**State of Maine: Notice of Agency Rulemaking – January 17, 2024**

**NOTICE OF STATE RULEMAKING**

**Public Input for Rules**

Notices are published each Wednesday to alert the public regarding state agency rulemaking. You may obtain a copy of any rule by notifying the agency contact person. You may also comment on the rule, and/or attend the public hearing. If no hearing is scheduled, you may request one - the agency may then schedule a hearing, and must do so if 5 or more persons request it. If you are disabled or need special services to attend a hearing, please notify the agency contact person at least 7 days prior to it. **Petitions**: you can petition an agency to adopt, amend, or repeal any rule; the agency must provide you with petition forms, and must respond to your petition within 60 days. The agency must enter rulemaking if the petition is signed by 150 or more registered voters, and may begin rulemaking if there are fewer. You can also petition the Legislature to review a rule; the Executive Director of the Legislative Council (115 State House Station, Augusta, ME 04333, phone (207) 287-1615) will provide you with the necessary petition forms. The appropriate legislative committee will review a rule upon receipt of a petition from 100 or more registered voters, or from "...any person who may be directly, substantially and adversely affected by the application of a rule..." (Title 5 §11112). **World‑Wide Web**: Copies of the weekly notices and the full texts of adopted rule chapters may be found on the internet at: <http://www.maine.gov/sos/cec/rules>. There is also a list of rulemaking liaisons (<http://www.maine.gov/sos/cec/rules/liaisons.html>), who are single points of contact for each agency.

**PROPOSALS**

AGENCY: **65-407 - Public Utilities Commission**

CHAPTER NUMBER AND TITLE: **Ch. 313,** Customer Net Energy Billing (amend)

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2024-P004**

BRIEF SUMMARY: The Public Utilities Commission initiates a rulemaking proceeding to amend its Net Energy Billing (NEB) rule, Chapter 313, to reflect recently enacted legislation.

PUBLIC HEARING: **February 8, 2024 at 10:00am** at the Public Utilities Commission, 26 Katherine Drive, Hallowell, Maine 04347. Persons unable to attend this conference in person may elect to participate virtually by emailing Pamela.Kowalchuk@maine.gov at the Commission and requesting a Microsoft Teams invitation. Those unable to attend via video may participate by phone using the dial-in information that appears on the Microsoft Teams invitation (obtained as described above).

COMMENT DEADLINE***:* February** **23, 2024**. Comments on the proposed rule may be filed electronically using the Commission’s Case Management System (CMS) or may be sent in writing to the Administrative Director on or before February 23, 2024 Written comments should refer to the docket number of this proceeding, Docket No. 2023-00284, and be sent to the Administrative Director, Public Utilities Commission, 18 State House Station, Augusta, Maine 04333-0018.

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: Liz Wyman, 18 State House Station, Augusta, ME 04333; Telephone: (207) 287- 1321. Email: Liz.Wyman@maine.gov

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES *(if any)*: None

STATUTORY AUTHORITY FOR THIS RULE: 35-A M.R.S. §§ 104, 111, 1301, 3209-A, 3209-B.

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED *(if different)*: N/A

AGENCY WEBSITE: [www.maine.gov/mpuc](http://www.maine.gov/mpuc)

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: Pamela.Kowalchuk@maine.gov

AGENCY: **05-071 – Department of Education**

CHAPTER NUMBER AND TITLE: **Ch. 52,** Grant Application and Award Procedure Fund for School Meal Equipment and Program Improvement

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2024-P005**

BRIEF SUMMARY: As a result of Public Law 2023, Chapter 457 (codified at 20-A MRSA §6664), the Maine Department of Education is proposing a new rule to govern the administration of the School Meal Equipment and Program Improvement Fund.

PUBLIC HEARING: N/A

COMMENT DEADLINE: February 16, 2024 at 5 p.m.

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: Laura Cyr, State House Station #23, Augusta, ME 04333. Telephone: 207-446-8791. Email: Laura.Cyr@maine.gov

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES *(if any)*: N/A

STATUTORY AUTHORITY FOR THIS RULE: MRS 20-A §6664. School Meal Equipment and Program Improvement Fund

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED *(if different)*: N/A

AGENCY WEBSITE: <https://www.maine.gov/doe/home>

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: Laura.Cyr@maine.gov

**ADOPTIONS**

AGENCY: **94-457 -** Finance Authority of Maine (FAME)

CHAPTER NUMBER AND TITLE: **Ch. 612,** Maine Dental Education Loan and Loan Repayment Programs

ADOPTED RULE NUMBER: **2024-005**

CONCISE SUMMARY: This rule implements changes to the Maine Dental Education Loan and Loan Repayment Programs. The rule comports with language enacted during the First Regular Session of the 131st Legislature via L.D. 1256, *An Act to Increase Access to Oral Health Care by Expanding the Maine Dental Education Loan Program*, and now set forth in law as P.L. 2023, chapter 130.

