR §307.11

Chapter number/title: **Ch. 351**, Maine Child Support Enforcement Manual: **ch. 2**, Definitions; **ch. 5**, Limitation of Debt; Bar Against Collection (19-A MRS §2302); SSI

Filing number: **2021-213**

Effective date: 10/17/2021

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To meet mandatory federal requirements to comply with technical corrections to amended 45 CFR §307.11

Basis statement:

The adoption of these rules meets mandatory federal requirements by implementing technical corrections made to 45 CFR §307.11. Adopted rule 5(1) adds Social Security Retirement (SSR) benefits when referring to concurrent Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) in the rule to prevent garnishment or income withholding of SSI payments and either SSDI or SSR benefits. Adopted rule 2 adds definitions for SSR, SSI and SSDI to ch. 2.

Fiscal impact of rule:

There will be no financial impact of this amended rule.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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) and 3762(3)(A) and (18)
Chapter number/title: **Ch. 607**, APRIRE-TANF Program: **ASPIRE Rule #28A**, TANF Earnings Disregard Extensions
Filing number: **2021-114**
Effective date: 6/1/2021
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rule change aligns ASPIRE Program rules with changes to the Maine Public Assistance Manual that require the Department to consider receipt of the TANF earnings “Step” disregard as a condition for extended eligibility when a family has received TANF past the federal and state lifetime limit of 60 months. This extension is required in 22 MRS §3762(18) and 10-144 CMR ch. 331 chapter I(J)(3)(g)(i).

The addition of the TANF Earnings Disregard Extension will result in more Maine families receiving TANF/PaS and for a longer duration without a benefit reduction due to increased earnings.

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

Fiscal impact of rule:

The \$15.7 million annual fiscal impact to Maine’s federal TANF block grant was reflected in the Maine Public Assistance Manual (TANF) Rule #114A – Changes to Household and Budgeting rule. Of this total, \$2.4 million per year is anticipated for the additional supports participants will be eligible for during the extended time they are receiving TANF benefits.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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) and (8)
Chapter number/title: **Ch. 609**, Food Supplement-Employment and Training (FSET) Program Rules, **FSET Rule #5** – Bachelors Programs Approved
Filing number: **2021-086**
Effective date: 5/1/2021
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Maine Department of Health and Human Services recently renewed its formal partnership with the Maine Department of Labor’s Competitive Skills Scholarship Program (CSSP) to include the CSSP program in its array of FSET services. This rulemaking proposes to expand Maine’s FSET post-secondary educational opportunities for FSET participants to include some 4-year degree programs that lead to high wage, in demand occupations, as defined by the Maine Department of Labor at 12-597, Chapter 2, Rule Governing the Competitive Skills Scholarship Program. The inclusion of these programs is consistent with the state plan amendment submitted to Food and Nutrition Services on October 23, 2020 and approved on November 13, 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:

Maine Department of Health and Human Services recently renewed its formal partnership with the Maine Department of Labor’s Competitive Skills Scholarship Program (CSSP) to include the CSSP program in its array of FSET services. Effective October 1, 2020, this rulemaking expands Maine’s FSET post-secondary educational opportunities for FSET participants to include some 4-year degree programs that lead to high wage, in demand occupations, as defined by the Maine Department of Labor at 12-597, Chapter 2, Rule Governing the Competitive Skills Scholarship Program. The inclusion of these programs is consistent with the state plan amendment submitted to Food and Nutrition Services on October 23, 2020 and approved on November 13, 2020.

Additionally, this rule change allows co-enrolled FSET and CSSP participants to most efficiently participate in educational programming. The rulemaking also clarifies that participants may be co-enrolled with more than one FSET provider only when the providers are delivering different components of services, as defined in the rule. As a result of comments, this rule change further clarifies that in the case of more than one provider offering the same component of service, the participant may select the provider of their choice.

In partnering with the CSSP program, Maine DHHS staff will utilize the expertise of the Maine Department of Labor to identify which occupations are high wage, in demand occupations, and support the degrees needed accordingly through its FSET program.

Finally, effective March 8, 2021, this rulemaking strikes language disallowing reimbursement for on the job training or work experience. This change aligns Maine’s policy with new federal rules adding subsidized employment as an allowable component.

