**State of Maine: Notice of Agency Rulemaking – March 30, 2022**

**PROPOSALS**

AGENCY: **18-553** - Department of Administrative and Financial Services (DAFS), **Bureau of Alcoholic Beverages and Lottery Operations (BABLO) - Maine State Liquor and Lottery Commission**

CHAPTER NUMBER AND TITLE: **Chapter 80**, Lotto America Rules

PROPOSED RULE NUMBER: **2022-P038**

BRIEF SUMMARY: This amendment updates the existing rules governing the jackpot draw game Lotto America. This amendment makes necessary changes to add one additional drawing per week, technical changes to clarify language, and fix typographical errors.

*Copies of the rule are available by contacting the Maine Bureau of Alcoholic Beverages and Lottery Operations, 8 State House Station, Augusta, Maine 04333-0008.*

PUBLIC HEARING: No Public Hearing

COMMENT DEADLINE: April 29, 2022

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Michael Boardman, Deputy Director – Lottery, Bureau of Alcoholic Beverages and Lottery Operations, 8 State House Station, Augusta, ME 04333-0008. Telephone: (207) 287-4614. Fax: (207) 287-6769. Email: Michael.Boardman@Maine.gov .

IMPACT ON MUNICIPALITIES OR COUNTIES: None

IDENTIFICATION OF PRIMARY SOURCE OF INFORMATION: Multi-State Lottery Association and Professional Judgment

STATUTORY AUTHORITY FOR THIS RULE: 8 MRS §374; 8 MRS §372 sub-§2 ¶I

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

DAFS RULEMAKING LIAISON: Anya.Trundy@Maine.gov.

AGENCY: **01-001 - Department of Agriculture, Conservation and Forestry (DACF)**

CHAPTER NUMBER AND TITLE: **Chapter 273**, Criteria For Listing Terrestrial Invasive Plants

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2022-P039**

BRIEF SUMMARY: This chapter establishes criteria to be used in evaluating non-native terrestrial invasive plants which are offered for sale or import in Maine that could have adverse economic and/or ecological impacts in Maine. This chapter also establishes the list of evaluated plants that meet the criteria and prescribes the restrictions on the distribution and sale of those plants.

The proposed amendments to this chapter seek to improve existing definitions and add new definitions, add 30 new species to the banned plant list, establish a new Watch List of plants that may meet the criteria for prohibition in the next 5 years, adds a new category of Species of Special Concern and better defines the variance process.

There are two options for regulating Species of Special Concern. The Plant Health Program requests that commenters indicate which option is their preference.

PUBLIC HEARING: April 22, 2022 - 10:00 a.m. to 12 - in Room 101 Deering Building, 90 Blossom Lane, Augusta, ME

COMMENT DEADLINE: 5:00 p.m., Friday, May 6, 2022

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Gary Fish, Maine DACF, 28 State House Station, Augusta, ME 04333-0028. Telephone: (207) 287-7545. Email: Gary.Fish@Maine.gov.

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None

STATUTORY AUTHORITY FOR THIS RULE: 7 MRS ch. 405-A §2211

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

AGENCY INVASIVE PLANTS WEBSITE: <https://www.maine.gov/dacf/php/horticulture/invasiveplants.shtml>.

DACF WEBSITE: <https://www.maine.gov/dacf/>.

DAFC RULEMAKING LIAISON: Shannon.Ayotte@Maine.gov.

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

CHAPTER NUMBER AND TITLE: **Chapter 808**, Corporate Income Tax Nexus

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2022-P040**

BRIEF SUMMARY: MRS is proposing to amend Rule 808 (“Corporate Income Tax Nexus”) to do the following:

**\*** Clarify the definitions of foreign corporation and partnership

**\*** Add language to reflect recently enacted corporate income tax nexus thresholds for tax years beginning on or after January 1, 2022

**\*** Repeal the section on Other Exceptions as unnecessary

**\*** Make other technical changes

PUBLIC HEARING: N/A

COMMENT DEADLINE: April 29, 2022

CONTACT PERSON FOR THIS FILING / MRS RULEMAKING LIAISON: Alex Weber, Office of General Counsel, Maine Revenue Services, 24 State House Station, Augusta, ME 04333-0024. Telephone: (207) 624-9712. Email: Alexander.J.Weber@Maine.gov.

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT: N/A

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: N/A

STATUTORY AUTHORITY FOR THIS RULE: 36 MRS §112

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: N/A

MRS WEBSITE: <https://www.maine.gov/revenue/>.

DAFS WEBSITE: <https://www.maine.gov/dafs/>.

DAFS RULEMAKING LIAISON: Anya.Trundy@Maine.gov.

