**State of Maine: Notice of Agency Rulemaking – January 24, 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: **02-318 -** Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, **Electricians’ Examining Board**

CHAPTER NUMBER AND TITLE: **Ch. 120,** Electrical Installation Standards (repeal and replace)

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2024-P006**

DETAILED SUMMARY: The proposed rulemaking would repeal the current Chapter 120, Electrical Installation Standards, and replace with a rule with the same title and in the same location that adopts and incorporates by reference into board rule the 2023 National Electrical Code, National Fire Protection Association (“NFPA”) standard #30 (“2023 NEC”) subject to certain amendments and exclusions.

 Go to <https://www.maine.gov/pfr/professionallicensing/professions/electricians> to find the proposed rule and related rulemaking documents.

The proposed rule adopts the 2023 NEC with amendments to the following: Article 90.4(D) New Products, Constructions, or Materials; Article 100, Dormitory Unit; Article 210.8(A)(6), Dwelling Units; Article 210.8(B)(2), Other than Dwelling Units; Article 210.8(F), Ground-Fault Circuit-Interrupter Protection for Personnel, Outdoor Outlets; Article 230.2(E), Number of Services, Identification; Article 230.85(B), Disconnects; Article 334.10, Uses Permitted; Article 338.12(B)(1) and (2), Uses Not Permitted, Underground Service-Entrance Cable; Article 400.12(4), Uses Not Permitted; Article 409.6(C), Receptacles in Damp or Wet Locations, Bathtub and Shower Space; and Article 702.4(A)(2)(a), Capacity and Rating, System Capacity, Automatic Load Connection. The Board does not adopt Article 334.12(A)(2).

PUBLIC HEARING: N/A. Pursuant to 5 M.R.S. § 8052(1) and § 8053(3)(B), a hearing may be requested by five (5) interested persons by submitting a request in writing to contact person for this filing.

COMMENT DEADLINE: Friday, February 23, 2024 at 5:00 p.m. Comments may be submitted in writing to Kristin Racine, Deputy Director, Office of Professional and Occupational Regulation, 35 State House Station, Augusta, ME 04333-0035, Kristin.Racine@maine.gov, Telephone: (207) 624-8615, TTY users call Maine Relay 711

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: Kristin Racine, Deputy Director, Office of Professional and Occupational Regulation, 35 State House Station, Augusta, ME 04333-0035. Email: Kristin.Racine@maine.gov Telephone: (207) 624-8615, TTY users call Maine Relay 711

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

STATUTORY AUTHORITY FOR THIS RULE: 32 M.R.S. §§ 1153, 1153-A

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

AGENCY WEBSITE: <https://www.maine.gov/pfr/professionallicensing/professions/electricians>

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: Kristin.Racine@maine.gov

AGENCY: **02-318 -** Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, **Electricians’ Examining Board**

CHAPTER NUMBER AND TITLE: Ch. 180, Licensure by Endorsement

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2024-P007**

BRIEF SUMMARY: The Electricians’ Examining Board is proposing to adopt Chapter 180 that outlines a pathway for licensure if a person is licensed by another jurisdiction within the United States that maintains substantially equivalent licensing standards pursuant to 10 M.R.S. § 8003-H.

 Go to <https://www.maine.gov/pfr/professionallicensing/professions/electricians> to find the proposed rule and related rulemaking documents.

The proposed rulemaking would add a new Chapter 180 that would contain standards for implementing 10 M.R.S. §8003-H, *Licensure by Endorsement*. Licensure by endorsement allows a person who holds an electrician license in another jurisdiction of the United States to bypass testing and other requirements when applying for a license of the same level in Maine when the licensing requirements of the initial licensing state are substantially the same as licensing requirements in Maine. Chapter 180 sets standards applicants must meet when filing for licensure by endorsement and sets minimum standards for what constitutes substantially similar requirements at the journeyman and master level of licensing.

PUBLIC HEARING: N/A. Pursuant to 5 M.R.S. § 8052(1) and § 8053(3)(B), interested persons may request a public hearing by submitting a request in writing to the contact person for this filing.