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.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

This amendment is expected to be annually cost neutral, as the same number of participants will be served, and providers will be held to the established budgets and caps for services and participant reimbursements in their contracts or Memorandum of Understanding as previously approved.

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

Fiscal impact of rule:

This amendment is expected to be annually cost neutral, as the same number of participants will be served, and providers will be held to the established budgets and caps for services and participant reimbursements in their contracts or Memorandum of Understanding as previously approved.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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 – Data, Research and Vital Statistics** (*jointly with 90-590, Maine Health Data Organization*)

Umbrella-Unit: **10-144**

Statutory authority: PL 2021 ch. 423; 22 MRS §§ 1406-A, 2706 sub-§2-A, 8715-A

Chapter number/title: **Ch. 730** (*New*), Interagency Reporting of Cancer Registry and Vital Statistics Data

Filing number: **2021-247**

Effective date: 12/14/2021

Type of rule: Routine Technical

Emergency rule: No

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

Basis statement:

The Maine Health Data Organization is authorized by statute to collect health care data. PL 2021 ch. 423, *An Act to Improve Health Care Data Analysis*, requires the Maine Health Data Organization and the Department of Health and Human Services to adopt a joint rule to require the reporting to the MHDO of data from the cancer-incidence registry established pursuant to 22 MRS §1404 and data related to the registration of vital statistics pursuant to 22 MRS §2701. This new rule meets the requirement as defined above.

The integration of the cancer registry and vital statistics data information into the MHDO data sets will enhance the data analysis in the State of Maine, specific to cancer research.

The provisions of this new rule include: identification of the agencies involved and the reporting requirements; establishment of requirements for the content, format, method, and reporting periods for the data; data integration; and confidentiality.

Fiscal impact of rule:

There is no fiscal impact on state municipalities, counties or small businesses.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

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: **2021-001**
Effective date: 1/6/2021
Type of rule: Major Substantive
Emergency rule: Yes

Principal reason or purpose for rule:

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's have sufficient resources to meet the challenges stemming from the current surge of the ongoing COVID-19 coronavirus, and to continue to provide services for hundreds of children in Maine. Without this rate increase, Maine's children's residential 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 residential PNMI providers are already facing extreme, unanticipated financial threats to their continued operation.

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." On March 11, 2020, the World Health Organization declared COVID-19 a worldwide pandemic.

Although Governor Janet Mills declared a state of civil emergency by proclamation pursuant to 37-B MRS §742(1)(A) as early as March 15, 2020, and has continually renewed that declaration ever since, over the past month, Maine's Centers for Disease Control and Prevention (CDC) has reported rates of COVID-19 infection as well as resulting hospitalizations and deaths resulting from COVID-19 at levels many times higher than at any other point during the civil emergency. This surge affects communities across the state.

Pursuant to 10-144 CMR ch. 101 (the *MaineCare Benefits Manual*) ch. II and III section 97 ("Private Non-Medical Institutions", or "PNMI", Services), PNMI's provide Medicaid services to various populations in Maine. Here, section 97 Appendix D governs the PNMI's 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 current surge of COVID-19 infections has created a number of challenges for PNMI's providing residential treatment to children statewide. PNMI's have been deemed an essential service as they are providing care and treatment for hundreds of children across the state. In the face of these challenges, several providers have recently shut down, resulting in a loss of residential care beds for Maine children.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Specifically, challenges include:

- 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 infection.
- The need to assure adequate staffing levels if members of a provider's staff are absent due to suspected or confirmed COVID-19 infection.
- 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 increased pay for their staff to compensate for the risk of exposure to COVID-19.
- School closures and virtual schooling have resulted in increased need for staffing. Prior to the pandemic children left the residential setting to receive educational services elsewhere, allowing providers to decrease staffing during this time. Due to the pandemic most children in residential are completing school virtually and residential providers are required to maintain staff not previously required in order to supervise schooling.

This emergency rule temporarily increases the Standard Room and Board Rate under 10-148 CMR ch. 21. The current rate for providers governed by this rule is \$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 \$26.55 to \$81.00 per occupied bed day, effective January 1, 2021 and continuing until March 31, 2021. The Department is making the rate increase retroactive to January 1, 2021. This retroactive application is authorized by 22 MRS §42(8), as it provides a financial benefit to the providers.