The new law expands eligibility for the Maine Dental Education Loan and Loan Repayment Programs, which are administered by FAME, to include dental hygienists, dental therapists, expanded function dental assistants, and dental assistants. The law provides that FAME will continue to award up to three loans or loan repayment agreements annually for dentists (or more if funds permit), and also award up to six loans or loan repayment agreements annually for dental hygienists, dental therapists, expanded function dental assistants, or dental assistants. FAME may award additional loans or loan repayment agreements annually as funds permit.

EFFECTIVE DATE: January 14, 2024

AGENCY CONTACT PERSON: William Norbert, Esq., Finance Authority of Maine (FAME), PO Box 949 - 5 Community Drive, Augusta, ME 04332-0949. Telephone. (207) 620-3540. Email: wnorbert@famemaine.com.
FAME WEBSITE: <https://www.famemaine.com/>

AGENCY: **94-457 - Finance Authority of Maine (FAME)**

CHAPTER NUMBER AND TITLE: **Ch. 617,** Health Professions Loan Program

ADOPTED RULE NUMBER: **2024-006**

CONCISE SUMMARY: This rule implements changes to the Health Professions Loan Program. The change to the definition of “financial need” is necessitated by enactment at the federal level of the FAFSA Simplification Act, which made significant changes to federal student aid, including the Free Application for Federal Student Aid (FAFSA) form. The act replaced the term “Expected Family Contribution” (EFC) with the term “Student Aid Index” (SAI) beginning in the 2024–25 award year. The change updates the current program rule, which referenced the outdated EFC terminology in one part (the term “financial need” in the definitions section), with new and simpler language with respect to determining financial need.

EFFECTIVE DATE: January 14, 2024

AGENCY CONTACT PERSON: William Norbert, Esq., Finance Authority of Maine (FAME), PO Box 949 - 5 Community Drive, Augusta, ME 04332-0949. Telephone. (207) 620-3540. Email: wnorbert@famemaine.com.
FAME WEBSITE: <https://www.famemaine.com/>

AGENCY: **94-457- Finance Authority of Maine (FAME)**

CHAPTER NUMBER AND TITLE: **Ch.618,** Maine Veterinary Medicine Loan Program

ADOPTED RULE NUMBER: **2024-007**

CONCISE SUMMARY: This rule implements changes to the Maine Veterinary Medicine Loan Program. The change to the definition of “financial need” is necessitated by enactment at the federal level of the FAFSA Simplification Act, which made significant changes to federal student aid, including the Free Application for Federal Student Aid (FAFSA) form. The act replaced the term “Expected Family Contribution” (EFC) with the term “Student Aid Index” (SAI) beginning in the 2024–25 award year. The change updates the current program rule, which referenced the outdated EFC terminology in one part (the term “financial need” in the definitions section), with new and simpler language with respect to determining financial need.

EFFECTIVE DATE: January 14, 2024

AGENCY CONTACT PERSON: William Norbert, Esq., Finance Authority of Maine (FAME), PO Box 949 - 5 Community Drive, Augusta, ME 04332-0949. Telephone. (207) 620-3540. Email: wnorbert@famemaine.com.
FAME WEBSITE: <https://www.famemaine.com/>

AGENCY: **65-407 - Maine Public Utilities Commission**

CHAPTER NUMBER AND TITLE: **Ch. 317,** Statewide Arrearage Management Program

ADOPTED RULE NUMBER: **2024-008**

CONCISE SUMMARY: The Public Utilities Commission amends Chapter 317 of the Commission's Rules regarding the Arrearage Management Program. The Commission amends Chapter 317 to: 1) allow participants to miss two payments before disqualification from the program; 2) allows a ratepayer to participate once every seven years rather than once in a lifetime; 3) allows all Low-income Assistance Program (LIAP) eligible ratepayers to qualify for AMP; 4) increases the maximum monthly AMP benefit to $500 a month (which increases the total amount eligible for forgiveness to $6,000 a year); and 5) changes the enrollment process to ensure that participants are not required to pay for more than one month of service at a time when enrolled in AMP. The Commission also approves other non-substantive changes to the rule.

EFFECTIVE DATE: January 15, 2024

AGENCY CONTACT PERSON: Pam Kowalchuk, MPUC, 18 State House Station, Augusta, ME 04333-0018; TELEPHONE: 207-287-1564; Email: Pamela.Kowalchuk@maine.gov
MPUC WEBSITE: [www.maine.gov/mpuc](http://www.maine.gov/mpuc)
MPUC RULEMAKING LIAISON: Deirdre.Schneider@Maine.gov

AGENCY: **10-144 - Department of Health and Human Services, MaineCare Services**

CHAPTER NUMBER AND TITLE: **Ch. 101,** MaineCare Benefits Manual, **Chapter II, Section 43,** Hospice Services (amend); **Ch. 101,** MaineCare Benefits Manual, **Chapter III, Section 43,** Allowances for Hospice Services (repeal)

ADOPTED RULE NUMBERS: **2024-009, 2024-010**

CONCISE SUMMARY: The Department adopts this amended Chapter II, Section 43 rule and repeals Chapter III, Section 43.