COMMENT DEADLINE: Friday, February 23, 2024 at 5:00 p.m. Comments may be submitted in writing to Kristin Racine, Deputy Director, Office of Professional and Occupational Regulation, 35 State House Station, Augusta, ME 04333-0035, Kristin.Racine@maine.gov, Telephone: (207) 624-8615, TTY users call Maine Relay 711

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: Kristin Racine, Deputy Director, Office of Professional and Occupational Regulation, 35 State House Station, Augusta, ME 04333-0035. Email: Kristin.Racine@maine.gov Telephone: (207) 624-8615, TTY users call Maine Relay 711

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

STATUTORY AUTHORITY FOR THIS RULE: 10 M.R.S. § 8003-H; 32 M.R.S. § 1201-B

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

AGENCY WEBSITE: <https://www.maine.gov/pfr/professionallicensing/professions/electricians>

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: Kristin.Racine@maine.gov

AGENCY: **19-100 - Department of Economic and Community Development**; **18- 125 -** Department of Administrative and Financial Services, **Bureau of Revenue Services**

CHAPTER NUMBER AND TITLE: **Ch. 815** (DAFS)**:** Dirigo Business Incentives Program;

**Ch. 300,** (DECD): Dirigo Business Incentives Program (Joint Rule)

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2024-P008, 2024-P009**

BRIEF SUMMARY: This establishes rules for the Dirigo Business Incentives Program created by PL 2023, c. 412, Part J. The rule provides additional detail to definitions of eligible sectors and qualified business activity and specifies the process of applying for a letter of certification.

PUBLIC HEARING: None

COMMENT DEADLINE: February 23, 2024

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: Phoenix McLaughlin;, State House Station #59, Augusta, ME 04333. Email: Phoenix.McLaughlin@maine.gov Telephone: 207-624-9813.

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

STATUTORY AUTHORITY FOR THIS RULE: *Title 36 §§ 112, 5219-AAA*

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

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

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: Victoria.Foley@maine.gov

AGENCY: **13-188 - Department of Marine Resources**

CHAPTER NUMBER AND TITLE: **Ch. 4,** Municipal Shellfish Conservation Warden Certification

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2024-P010**

BRIEF SUMMARY: The proposed rule amends the process for Municipal Shellfish Conservation Warden applicants and their Performance Standards. Specifically, it would allow Municipal Shellfish Conservation Warden applicants to attend the MDMR Municipal Shellfish Conservation Warden Certification Course prior to receiving a formal nomination from an appointing municipality. It adds enforcement of minimum sizes of all shellfish species included in a municipality’s ordinance into the Performance Standards of Municipal Shellfish Conservation Wardens. The proposed rule makes other minor clarifying changes.

PUBLIC HEARING: February 12, 2024, 4:30 p.m., in-person at the Sorrento-Sullivan Rec Center, 1776 US-1 Sullivan, ME. February 13, 2024, 4:00 p.m. in-person at the DMR Offices in the Marquardt Building, Room 118, 32 Blossom Lane, Augusta or remotely via Microsoft Teams. Remote access information is posted to DMR’s website under “Meetings.”

COMMENT DEADLINE: February 23, 2024

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: Deirdre Gilbert, 21 State House Station, Augusta, Maine 04333-0021. E-MAIL: dmr.rulemaking@maine.gov Telephone: 207-624-6553, Fax: 207-624-6024, TTY: 207-624-6500 (Deaf/Hard of Hearing). Hearing facilities: If you require accommodations due to disability, please contact 207-624-6553.

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

STATUTORY AUTHORITY FOR THIS RULE: 12 MRS 6671

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED *(if different)*: Same

AGENCY WEBSITE: <http://www.maine.gov/dmr/rulemaking/>

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON: dmr.rulemaking@maine.gov

AGENCY: **13-188 - Department of Marine Resources**

CHAPTER NUMBER AND TITLE: **Ch. 7,** Requirements for Municipalities Having Shellfish Conservation Programs

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2024-P011**

BRIEF SUMMARY: This rulemaking is proposed to modify and clarify the requirements of Municipal Shellfish Programs so that the Department of Marine Resources can consistently apply the same standards to all programs. These changes include amending current definition of “period of issuance” and providing a new definition for the effective license year. Additionally, regulations regarding holding and removing shellfish on and from Municipal Limited Purpose Aquaculture license sites held by Shellfish Committees have been developed. The process for requesting permission to complete a shellfish resource survey in a closed area and the requirements for such surveys have been defined. Finally, the length of the comment period for Shellfish Programs to provide recommendations on intertidal mussel dragging has been increased from 21 to 30 days.