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's 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. In the face of the current surge and its effect on PNMI's operations, 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 current COVID-19 situation, detailed above.

Emergency major substantive rules are effective for up to one year, pursuant to 5 MRS §8072. Moving forward, the Office of Child and Family Services (OCFS) is collaborating with MaineCare on a rate study for children's residential care. The study is considering both the MaineCare portions of the service, as well as the room and board rate covered by this rule, 10-148 CMR ch. 21. It is anticipated that in early 2021 MaineCare's contracted provider will complete the rate study and OCFS plans to update the rate permanently through non-emergency, major substantive rulemaking pursuant to 5 MRS §8071 once the rate study is complete.

Fiscal impact of rule:

\$720,000.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Office of Child and Family Services**
Umbrella-Unit: **10-148**
Statutory authority: 22 MRS §§ 7702-B, 7703, 7704, 7707, 7802, 8301, 8301-A, 8302-A, 8303-A
Chapter number/title: **Ch. 32** (*Repeal and replace*), Child Care Facility Licensing Rule – Child Care Centers, Nursery Schools, Small Child Care facilities, Other Programs. Also repeals **Ch. 36**, Rules for the Licensing of Nursery Schools
Filing number: **2021-188, 189**
Effective date: 9/27/2021
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”) proposed rulemaking to repeal 10-148 CMR ch. 32 *Rules for the Licensing of Child Care Facilities* and 10-148 CMR ch. 36 *Rules for the Licensing of Nursery Schools* to replace the two rules with 10-148 CMR ch. 32 *Child Care Facility Licensing Rule - Child Care Centers, Nursery Schools, Small Child Care Facilities, Other Programs* on June 30, 2021. A public hearing using the zoom platform was held on July 20, 2021 and written comments were accepted through July 30, 2021.

The Department has determined that adoption of this rule, 10-148 CMR ch. 32 *Child Care Facility Licensing Rule - Child Care Centers, Nursery Schools, Small Child Care Facilities, Other Programs* is necessary to fully comply with the federal requirements of the 2014 reauthorization of the Child Care and Development Block Grant (CCDBG), which provides significant funding annually to improve access to and quality of child care in Maine. Maine currently has an approved waiver for specific requirements that will expire on September 30, 2021. The new provisions in the proposed rule are required to remain in compliance with CCDBG and must be operationalized prior to the expiration of the waiver. These provisions require compliance with 10-148 CMR ch. 34 *Child Care Provider (Child Care Facilities and Family Child Providers) Background Check Licensing Rule*, require specific health and safety training for staff, require emergency preparedness plans, require immunization records for all children, and require all monitoring reports to be posted to a public website for three years. Additionally, the proposed rule includes provisions necessary to meet the health and safety needs of children who are served in child care facilities. The rule updates the current regulations and merges and consolidates requirements of the current rules in order to streamline requirements and processes.

Significant changes to the rule include;

- Reframing the order and language of the rule to describe provider licensing responsibilities more clearly;
- Removing obsolete definitions, while adding and clarifying other definitions necessary for the rule;
- Adding that the Department will post all inspection reports to a website available to the public for a period of three years;
- Streamlining and clarifying requirements for license applications;
- Eliminating requirements for personal references;

