**State of Maine: Notice of Agency Rulemaking – February 17, 2021**

**PROPOSALS**

AGENCY: **18-125** - Department of Administrative and Financial Services (DAFS), **Bureau of Revenue Services (Maine Revenue Services – MRS)**

CHAPTER NUMBER AND TITLE: **Ch. 205**, Certification of Assessors

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P019**

BRIEF SUMMARY: Certification and the continuing education of property tax assessors in the State of Maine is the responsibility of the Bureau. Rule 205 (*Certification of Assessors*) governs the nature and timing of the certification examinations as well as the enforcement of the continuing education requirements established under 36 MRS §311. The Bureau proposes to amend the rule to clarify and consistently use the terms “continuing education,” “advanced continuing education,” and “advanced assessor training.” The Bureau also proposes to remove the limitation on continuing education credit carryovers, which is rarely used and unnecessary. Other changes are proposed for clarification.

PUBLIC HEARING: N/A

COMMENT DEADLINE: March 19, 2021

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Alex Weber, General Counsel, Maine Revenue Services, 51 Commerce Drive – 24 State House Station, Augusta, Maine 04333. Telephone: (207) 624-9712. Email: [Alexander.J.Weber@Maine.gov](mailto:Alexander.J.Weber@Maine.gov)

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: Minimal

STATUTORY AUTHORITY FOR THIS RULE: 36 MRS §§ 310-314, 318

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: N/A

MRS WEBSITE: [www.maine.gov/revenue](http://www.maine.gov/revenue) .

DAFS RULEMAKING LIAISON: [Anya.Trundy@Maine.gov](mailto:Anya.Trundy@Maine.gov) .

AGENCY: **02-031** – Department of Professional and Financial Regulation (PFR), **Bureau of Insurance**

CHAPTER NUMBER AND TITLE: **Ch. 851**, Clear Choice Designs for Individual and Small Group Health Plans

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P020**

BRIEF SUMMARY: The purpose of the rule is to develop health plan cost share designs for individual and small group health plans as set out in 24-A MRS §2793.

PUBLIC HEARING: March 12, 2021, at 2:00 p.m. from the Department of Professional and Financial Regulation, Bureau of Insurance, 76 Northern Avenue, Gardiner, ME 04345. *Instructions for attending the hearing remotely will be posted on the Bureau’s website before the hearing.*

COMMENT DEADLINE: 4:30 p.m., March 23, 2021, by mail or email to the Contact Person.

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Brittnee Greenleaf, Bureau of Insurance, 34 State House Station, Augusta, ME 04333-0034. TELEPHONE: (207) 624-8491. Email: [Brittnee.L.Greenleaf@Maine.gov](mailto:Brittnee.L.Greenleaf@Maine.gov) .

IMPACT ON MUNICIPALITIES OR COUNTIES: None.

STATUTORY AUTHORITY FOR THIS RULE: 24-A MRS §§ 212, 2793.

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: n/a

AGENCY WEBSITE: <https://www.maine.gov/pfr/insurance/> .

AGENCY RULEMAKING LIAISON: [Benjamin.Yardley@Maine.gov](mailto:Benjamin.Yardley@Maine.gov) .

AGENCY: **94-411 - Maine Public Employees Retirement System (MainePERS)**

CHAPTER NUMBER AND TITLE: **Ch. 414**, Required Minimum Distributions

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P021**

BRIEF SUMMARY: This rule establishes the date when a member must begin to receive a service retirement benefit or withdraw accumulated contributions under a retirement program pursuant to *Internal Revenue Code*. The proposed rule makes three changes: (1) update the required minimum distribution (RMD) age to correspond to changes in federal law; (2) permit MainePERS to mandate a lump sum RMD on a terminated member as early as the beginning of the year when they will reach RMD age; and (3) provide clarification on the minimum distribution incidental benefit (MDIB) rule.

PUBLIC HEARING: None

COMMENT DEADLINE: March 19, 2021, 5:00 p.m. EST

EMAIL FOR PUBLIC TO SUBMIT COMMENTS: [rulemaking@mainepers.org](mailto:rulemaking@mainepers.org) .

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / MAINEPERS RULEMAKING LIAISON: Kathy J. Morin, Manager, Actuarial and Legislative Affairs, Maine Public Employees Retirement System, P.O. Box 349, Augusta, ME 04332-0349. Telephone: 1 (800) 451-9800 or (207) 512-3190. Email: [Kathy.Morin@mainepers.org](mailto:Kathy.Morin@mainepers.org) .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None

STATUTORY AUTHORITY FOR THIS RULE: 5 MRS §17103(4)

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

AGENCY WEBSITE: [www.mainepers.org](http://www.mainepers.org) .

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

CHAPTER NUMBER AND TITLE: **Ch. 301**, Food Supplement Program, **FS217P** (Increases Pursuant to PL 116-260): **Section FS 999-3**, Charts;

PROPOSED RULE NUMBER: **2021-P022**

BRIEF SUMMARY: This rule change proposes to implement increases to the maximum and minimum allotments from January 1, 2021 through June 30, 2021. As a result, Food Supplement benefits would increase for some households. Furthermore, it proposes to increase eligibility thresholds. As a result, more households would be eligible for Food Supplement benefits.

A rule change is necessary to remain in compliance with PL 116-260. *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.

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.

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 CFR §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 the FPLs are published. This year, they were published at [https://aspe.hhs.gov/poverty-guidelines on January 13](https://aspe.hhs.gov/poverty-guidelines%20on%20January%2013). 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>.

Finally, the rule change proposes to remove 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 would, also, be condensed to more clearly show where figures have been retained for an extended period of time.

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

PUBLIC HEARING: None scheduled.

COMMENT DEADLINE: Monday, March 22, 2021.