PUBLIC HEARING: February 12, 2024, 5:00 p.m., in-person at the Sorrento-Sullivan Rec Center, 1776 US-1 Sullivan, ME. February 13, 2024, 4:30 p.m. in-person at the Marquardt Building, Room 118, 32 Blossom Lane, Augusta or remotely via Microsoft Teams. Remote access information is posted to DMR’s website under “Meetings.”

COMMENT DEADLINE: February 23, 2024

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: Deirdre Gilbert, 21 State House Station, Augusta, Maine 04333-0021. E-MAIL: dmr.rulemaking@maine.gov Telephone: 207-624-6553, FAX: 207-624-6024, TTY: 207-624-6500 (Deaf/Hard of Hearing). Hearing facilities: If you require accommodations due to disability, please contact 207-624-6553.

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

STATUTORY AUTHORITY FOR THIS RULE: 12 MRS 6671

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED *(if different)*: Same

AGENCY WEBSITE: <http://www.maine.gov/dmr/rulemaking/>

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON: dmr.rulemaking@maine.gov

**AGENCY: 13-188 - Department of Marine Resources**

CHAPTER NUMBER AND TITLE: **Ch. 32,** Elver Quota System for the 2024 Season and Temporary Medical Transfers of Elver Quota

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2024-P012**

BRIEF SUMMARY: This proposed rulemaking establishes the elver quota allocations for the 2024 season for individuals licensed under §§6505-A and 6302-A, and the method of calculating individual elver quota allocations for individuals licensed under §6505-A. The quota for the Passamaquoddy Tribe has been adjusted in accordance with their overage in the 2023 season.2024 allocations for individuals who held a license in 2023 will be the same as their 2023 allocations, plus any quota associated with licenses not renewed in 2023, or licenses suspended for the duration of the 2023 season, in excess of that which is allocated to new license holders authorized through the lottery, which will be distributed evenly to all existing license holders. In addition, the proposed rulemaking specifies the parameters for a temporary medical transfer of elver quota.

PUBLIC HEARING: February 15, 2024: 4:00 p.m. at DMR’s Augusta Office (Marquardt Building, 32 Blossom Lane, rm 118) and remotely via Microsoft Teams. If the February 15th hearing is cancelled due to inclement weather an alternate hearing will be held on February 16th at 3:00 pm in Room 224 of the same location, and Remotely via Microsoft Teams. Remote access information is posted to DMR’s website under “Meetings.”

COMMENT DEADLINE: February 26, 2024. Written comments can be mailed, emailed, or faxed to DMR using the contact information below.

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: Deirdre Gilbert, 21 State House Station, Augusta, Maine 04333-0021. E-MAIL: dmr.rulemaking@maine.gov Telephone: 207-624-6553, FAX: 207-624-6024, TTY: 207-624-6500 (Deaf/Hard of Hearing). Hearing facilities: If you require accommodations due to disability, please contact Meredith Mendelson at 207-624-6553.

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

STATUTORY AUTHORITY FOR THIS RULE: 12 M.R.S. §6505-A; §6575-L

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED *(if different)*: Same

AGENCY WEBSITE: <http://www.maine.gov/dmr/rulemaking/>

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON: dmr.rulemaking@maine.gov

AGENCY: **13-188 - Department of Marine Resources**

CHAPTER NUMBER AND TITLE: Ch. 36, Atlantic Herring; 2024 Administrative Update

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2024-P013**

BRIEF SUMMARY: This proposed regulation amends language clarifying the default closing and open dates for spawning closures, and strikes language within section D(3)(b)(ii)(A) as all harvest schedules are updated annually through the ASMFC Days Out Program. It clarifies that reporting requirements apply to all fish landed or retained.

PUBLIC HEARING: None scheduled.

COMMENT DEADLINE: February 26, 2024

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: Deirdre Gilbert, 21 State House Station, Augusta, Maine 04333-0021. E-MAIL: dmr.rulemaking@maine.gov. Telephone: 207-624-6553, Fax: 207-624-6024, TTY: 207-624-6500 (Deaf/Hard of Hearing)

Hearing facilities: If you require accommodations due to disability, please contact Meredith Mendelson at 207-624-6553.