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

- Requiring an applicant to complete pre-licensure health and safety training;
- Adding the requirement for compliance with 10-148 CMR ch. 34 Child Care Provider Background Check Licensing Rule, which was effective Sept. 25, 2020;
- Adding additional requirements for the staff manual;
- Expanding written policy requirements for handling suspected instances of child abuse and neglect;
- Adding a requirement to register with Maine's Quality Rating Improvement System;
- Adding clarifying language regarding the waiver process;
- Clarifying inspection and investigation procedures;
- Adding language to the rule for transparency to reflect current practice of requiring a Plan of Action or issuance of a Directed Plan of Action;
- Unifying record-keeping requirements and including additional requirements in the program manual and policies;
- Increasing personnel record retention and child records to three years;
- Adding the requirement for record of immunization for all children;
- Clarifying and adding requirements for notifications and reports to the Department including adverse drinking water results;
- Adding provisions to supervision;
- Broadening staff qualifications and requirements;
- Specifying orientation and ongoing training requirements;
- Adding safe sleep provisions;
- Adding a requirement for registration with Maine's Professional Development Network;
- Adding additional constructive methods of guidance;
- Clarifying prohibited detrimental practices;
- Merging Rights of Children;
- Requiring written instructions regarding child abuse and neglect reporting;
- Requiring the Child Protective Intake hotline number be posted;
- Adding requirement that all children have a current record of immunization on file, removing specific exemptions from immunization requirements, per PL 2019 ch. 154 §11 (eff. Sept. 1, 2021);
- For Nursery Schools only, every 2 years each licensee, administrator and other staff members of the Nursery School who provide care for children must be declared free from communicable disease by a licensed physician, nurse practitioner or physician assistant. Pursuant to 22 MRS §8402, effective September 1, 2021, there will no longer be exemptions from this requirement based on religious or philosophical beliefs;
- Adding requirement for facilities serving 13 or more Children to have a separate first aid kit and manual in each classroom;
- Adding a requirement to test drinking water for lead and other specified contaminants;
- Adding requirement to notify parents when on a bottled water agreement;
- Adding requirements related to the indoor physical environment to include the requirement for shock absorbing material, requirements regarding power equipment, requirements regarding purses, bags, medications and other belongings;
- Adding time requirements for outdoor play and limits for television, videos, and hand-held electronic devices;
- Adding a requirement for a carbon monoxide detector;
- Decreasing minimum indoor temperature requirement to 65° Fahrenheit;
- Increasing requirements for outdoor play areas including specific criteria for fencing, use of helmets, and energy absorbing material in fall zones;
- Adding requirements for exceeding maximum group size in outdoor areas;

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

- Adding requirements for bathing facilities;
- Specifying and adding requirements for emergency preparedness plans;
- Clarifying requirements for swimming and wading settings and adding requirements for hot tubs;
- Adding more healthy meal and snack requirements and limiting consumption of juice;
- Adding a requirement for documentation of allergy plan;
- Adding safety precautions in kitchen facilities;
- Adding disqualifying driving offenses prohibiting provider transport of children;
- Decreasing restrictions to first floor;
- Limiting use of infant equipment to 30 consecutive minutes;
- Adding requirements regarding feeding and storage of breast milk;
- Prohibiting the practice of swaddling;
- Adding requirements for nighttime care; and
- Increasing transparency and clarifying enforcement authority and process.

Fiscal impact of rule:

The expected impact will vary depending upon the provider. Providers may have cost associated with compliance with outdoor play areas, safe sleep, water testing, and required training.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

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

Umbrella-Unit: **10-148**

Statutory authority: 5 MRS §§ 8054, 8073; 22 MRS §§ 7702-B11), 7703(6), 7704, 77073), 7802(7), 8301(8), 8302-A(2), 8303-A(l)

Chapter number/title: **Ch. 33** (*Repeal and replace*), Family Child Care Provider Licensing Rule

Filing number: **2021-112**

Effective date: 5/27/2021

Type of rule: Major Substantive

Emergency rule: Yes

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

Basis statement:

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 Department's findings of emergency are as follows: Without this emergency major substantive rule, the provisionally adopted major substantive rule provisions would have no legal effect until they are reviewed and approved by the Maine Legislature. These provisions are integral to the rule as a whole, such that the rule could not function nor be enforceable unless they have legal effect. The lack of a functional, enforceable rule for the licensing of family child care providers presents an immediate threat to the health, safety, and general welfare of Maine children. Moreover, as indicated below, these provisions provide necessary protection for children and toddlers. These major substantive provisions are both necessary for the primary health and safety of the children in family child care and are required by Maine law to be included in this rule. 22 MRS §8302-A(2). Finally, emergency adoption of the major substantive provisions of this rule is necessary to fully comply with the federal requirements of the 2014 reauthorization of the Child Care and Development Block Grant (CCDBG), which provides significant funding annually to improve access to and quality of child care in Maine.