CONTACT PERSON FOR THIS FILING: Ian Miller, Senior Program Manager – Food Supplement, Department of Health and Human Services - Office for Family Independence, 109 Capitol Street – 11 State House Station, Augusta, ME 04330-6841. Telephone: (207) 624-4138. Fax: (207) 287-3455. TT Users Call Maine Relay – 711. Email: [Ian.Miller@Maine.gov](mailto:Ian.Miller@Maine.gov) .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None anticipated.

STATUTORY AUTHORITY FOR THIS RULE: 22 MRS.§42(1)

OFI RULES WEBSITE: <http://www.maine.gov/dhhs/ofi/rules/index.shtml> .

OFI WEBSITE: <https://www.maine.gov/dhhs/ofi> .

OFI RULEMAKING LIAISON: [Dan.Cohen@Maine.gov](mailto:Dan.Cohen@Maine.gov) .

DHHS RULEMAKING LIAISON: [Kevin.Wells@Maine.gov](mailto:Kevin.Wells@Maine.gov)

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

CHAPTER NUMBER AND TITLE: **Ch. 332**, MaineCare Eligibility Manual, **Parts 9, 18**: **MaineCare Rule #295**, Updates to Parts 9, (Special) Limited Benefit Groups, and 18, Presumptive Eligibility Determined By Hospitals.

PROPOSED RULE NUMBER: **2021-P023**

BRIEF SUMMARY: The Department proposes various substantive and technical changes in Part 9, as well as in Part 18 of the *MaineCare Eligibility Manual*, 10-144 CMR ch. 332, primarily with regard to presumptive eligibility determinations. Additionally, the Department regularly reviews policies to ensure clarity and conformity with state and federal Medicaid requirements. The Department proposes to add 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 proposes the following changes. References to “HIV/AIDS Waiver” would be changed to “Benefit for People living with HIV/AIDS”. Language would be added to specify that this benefit is also referred to as the Special Benefit Waiver or SBW. 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. The Department proposes changes in Subsection 1(A) specifying that this requirement only applies to individuals who qualify for SSI-Related MaineCare based on disability (not age). Language would be added to Subsection 1(C) specifying that SSI-Related budgeting procedures (in Part 7) apply. To improve specificity, the due date of premiums would be added to the first paragraph of Subsection 2. Subsection 2(A)(1) would be amended to clarify that multiple month payments should be made in advance of the due date. Subsection 2(A)(2) would be 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) would be amended to clarify that the date in question is the last day of the grace period. Subsection 2(B)(2)(b) would be amended to allow for a person other than a relative to be responsible for an individual’s premium payments. Subsection 3(A) would be amended to clarify that continuous coverage will 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 proposes the following change to clarify that there are, in fact, two distinct Breast and Cervical Cancer programs. A sentence would be 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 proposes to add language to 10-144 CMR ch. 332, the *MaineCare Eligibility Manual*, 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. These changes shall be effective retroactive to October 1, 2020.

Other proposed changes are part of a standardization of practice across all OFI rules. References to MaineCare coverage that does not limit its coverage to a specific system or condition would be consistently changed to “full MaineCare”.

Furthermore, this rulemaking proposes to make 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 proposed changes clarify the Hospital Presumptive Eligibility process and impose an 80% performance standard and a process for enforcing same.

The primary substantive changes are proposed 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.

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

PUBLIC HEARING: None scheduled.

COMMENT DEADLINE: Monday, March 22, 2021.

CONTACT PERSON FOR THIS FILING: Esther Bullard, MaineCare Program Manager, Department of Health and Human Services - Office for Family Independence, 109 Capitol Street – 11 State House Station, Augusta, ME 04330-6841. Telephone: (207) 624-4178. Fax: (207) 287-3455. TT Users Call Maine Relay – 711. Email: [Esther.Bullard@Maine.gov](mailto:Esther.Bullard@Maine.gov) .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None anticipated.

STATUTORY AUTHORITY FOR THIS RULE: 22 MRS §§ 42(1), 3173-G(3); 42 USC §1396r-1; 22 MRS §42(8)

OFI RULES WEBSITE: <http://www.maine.gov/dhhs/ofi/rules/index.shtml> .

OFI WEBSITE: <https://www.maine.gov/dhhs/ofi> .

OFI RULEMAKING LIAISON: [Dan.Cohen@Maine.gov](mailto:Dan.Cohen@Maine.gov) .

DHHS RULEMAKING LIAISON: [Kevin.Wells@Maine.gov](mailto:Kevin.Wells@Maine.gov)

**ADOPTIONS**

AGENCY: **02-031** - Department of Professional & Financial Regulation (PFR), **Bureau of Insurance**

CHAPTER NUMBER AND TITLE: **Ch. 210** *(New)*, Standards for Pharmacy Benefits Managers

ADOPTED RULE NUMBER: **2021-037**

CONCISE SUMMARY: The purpose of the rule is to implement LD 1504, “An Act To Protect Consumers from Unfair Practices Related to Pharmacy Benefits Management,” enacted as PL 2019 ch. 469. This legislation specifically authorizes routine technical rules concerning network adequacy and fiduciary duties that a prescription benefit manager owes to carriers that it contracts with.

EFFECTIVE DATE: February 14, 2021

AGENCY CONTACT PERSON / RULEMAKING LIAISON: Benjamin Yardley, Senior Staff Attorney, Department of Professional & Financial Regulation - Bureau of Insurance, 76 Northern Avenue, Gardiner, ME 04345. Telephone: (207) 624-8537. Email: [Benjamin.Yardley@Maine.gov](mailto:Benjamin.Yardley@Maine.gov) .

AGENCY WEBITE: <https://www.maine.gov/pfr/insurance/> .