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

STATUTORY AUTHORITY FOR THIS RULE: §6171

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED *(if different)*: Same

AGENCY WEBSITE: <http://www.maine.gov/dmr/rulemaking/>

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON: dmr.rulemaking@maine.gov

AGENCY: **13-188 - Department of Marine Resources**

CHAPTER NUMBER AND TITLE: **Ch. 41,** Atlantic Menhaden; 2024 Season

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2024-P014**

BRIEF SUMMARY: This proposed rulemaking establishes limitations for the 2024 menhaden season. It establishes an annual end date for the fishery of November 30. It creates a new program in which two commercial menhaden license holders may enter into a Designated Partnership Agreement, which will allow either vessel to remove fish from a purse seine that has been set by one of the vessels in the Designated Partnership Agreement. A definition is provided for “fish box” or “tank” so that harvesters may use fish boxes or tanks to meet the requirement to store fish upon harvest. It clarifies that reporting requirements apply to all fish landed or retained. It creates an incidental bycatch limit of 1,050 lbs for individuals operating a pound net or fish weir during periods when the commercial menhaden fishery is paused by the Commissioner or when the commercial fishery is closed prior to the opening of the Episodic Event Set Aside Program. It amends the weekly limit for the State Allocated Fishery from 18,000 pounds to 17,850 pounds and amends the Small Scale Fishery daily limit from 6,000 to 5,950 pounds. The fishing and landing days for the Episodic Event Set Aside Program are proposed to be Monday and Thursday and the daily limit is increased from 6,000 lbs to 7,000 lbs.

PUBLIC HEARING: February 15 2024: 5:00 p.m. at DMR’s Augusta office (Marquardt Building, 32 Blossom Lane, rm 118) and remotely via Microsoft Teams. If the February 15th hearing is cancelled due to inclement weather an alternate hearing will be held on February 16th at 4:00 pm in Room 224 of the same location, and remotely via Microsoft Teams. Remote access information is posted to DMR’s website under “Meetings.”

COMMENT DEADLINE: February 26, 2024

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: Deirdre Gilbert, 21 State House Station, Augusta, Maine 04333-0021. E-MAIL: dmr.rulemaking@maine.gov Telephone: 207-624-6553, Fax: 207-624-6024. TTY: 207-624-6500 (Deaf/Hard of Hearing) Hearing facilities: If you require accommodations due to disability, please contact Meredith Mendelson at 207-624-6553.

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

STATUTORY AUTHORITY FOR THIS RULE: §6171, §6502-C

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED *(if different)*: Same

AGENCY WEBSITE: <http://www.maine.gov/dmr/rulemaking/>

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON: dmr.rulemaking@maine.gov

AGENCY: **13-188 - Department of Marine Resources**

CHAPTER NUMBER AND TITLE: **Ch. 55,** Gear Restrictions

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2024-P015**

BRIEF SUMMARY: This proposed rulemaking establishes standard practices for operating pound nets and fish weirs in Maine’s territorial waters. Bait gillnet requirements while harvesting under menhaden licenses are clarified. Outdated references are removed.

PUBLIC HEARING: February 15, 2024: 4:30 p.m. at DMR’s Augusta Office (Marquardt Building, 32 Blossom Lane, rm 118) and remotely via Microsoft Teams. If the February 15th hearing is cancelled due to inclement weather an alternate hearing will be held on February 16th at 3:30 pm in Room 224 of the same location, and Remotely via Microsoft Teams. Remote access information is posted to DMR’s website under “Meetings.”

COMMENT DEADLINE: February 26, 2024

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: Deirdre Gilbert, 21 State House Station, Augusta, Maine 04333-0021. E-MAIL: dmr.rulemaking@maine.gov Telephone: 207-624-6553, Fax: 207-624-6024, TTY: 207-624-6500 (Deaf/Hard of Hearing) Hearing facilities: If you require accommodations due to disability, please contact Meredith Mendelson at 207-624-6553.