The Emergency Major Substantive rule adopted in this rulemaking is identical to the 10-148 CMR ch. 33 rule the Department adopted on May 20, 2021. The emergency major substantive provisions in this rule, that are effective May 20, 2021, address the following: applicant qualifications; requirements of provider handbook, staff manual, and child abuse/neglect policies; fees; record management and retention; certain reporting requirements; staff-child ratios, supervision, and qualifications; provider and staff training; child guidance; rights of children and parents; health and medical care; environment and safety; swimming and wading; food and kitchen; infant/ toddler care; nighttime care; and certain enforcement provisions.

Specific changes from the former Family Child Care Provider Licensing Rule, 10-144 CMR ch. 33, that are adopted on an emergency basis in this rulemaking include: requiring compliance with comprehensive background checks pursuant 10-148 CMR ch. 34 (Emergency Rule, effective 9-25-20), adding requirements for provider handbook and staff manual, increasing record retention from two years to three years, updating immunization requirements, clarifying and adding requirements for notifications to the Department, adding staff qualifications and requirements, specifying orientation and ongoing training requirements, adding a requirement for registration with Maine's Professional Development Network, adding a requirement to register with Maine's Quality Rating Improvement System, adding child and parent rights, adding time requirements for active outdoor play, reducing

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

screen time, adding a requirement for a carbon monoxide detector, changing temperature requirements, adding swimming requirements, adding healthy meal and snack requirements, adding disqualifying driving offenses prohibiting provider transport of children, prohibiting swaddling, modifying requirements for nighttime care, and increasing transparency with additional parental notification.

Fiscal impact of rule:

The Department does not anticipate any fiscal impact as the changes are cost neutral.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Office of Child and Family Services**
Umbrella-Unit: **10-148**
Statutory authority: 22 MRS §§ 42,7801,7802, 8102; 22-A MRS §205(2); 34-B MRS §1203-A
Chapter number/title: **Ch. 35** (*Repeal and replace*), Children’s Residential Care Facilities Licensing Rule (*replaces ch. 36*)
Filing number: **2021-243, 244**
Effective date: 12/12/2021
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”) proposed rulemaking to repeal the current Children’s Residential Care Facilities Licensing Rule, 10-144 CMR ch. 36, and to replace it with 10-148 CMR ch. 35: Children’s Residential Care Facilities Licensing Rule on September 22, 2021. There was no public hearing for this proposed rule. The Department accepted written comments through October 22, 2021.

The Department has determined that adoption of this rule, 10-148 MR ch. 35 Children’s Residential Care Facilities Licensing Rule, is necessary to fully comply with the requirements of the federal Family First Prevention Services Act (FFPSA) of 2018 which requires states to focus resources on prevention services and early intervention to strengthen families, keep children safe, and reduce the need for foster care. FFPSA also improves the wellbeing of children who are in foster care by reducing placement of children in congregate care settings. The Department believes that the new requirements adopted in this rulemaking to comply with FFPSA will afford greater health and safety protection for children and young adults receiving services in a children’s residential care facility.

For children who require treatment in a residential care facility, FFPSA established standards for Qualified Residential Treatment Programs (QRTP). In order for states to receive Title IV-E federal financial support for children in state care placed in a residential care facility, the facility must meet QRTP standards. This rule requires most children’s residential care facilities to comply with QRTP standards, and all that serve children in state care. QRTP requirements incorporated into the rule are described in the list of specific changes to the current rule, below.

FFPSA also requires states to conduct comprehensive background checks on any adult working in a children’s residential care facility. These new comprehensive background check requirements include pre-employment fingerprinting with a search of the Federal Bureau of Investigation (FBI) and State Bureau of Identification (SBI). Furthermore, FFPSA stipulates which crimes disqualify an individual from working at a children’s residential care facility either for the individual’s lifetime or for five years, depending on the crime. Additionally, FFPSA requires checks of the child abuse and neglect registry for each state in which prospective hires have resided during the preceding five years. This rulemaking incorporates the comprehensive background check requirements of FFPSA into the licensing rule. Additionally, the Department includes checks of professional registries and Adult Protective Services records in the adopted rule.

This rule adoption also updates and clarifies language to reflect current practice and adds requirements to afford greater health and safety protection for residents receiving

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

services. The Department has adopted these changes based on program knowledge and expertise, and review of current practice as compared to the current rule. Moreover, the Office of Child and Family Services consulted with other offices within the Department of Health and Human Services to assure that this rule development aligned with Department goals and other Department policies.