1. Adds a requirement for Electronic Visit Verification (“EVV”) for Hospice Services delivered in-home. Federal Medicaid law mandates that EVV be utilized for personal care services and home health care services that require an in-home visit by a provider (42 U.S.C. Sec. 1396b(l)). The federal EVV requirement does not explicitly include Hospice services, however, to remain consistent with MaineCare efforts to prevent fraud, waste, and abuse for home-based services, EVV requirements are implemented for all Hospice Services delivered in-home. The adopted rule also clarifies that Physician Services are delivered and billed separately as described in MBM Ch. II, Section 90, and are exempt from EVV requirements. On February 6, 2023, CMS approved the Maine SPA which requires EVV for in-home hospice services. CMS, Maine state Plan, TN No 22-0044, Attachment 3.1-A, #18 (Hospice Care), Page 7, Effective Date: 1/1/23 (“The state will require Electronic Visit Verification System (EVV) requirements for in-home services effective January 1, 2023.”). Hence, EVV is mandated for these MaineCare Hospice Services by the Federal Government.

Facilities providing Hospice Services will not be subject to EVV, this requirement only applies to services offered within the member’s home. EVV implementation for all in-home Hospice Services, including those reimbursed at a per diem rate, will support the Department’s goal of improving oversight of Hospice Services and, in turn, reduce the occurrence of fraud, waste, and abuse in home settings. Providers may utilize the Department’s EVV system at no cost or may procure and utilize their own EVV system, so long as the Department’s EVV system can accept and integrate data from the provider-owned EVV system and the provider-owned system is otherwise compatible with the Department’s system and billing guidelines.

In response to comments, the Department changed the effective date of the EVV requirement from January 1to July 1, 2024, in order to give providers more time.

1. Amends the definition of “Attending Physician” to include Nurse Practitioners and Physician Assistants. This is consistent with Section 51006 of the Bipartisan Budget Act (BBA) of 2018 (P. L. 115-123), as codified in 42 U.S.C. § 1395x(dd)(3)(B). The BBA considers Physician Assistants to be qualified to provide Hospice Services as an Attending Physician. Nurse Practitioners were qualified Attending Physicians in Section 1861(dd)(3)(B) of the Social Security Act (SSA) prior to the passing of the BBA. The adopted rule mirrors SSA statute, stating an Attending Physician must be a medical Doctor of Medicine or Osteopathy, Nurse Practitioner, or Physician Assistant licensed in the state of Maine.
2. Adds a definition for the term “Benefit Period” which appears multiple times throughout this rule to provide clarity.
3. Section 43.07-5 (Payment for Inpatient Care): Changes the date by which Hospice providers must submit inpatient data to the Department, upon Department request, from January 1st to October 1st, following the period ending September 30th of the previous year, in keeping with the federal fiscal year. This change grants providers additional time to compile and submit reports to the Department.
4. Adds Opioid Health Home Services to the list of services that may be continued after the election of hospice. The Department recognizes treatment for Substance Use Disorder may be required through the end of a member’s life. As such, MaineCare will reimburse for services under Chapter II, Section 93 Opioid Health Home Services and under Chapter II, Hospice Services provided concurrently.
5. Makes minor technical edits to improve the clarity of the rule.
6. Sec. 43.09: Adds a new section – Allowances for Hospice Services – which is largely moved from the Ch. III rule, which is being repealed. The Department will henceforth list the specific reimbursement rates on the MaineCare Fee Provider Schedule which is posted on the Department’s website, as authorized by 22 M.R.S. Sec. 3173-J(7). The Department, after OAG review, added language explaining the current methodology of annual adjustments to the reimbursement for the services. CMS has approved this methodology in the Maine Medicaid state Plan, and this is the methodology that has been utilized by the Department historically. In accordance with 22 M.R.S. Section 3173-J, the Department will not have to go through rulemaking if there is no change to this methodology and the rates are posted in accordance with this law.

 See <http://www.maine.gov/dhhs/oms/rules/index.shtml> for rules and related rulemaking documents.

EFFECTIVE DATE:January 17, 2024

STATUTORY AUTHORITY:22 M.R.S. §§ 42, 3173 and 3173-J

AGENCY CONTACT PERSON: Julieanna Scott, Comprehensive Health Planner II, MaineCare Services, 109 Capitol Street, 11 State House Station, Augusta, Maine, 04333-0011. EMAIL: Julieanna.Scott@maine.gov. TELEPHONE: 207-287-2286 FAX: (207) 287-6106, TTY: 711 (Deaf or Hard of Hearing)

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