AGENCY: **02-373 - Board of Licensure in Medicine; 02-380 - State Board of Nursing; 02-383 - Board of Osteopathic Licensure**

CHAPTER NUMBER AND TITLE: **Chapter 11**, Joint Rule Regarding Telehealth Standards of Practice

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBERS: **2021-P208, P209, P210** *(2nd notice, revised)*

BRIEF SUMMARY: On June 21, 2021, Public Law ch. 291 “An Act Regarding Telehealth Regulations” became law following emergency enactment. The new law included definitions for telehealth and expanded them to include “interactive audio or video connection” between a patient and health care provider. In addition, it required licensing boards, including the Board of Licensure in Medicine (BOLIM), Board of Osteopathic Licensure (BOL), and State Board of Nursing (BON) to adopt rules governing telehealth services by their licensees, to include “standards of practice and appropriate restrictions.” At the time of the enactment of PL ch. 291, the BOLIM and BOL had an existing joint “telemedicine” rule (effective December 10, 2016) that established “definitions” and “practice guidelines” including but not limited to licensure requirements, standards of care and professional ethics, scope of practice, identification requirements, the physician-patient relationship, practice standards, informed consent, record keeping, privacy and security requirements, and prescribing practices. As originally proposed, the BOLIM and BOL propose amendments to the existing joint rule, which will also be adopted by the BON (Boards). The originally proposed amendments: change the chapter number and title of the rule from “Chapter 6 Telemedicine Standards of Practice” to “Chapter 11 Joint Rule Regarding Telehealth Standards of Practice”; update definitions to comport with definitions in PL ch. 291; and include terminology and requirements applicable to nurses.

Following receipt and review of written comments to the proposed amendments to the rule, the Boards made the following substantive changes to the proposed amendments to the rule: amending section 2.12 regarding the definition of telehealth to include the use of audio-only technology for the delivery of telehealth under certain circumstances, and clarifying that telehealth shall not include the provision of health care services only through email, instant messaging, facsimile transmission, or U.S. mail or other parcel service, or any combination thereof between a licensee and a patient with or without an intervening health care provider; amending section 3.8 regarding “Nursing Assessment” by removing “licensed practical nurse;” amending section 3.9 by changing “non-clinician health care providers” to “non-clinician health care personnel;” amending section 3.14 regarding “Patient Telehealth Records” by adding “the need for follow-up care or emergency services;” amending section 3.17.A regarding “Disclosure and Functionality of Telehealth Services” to add “(8) privacy and security risks of the technologies and equipment;” and amending section 3.17.A.7 regarding “Disclosure and Functionality of Telehealth Services” to add “and equipment.”

PUBLIC HEARING: None planned. *Requests to hold a public hearing by any interested party may be submitted in writing to the identified agency contact person. This is a publication of substantive proposed changes to a proposed rule in order to allow public comment on the proposed changes as required by Title 5 MRS §8052(5)(B).*

COMMENT DEADLINE: Friday, April 29, 2022 by 4:30 p.m.

CONTACT PERSONS FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION:

Dennis E. Smith, Executive Director, Board of Licensure in Medicine 137 State House Station, Augusta, ME 04333-0137. Telephone: (207) 287-3605. Fax (207) 287-6590. Email Dennis.E.Smith@Maine.gov.

Kimberly S. Esquibel, Executive Director, State Board of Nursing, 158 State House Station, Augusta, ME 04333-0158. Telephone: (207) 287-1148. Fax (207) 287-1149. Email: Kim.Esquibel@Maine.gov.

Susan E. Strout, Executive Secretary, Board of Osteopathic Licensure, 142 State House Station, Augusta, ME 04333-0142. Telephone: (207) 287-2480. Fax: (207) 536-5811 Email: Susan.E.Strout@Maine.gov.

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

STATUTORY AUTHORITY FOR THIS RULE: 32 MRS §§ 3269(3), 3269(7), 3300-AA-3300-EE (Board of Licensure in Medicine); 32 MRS §§ 2102(2-A) , 2153-A(1), 2266-2270 (State Board of Nursing); 32 MRS §2562, 2600-AA-2600-EE (Board of Osteopathic Licensure)

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: PL. 2021 ch. 291

AGENCY WEBSITES: [www.maine.gov/md](http://www.maine.gov/md) (Board of Licensure in Medicine); [www.maine.gov/boardofnursing](http://www.maine.gov/boardofnursing) (State Board of Nursing); [www.maine.gov/osteo](http://www.maine.gov/osteo) (Board of Osteopathic Licensure)

EMAIL FOR AGENCY RULEMAKING LIAISONS: Maureen.S.Lathrop@Maine.gov (Board of Licensure in Medicine); Kim.Esquibel@Maine.gov (State Board of Nursing); Susan.E.Strout@Maine.gov (Board of Osteopathic Licensure)

AGENCY: **02-373 - Board of Licensure in Medicine; 02-380 - State Board of Nursing; 02-383 - Board of Osteopathic Licensure**

CHAPTER NUMBER AND TITLE: **Chapter 12**, Joint Rule Regarding Office Based Treatment of Opioid Use Disorder

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P211, P212, P213** *(2nd notice, revised)*

BRIEF SUMMARY: The Board of Licensure in Medicine, State Board of Nursing, and Board of Osteopathic Licensure (Boards) propose amendments to a joint rule regarding office-based treatment of opioid use disorder. The originally proposed amendments: eliminate gender terms, change the term “medical records” to “patient records”, and update the definition of telemedicine to telehealth to comport with the definition in 2021 PL ch. 291 enacted June 21, 2021.