Significant specific changes to the current rule include:

- Specifying exemptions or modifications applicable to specific service types (i.e., crisis services and therapeutic boarding schools) throughout the rule;
- Removing, adding, clarifying, and updating definitions;
- Adding the requirement for participation in quality assurance reviews conducted by Children's Behavioral Health Services within the Office of Child and Family Services;
- Adding and clarifying requirements for licensure application;
- Adding requirement for accreditation for consideration as a Qualified Residential Treatment Program and adding requirement for accreditation reports to be submitted to the Department in section;
- Requiring a trauma informed treatment model for consideration as a Qualified Residential Treatment Program;
- Requiring a unique license for each physical site;
- Adding a policy requirement for aftercare;
- Adding requirement that providers must follow Rights of Recipients of Mental Health Services (14-193 CMR ch. 1) for residents 18-21 years old;
- Specified requirement for providers to comply with requests for records;
- Adding requirement for staff to sign a statement regarding adult abuse and neglect;
- Removing requirement for medical examination for staff;
- Adding parental/guardian participation as appropriate and required for a Qualified Residential Treatment Program and requiring an aftercare plan to be in the resident record;
- Clarifying reporting requirement for all facilities;
- Changing reporting requirement from next business day to 72 hours to align with updated OCFs policy and clarified reporting requirements for adult residents 18-21 years old;
- Adding additional requirements to the comprehensive assessment and removing requirement for physician consultation regarding medication during comprehensive assessment;
- Removing requirement for crisis units to do a full comprehensive assessment;
- Modifying service plan review requirements to include a 30-day internal review;
- Modifying the review frequency of crisis plan from after every use to each service plan review or sooner if needed;
- Adding additional discharge requirements to include documenting resident's progress and family involvement;
- Incorporating new post-discharge requirements for Qualified Residential Treatment Programs;
- Clarifying and consolidating the requirements to meet physical health needs of residents;
- Adding requirement for first aid kits to be in each facility vehicle;
- Adding requirement for medication to be secured at all times;
- Clarifying language and reorganizing the behavior management section of rule;

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

- Removing requirements regarding isolation, including assessment of benefit of isolation and need for approval by supervisor;
- Clarifying and updating language regarding restraint;
- Clarifying previously allowed practice of standing in or near the doorway while engaging in approved de-escalation techniques as the only form of seclusion allowed;
- Requiring all non-clinical staff providing direct care and supervision of residents to be certified as Behavioral Health Professionals (BHP), for facilities designated as a Qualified Residential Treatment Program;
- Expanding and elaborating requirements for staff, including clarifying the requirement that good judgement means respecting professional boundaries;
- Updating and clarifying staff supervision requirements;
- Removing specific requirements for staff evaluations;
- Adding requirements for comprehensive background checks and including specific disqualifying conditions aligning with Family First Prevention Services Act;
- Including professional registries and Adult Protective Services in background check requirements;
- Adding disqualifying driving offenses that prohibit a staff member from transporting residents;
- Updating staff training requirements;
- Adding requirement to screen for indications of human trafficking;
- Clarifying requirement for seatbelts and child safety seats;
- Adding requirements for Qualified Residential Treatment Programs to have both a licensed clinician and registered nurse available 24 hours a day/ 7 days a week;
- Eliminating requirement for six-month clinical review;
- Adding specialized service requirements for facilities providing Intellectual and/or Developmental Disabilities Treatment Programs;
- Adding requirements for assessment and staff supervision;
- Expanding allowable credentials for a clinician to include clinical conditional LCSW, LCPC, and LMFT with two years behavioral health field work with children in Level 2 facilities;
- Adding ancillary service to include BCBA in Level 2 facilities;
- Clarifying language regarding enforcement to reflect current practice; and
- Adding requirement to notify guardians of current and prospective residents of licensing action.