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

STATUTORY AUTHORITY FOR THIS RULE: 12 MRS 6171

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED *(if different)*: Same

AGENCY WEBSITE: <http://www.maine.gov/dmr/rulemaking/>

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON: dmr.rulemaking@maine.gov

AGENCY: **13-188 - Department of Marine Resources**

CHAPTER NUMBER AND TITLE: **Ch. 115,** *Vibrio parahaemolyticus* Control Plan

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2024-P016**

BRIEF SUMMARY: Under current regulation, certain areas of Maine’s territorial waters are subject to a Control Plan for *Vibrio parahaemolyticus* between June 1 and October 15. This proposed rule-making would protect consumers from all species of *Vibrio* by extending these requirements for oysters to all of Maine’s territorial waters during these months. The requirements for hard clams are limited to the upper New Meadows River through this proposed rule-making. With the extension of these restrictions, harvester sales of oysters and upper New Meadows River hard clams from their homes would be prohibited during these months. The recreational harvest of oysters and upper New Meadows River hard clams would also be prohibited during these months, except for holders of Limited Purpose Aquaculture licenses removing oysters from their license sites, or in municipalities providing mandatory Vibrio training to recreational harvesters prior to licensing. The proposed rule eliminates a current requirement to submit an annual harvest/purchase plan. It requires mandatory annual Department provided training for all oyster and some hard clam harvesters and certified shellfish dealers purchasing oysters or upper New Meadows River hard clams. It provides two options for methods for harvesters to follow to reduce time to temperature for oysters and upper New Meadows River hard clams. Finally, it removes the option of wet storing to remediate product that has not been subject to the appropriate time to temperature controls.

PUBLIC HEARING: February 12, 2024, 5:30 p.m. in-person at the Sorrento-Sullivan Rec Center, 1776 US-1 Sullivan, ME. February 13, 2024, 5:00 p.m in-person at the Marquardt Building, Room 118, 32 Blossom Lane, Augusta or remotely via Microsoft Teams. Remote access information is posted to DMR’s website under “Meetings.”

COMMENT DEADLINE: February 23, 2024

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: Deirdre Gilbert, 21 State House Station, Augusta, Maine 04333-0021. E-MAIL: dmr.rulemaking@maine.gov Telephone: 207-624-6553, Fax: 207-624-6024, TTY: 207-624-6500 (Deaf/Hard of Hearing) Hearing facilities: If you require accommodations due to disability, please contact 207-624-6553.

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

STATUTORY AUTHORITY FOR THIS RULE: 12 MRS 6171-A

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED *(if different)*: Same

AGENCY WEBSITE: <http://www.maine.gov/dmr/rulemaking/>

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON: dmr.rulemaking@maine.gov

**ADOPTIONS**

AGENCY: **94-411 - Maine Public Employees Retirement System**

CHAPTER NUMBER AND TITLE: **Ch. 803,** Participating Local District Consolidated Retirement Plan

ADOPTED RULE NUMBER: **2024-011**

CONCISE SUMMARY: This rule governs the Consolidated Plan for Participating Local Districts. Under the current rule, cost-of-living adjustments to eligible retirees are capped at 2.5%. The proposed amendment to the rule provides for an additional one-time, non-cumulative cost-of-living payment in the amount of 0.5% of benefits to be paid to retirees who were eligible for a cost-of-living adjustment in September 2023. Under the current rule, several special plans are available for adoption by participating local district employers. No employers or employees are currently active in special plan 4N and the proposed amendment makes that plan no longer available for adoption after January 31, 2024.

EFFECTIVE DATE: January 22, 2024

AGENCY CONTACT PERSON: Kathy Morin, Maine Public Employees Retirement System, P.O. Box 349, Augusta, Maine 04332-0349. Telephone: 1-800-451-9800 or (207) 512-3108. Email: Kathy.Morin@MainePERS.org.

WEBSITE: [https://MainePERS.org](https://mainepers.org/).

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

CHAPTER NUMBER AND TITLE: **Ch. 101,** MaineCare Benefits Manual, **Chapter II, Section 29,** Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder

ADOPTED RULE NUMBER: **2024-012**

CONCISE SUMMARY: The Department is adopting comprehensive amendments of 10-144 C.M.R. Chapter 101, MaineCare Benefits Manual (“MBM”), Chapter II, Section 29, Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder.