Fiscal impact of rule:

Services provided to children in Children’s Residential Care Facilities are funded by a variety of means including MaineCare, federal Title IV-E funds, and State general funds. A recent rate study was conducted which incorporated the expected costs associated with each of the new provisions proposed in this rule and resulted in rate increases for services provided in Children’s Residential Care Facilities. As approved in PL 2021 ch. 29 and 398, the estimated fiscal impact of this rule is \$5.8m General Fund, \$10.3m Federal Expenditures Fund, and \$1m Other Special Revenue Funds.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Office of Aging and Disability Services**
Umbrella-Unit: **10-149**
Statutory authority: 22 MRS §§ 42, 3493
Chapter number/title: **Ch. 5 §16 (Repeal)**, Adult Protective Services: Administration
Filing number: **2021-041**
Effective date: 2/27/2021
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The Department is repealing 10-149 CMR ch. 5 §16 – “Adult Protective Services: Administration”, because its description of Adult Protective Services (APS) case records management practices, including retention, transfer, maintenance, and case reviews, is outdated and no longer applicable. Section 16, effective October 6, 2007, was part of the *Office of Elder Services Policy Manual*. The Office of Elder Services and the Office of Adults with Cognitive and Physical Disabilities Services merged in 2012, and the Office of Aging and Disability Services was established. As a unit within the Office of Aging and Disability Services, APS follows the record retention policies established by the Department of Health and Human Services as well as the Maine Secretary of State. APS files are currently maintained electronically in a system known as Evergreen. The repeal of Section 16 therefore will assure that reporters, victims, Department staff, and the public do not have inaccurate information regarding the Department’s APS file management practices.

Fiscal impact of rule:

There is no cost to municipalities or counties associated with this rule.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Health and Human Services, **Office of Aging and Disability Services** (2)
Umbrella-Unit: **14-197**
Statutory authority: 22 MRS §§ 42(1), 3089(3); 34-B MRS §5206(8)
Chapter number/title: **Ch. 6** (*New*), Crisis Prevention and Intervention Services
Filing number: **2021-121**
Effective date: 7/1/2021
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

PL 2019 ch. 290 §1 directed the Department to adopt major substantive rules to implement 34-B MRS §5206. Section 5206 authorizes crisis services for persons with intellectual disabilities or Autism Spectrum Disorder. The rule also describes the Department's crisis services available for persons with an acquired brain injury pursuant to 22 MRS §3088.

Basis statement:

The Maine Legislature, pursuant to PL 2019 ch. 290 §1, directed the Department of Health and Human Services to adopt rules to implement 34-B MRS §5206 - Crisis and Respite Services, and designated such rules as major substantive rules. In order to comply with the Legislature's mandate, the Department is adopting this *Crisis Prevention and Intervention Services (CPIS)* rule to provide guidance on the Department's crisis services for persons with intellectual disabilities or Autism Spectrum Disorder authorized by 34-B MRS §5206. This rule also describes crisis services available to persons with acquired brain injuries pursuant to 22 MRS §3088.

The Department's crisis services support and promote the safety and well-being of adults with intellectual disabilities, acquired brain injuries, or Autism Spectrum Disorder who are in crisis, when such personal crises could lead to the loss of their home, program, or employment. CPIS shall be offered in the person's home, program, or workplace when feasible unless otherwise provided in the person's service plan or CPIS in the home have proven to be unsuccessful. Out-of-home CPIS may be available in Residential Stabilization Units maintained by or on behalf of the Department. To deploy CPIS to persons in crisis, the Department shall provide intake services, crisis case management services, crisis stabilization units and emergency transitional housing, and post-crisis services. The Department will offer training on CPIS, maintain data, and undertake deidentified reporting for planning and budgeting purposes. The Department will also maintain a statewide respite system for planned and unplanned respite for persons with intellectual disabilities or Autism Spectrum Disorder and their families.

OADS drafted this rule utilizing the following resources: existing crisis services for persons with intellectual disabilities, acquired brain injuries, or Autism Spectrum Disorder who are in crisis; stakeholder input; the Department's knowledge of and experience with administering crisis services; and the administration's guidance and vision for crisis services for these populations.

The Department held a virtual public hearing on October 14, 2020. No comments were submitted during the comment period or during the public hearing.

The Department provisionally adopted this major substantive rule on December 22, 2020. The Legislature approved the provisionally-adopted rule without amendment by Resolves 2021 ch. 12, which was approved by the Governor on May 5, 2021. This rulemaking will not impose any costs on municipal or county government or on small businesses.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Fiscal impact of rule:

There is no cost to municipalities or counties associated with this rule.