This Section 29 rule implements and regulates a Section 1915(c) home and community-based services (HCBS) Medicaid waiver program. Under Section 29, the Department provides HCBS to support eligible adult MaineCare Members with an intellectual disability or autism living in the community. MBM Chapter II, Section 29 is a routine technical rule pursuant to 34-B M.R.S. § 5432(3).

On December 18, 2020, The Centers for Medicare & Medicaid Services (CMS) approved the Department’s request to renew the Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder waiver for a five-year period, with an effective date of January 1, 2021. On April 13, 2023, the Department gave public notice of proposed amendments to the CMS-approved Section 29 waiver, to add services and enhance service delivery. The Department is seeking and anticipates receiving CMS approval of this waiver amendment.

On or about August 23, 2023, the Office of the Secretary of State gave notice of proposed amendments of MBM Chapter II, Section 29 to the Executive Director of the Legislative Council, published notice of the proposed rulemaking, and gave notice of the rulemaking to known interested parties. The Department then held a hybrid remote and in-person public hearing pursuant to 34-B M.R.S. § 5465(4) on September 11, 2023, conducted jointly with the public hearing on proposed amendments to MBM Chapter III, Section 29. The Department then accepted additional written public comment regarding the proposed rulemaking pursuant to 5 M.R.S. § 8057-A(3) until the close of business on September 21, 2023. A summary of public comments, the Department’s responses, and changes made to the rule after it was published for public comment will be filed with the Secretary of State in conjunction with this rulemaking.

The Department has added the following new services, effective March 1, 2024:

* Home Support - Quarter Hour (Self-Directed)
* Shared Living – Two Members served
* Shared Living - One Member, Increased level of support (Provider Managed)
* Shared Living - Two Members, Increased level of support (Provider Managed)
* Home Accessibility Adaptations (Self-Directed)
* Home Accessibility Adaptations Repairs (Self-Directed)
* Assistive Technology - Devices (Self-Directed)
* Assistive Technology - Transmission (Self-Directed)
* Community Support - Community Only - Individual (Self-Directed)
* Community Support - Community Only – Individual (Provider Managed)
* Community Support - Community Only – Group (Provider Managed)
* Financial Management Services (Self-Directed)
* Supports Brokerage (Self-Directed)
* Individual Goods and Services (Self-Directed)

The Department is seeking and anticipates approval from CMS for these newly added services with an effective date of March 1, 2024. These services will continue to be provided through February 29, 2024, under the Department’s Appendix K: Emergency Preparedness and Response authority in response to the COVID-19 Public Health Emergency, which was approved by the Centers for Medicare and Medicaid Services (CMS) but not added to MBM Chapter II, Section 29 at that time.

The Department is concurrently going through APA rulemaking for MBM Ch. III, Section 29, to identify the methodology(ies) for reimbursements for these services. MBM Chapter III, Section is a major substantive rule, will be provisionally adopted pending approval by the Legislature, and will propose a retroactive date of March 1, 2024, for the increased reimbursement rates.

The Department adopts the following specific changes to this rule:

* Covered Services: Updates, expands, and/or clarifies the descriptions for the following Covered Services:
* Assistive Technology
* Career Planning
* Community Support
* Employment Specialist Services
* Home Accessibility Adaptations
* Home Support – Quarter Hour
* Home Support – Remote Support
* Shared Living
* Non-Medical Transportation Service
* Work Support – Group
* Work Support – Individual
* Revised Definitions: Updates the following definitions: Activities of Daily Living, Autism Spectrum Disorder, Intellectual Disability, Instrumental Activities of Daily Living, Person-Centered Service Plan and Shared Living, and Services Delivered for the Member (formerly, “On Behalf Of” Services).
* New Definitions: Adds definitions for the following terms: Budget Authority, Community Inclusion, Competitive Integrated Employment, Community Mapping, Disability-Specific Setting, Employer Authority, Fiscal Intermediary, Home and Community Based Services, Personal Resources, Provider-Managed Service, Self-Direction, Representative, Self-Direction, Service Implementation Plan, and Supports Broker.
* Self-Direction: Adds Self-Direction Services, including Financial Management Services, Supports Brokerage Services, and Individual Goods and Services, to the list of covered services in Section 29 to expand opportunities for Members to manage and control certain services and service delivery methods.
* Global HCBS Rule: Incorporates the requirements of the January 19, 2022, Global HCBS Rule: *see* §§  29.04 [Person-Centered Service Plan (PCSP)], 29.15-1 [Self-Directed Person-Centered Service Planning Process] and 29.05-1 [Home and Community Based Services Settings]), implementing the federal requirements for Maine’s Section 1915(c) home and community-based waiver programs as required by 42 C.F.R. § 441.301(c). The HCBS Global Rule includes requirements for person-centered service planning and for settings in which HCBS waiver services are provided.
* 29.07-2 (Limits): Changes the limit from $58,168.50 to $84,689.28 for the combined annual cost of Home Support (Remote or Quarter-hour), Community Support, and Shared Living Services. The Department received CMS approval for this change.
* 29.08-3 (Termination from Participation as a MaineCare Provider): Establishes and clarifies standards for providers who are disenrolling from participating as MaineCare providers. The provision expressly references the requirement in the MaineCare Benefits Manual, Ch. I, Sec. 1 that providers must give written notice to the Office of MaineCare Services of their intent to terminate participation in the MaineCare Program. In addition, this provision requires Section 29 providers to notify all Section 29 Members they serve of the provider’s intent to terminate participation in the MaineCare program.
* 29.10 (Provider Qualifications): Clarifies Provider Qualifications and Requirements for Direct Support Professionals (DSPs) and for Career Planners, Job Coaches, and Employment Specialists delivering Career Planning, Work Support, and Employment Specialist Services, to state that provider agencies may hire DSPs who are seventeen (17) years of age. The minimum age requirement for Career Planners, Job Coaches, and Employment Specialists remains eighteen (18) years of age.
* 29.10-1 (DSP Qualifications): Requires that all DSPs, regardless of capacity and prior to provision of services to a Member, receive training regarding the Global HCBS Rule. Moreover, within six (6) months of hire and annually thereafter, the adopted rule requires DSPs to comply with the Department’s regulations: Reportable Events System (14-197 C.M.R. ch. 12) and the Adult Protective Services System (10-149 C.M.R. ch. 1).
* 29.10-9 (Electronic Visit Verification): Requires that providers of Home Support-Quarter Hour services comply with Maine DHHS Electronic Visit Verification (EVV) system standards and requirements, in accordance with the 21st Century Cures Act (P.L. 114-255), Section 12006, as codified in 42 U.S.C. § 1396b(l).
* 29.10-11 (POCA): Authorizes for the Office of Aging and Disability Services (OADS) to issue written notices of deficiencies in service delivery and requires providers to submit and implement Plans of Corrective Action (POCA) as approved by the Department. Providers have the right to appeal written notices of deficiencies. This POCA process provides increased protections for Members and ensures that providers comply with service requirements, have sufficient clinical and administrative capability to carry out the intent of the service, and have taken steps to assure the safety, quality, and accessibility of the service for Members.
* 29.11 (Member Appeals): Clarifies that Members have the right to appeal decisions made regarding priority level and waitlist determinations.
* 29.14, Exceptions from Caps on Services: Establishes an exceptions process which provides that Section 29 Members, and Members applying to receive Section 29 benefits, may request services in excess of otherwise applicable Section 29 monetary and/or unit caps, where necessary to ensure that Section 29 Members receive adequate services and supports in the most integrated setting appropriate to their needs, consistent with the Americans with Disabilities Act (ADA).
* 29.16 (Appendix I-Shared Living Criteria for Increased Level of Support): Adds a new appendix describing the criteria for an increased level of support if, due to extraordinary medical or behavioral needs, a Member requires Shared Living Services beyond the level of support defined in § 29.05-12.
* 29.16 Appendix III, Performance Measures: The Department eliminates Appendix III because the Department utilizes data available through the Department of Labor, Person Centered Service Plans, and authorization data as part of the Department’s commitment to quality assurance and quality improvement system. Additionally, specific performance measures are either no longer relevant or necessary to measure the performance of specifically listed employment services or have been met.
* 29.19 (Appendix IV-Additional Requirements for Section 29 Providers of Community Support Services, Employment Specialist Services, and Shared Living): Clarifies the requirements and responsibilities of the Administrative Oversight Agency and the Shared Living Provider for Shared Living Services.

In conformance with the January 1, 2021, CMS-approved, renewed waiver, and the Department’s pending, proposed waiver amendments, this rule also aligns similar processes, service descriptions, and similar provisions with MaineCare’s four other Section 1915(c) waivers (primarily the Section 21 waiver).

As a result of public comments and further review by the Department and the Office of the Attorney General, the adopted rule includes clarifying language for §29.02-12 (E), Services that Support Personal Well-being, §29.04, Person-Centered Service Plan, §29.05-4 Community Support, and §29.05-8, Home Support-Quarter Hour.

Additionally, as a result of public comment, the adopted rule adds a provision allowing providers of Assistive Technology-Assessments to conduct evaluations via telehealth so long as the provider ensures that the assessment via telehealth meets the requirements of the scope of the service.

Further, as a result of public comment, the Department has revised §29.19 Appendix IV, Additional Requirements for Section 29 Providers of Community Support Services, Employment Specialist Services, and Shared Living, replacing the requirement that the Administrative Oversight Agency (AOA) train the Shared Living Provider with a requirement for the AOA to maintain and retain documentation that the Shared Living Provider meets the requirements to deliver Shared Living Services. The Department has also added a provision that Shared Living Providers must comply with training and certification requirements and to provide proof of current trainings to the AOA.

The Summary of Public Comments and Responses identifies more specifically all changes that were made to the final rule.

Additionally, as a result of review and guidance from the Centers for Medicare and Medicaid Services (CMS), the Department has replaced the term “On Behalf Of” within the rule with “Services Delivered for the Member (formerly “On Behalf Of”)”. The Department has revised § 29.18 Appendix III, Additional Guidance for Home Support, Community Support, Work Support, Career Planning, and Employment Specialist Covered Services that are Delivered Directly for the Member (formerly, On Behalf Of Covered Services) by clarifying the billable and non-billable activities that constitute the same.

Finally, the Department anticipates that CMS will approve newly added services with an effective date of March 1, 2024. In the interim, the Department will continue to implement these flexibilities under the Appendix K: Emergency Preparedness and Response authority in accordance with State Medicaid Director (SMD) Letter # 23-004.

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

EFFECTIVE DATE: January 24, 2024

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AGENCY: **10-144 -** Department of Health and Human Services, **Office for Family Independence**

CHAPTER NUMBER AND TITLE: **Ch. 301,** Supplemental Nutrition Assistance Program (SNAP) Rules; Sections 777-4 and 999-1, **SNAP Rule #229A** - Electronic Benefit Theft

ADOPTED RULE NUMBER: **2024-013**

CONCISE SUMMARY:Pursuant to the Consolidated Appropriations Act 2023 (CAA 2023), Public Law 117-328, Division HH, Title IV § 501, EBT Benefit Fraud Prevention requirements, the Department adopts changes to the SNAP Manual, Section 777-4 to align with the requirements of the CAA 2023. The adopted rule changes provide clarity on the Department’s procedure and timeframes for replacement of SNAP benefits determined to have been stolen through card skimming, card cloning, or similar fraudulent methods. The U.S.D.A. – Food and Nutrition Services approved the Department’s Plan for the Replacement of Electronically Stolen EBT Benefits on August 10, 2023, retroactive to October 1, 2022. This rule change is effective retroactive to October 1, 2022. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as this update provides a benefit to SNAP recipients or beneficiaries and does not adversely impact applicants, participants, beneficiaries, or providers.

In addition, definitions for Card Cloning, Card Skimming, and Phishing are added to Section 999-1.

The Department determined it necessary to make non-substantial changes to the final rule. The changes provide clarity to PROCEDURES FOR REPLACING BENEFITS STOLEN ELECTRONICALLY. These non-substantial changes include:

* 777-4 (3)(B) replaces must with shall.
* 777-4 (3)(D) removes appropriate and adds if applicable.
* 777-4 (3)(H) is a typo and is corrected to 777-4 (3)(G).

See <https://www.maine.gov/dhhs/about/rulemaking> for rules and related rulemaking documents.

EFFECTIVE DATE: January 28, 2024

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