Following receipt and review of written comments to the originally proposed amendments to the rule, the Boards made the following substantive changes to the proposed amendments to the rule: amending section 1 to add a definition for “medical emergency;” amending section 1 regarding the definition of “telehealth” to include the use of audio-only technology for the delivery of telehealth under certain circumstances, and clarifying that telehealth shall not include the provision of health care services only through email, instant messaging, facsimile transmission, or U.S. mail or other parcel service, or any combination thereof between a licensee and a patient with or without an intervening health care provider; amending section 3.1.D regarding qualifications to read “When required by State law, physician assistants must work in collaboration with a licensed physician when prescribing medications for the treatment of opioid use disorder;” amending section 5.4.D regarding “Informed Consent, Patient Treatment Agreement, Releases” to provide an exception to obtaining informed consent prior to OBOT “as a result of a genuine medical emergency” as defined in section 1 of the rule; and amending section 5.4.D.1 to require that a clinician “obtain and document voluntary informed consent” in lieu of obtaining written informed consent from the patient.

PUBLIC HEARING: None planned. *Requests to hold a public hearing by any interested person may be submitted in writing to the identified agency contact person. This is a publication of substantive proposed changes to a proposed rule in order to allow public comment on the proposed changes as required by Title 5 MRS §8052(5)(B).*

COMMENT DEADLINE: Friday, April 29, 2022 by 4:30 p.m.

CONTACT PERSONS FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION:

Dennis E. Smith, Executive Director, Board of Licensure in Medicine, 137 State House Station, Augusta, ME 04333-0137. Telephone: (207) 287-3605. Fax: (207) 287-3605. Email: Dennis.E.Smith@Maine.gov.

Kimberly S. Esquibel, Executive Director, State Board of Nursing, 158 State House Station, Augusta, ME 04333-0158. Telephone: (207) 287-1148. Fax: (207) 287-1149 Email: Kim.Esquibel@Maine.gov.

Susan E. Strout, Executive Secretary, Board of Osteopathic Licensure, 142 State House Station, Augusta, ME 04333-0142. Telephone: (207) 287-2480. Fax: (207) 536-5811. Email: Susan.E.Strout@Maine.gov.

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

STATUTORY AUTHORITY FOR THIS RULE: 32 MRS §§ 3269(3),(7), 3300-F, 3300-EE (Board of Licensure in Medicine); 32 MRS §§ 2102(2-A), 2153-A(1), 2210, 2270 (State Board of Nursing); 32 MRS §§ 2562, 2600-C, 2600-EE (Board of Osteopathic Licensure)

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

AGENCY WEBSITE: [www.maine.gov/md](http://www.maine.gov/md) (Board of Licensure in Medicine); [www.maine.gov/boardofnursing](http://www.maine.gov/boardofnursing) (State Board of Nursing); [www.maine.gov/osteo](http://www.maine.gov/osteo) (Board of Osteopathic Licensure)

EMAIL FOR AGENCY RULEMAKING LIAISONS: maureen.s.lathrop@maine.gov (Board of Licensure in Medicine); kim.esquibel@maine.gov (State Board of Nursing); susan.e.strout@maine.gov (Board of Osteopathic Licensure)

AGENCY: **10-144** - Department of Health and Human Services (DHHS), **Office of MaineCare Services (OMS)**

CHAPTER NUMBER AND TITLE: **Chapter 101**, MaineCare Benefits Manual (MBM): **Chapter III Section 21**, Allowances for Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder

PROPOSED RULE NUMBER: **2022-P041**

CONCISE SUMMARY: In response to the statewide staffing crisis and to comply with PL 2021 ch. 398(the “Act”), the Department is proposing routine technical rule changes to increase rates for providers of services under ch. III section 21, “Allowances for Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder”.

Section AAAA-1 of the Act enacts 22 MRS ch. 1627, Essential Support Worker Reimbursement. The new law requires that, effective January 1, 2022, the labor components of MaineCare reimbursement rates for specified services delivered by “essential support workers” must equal at least 125% of the minimum wage established in Title 26 section 664 subsection 1. Essential support workers are individuals who by virtue of employment generally provide to individuals direct contact assistance with activities of daily living or instrumental activities of daily living or have direct access to provide care and services to clients, patients or residents regardless of the setting. 22 MRS §7401. In addition, part AAAA states that the reimbursement rate must include an amount necessary to reimburse the provider for taxes and benefits related to the wages. 22 MRS §7402(2). Section AAAA-2 of the Act specifies that the 125% of minimum wage requirement for essential support workers applies to ch. III section 21 services.

Additionally, Part OOO of the Act authorizes the Department to implement cost of living increases (COLAs). In calculating the rate increases necessary to comply with Part AAAA of the Act, the Legislature and the Department took into consideration the impact of the planned COLAs on ensuring the labor components of the reimbursement rates for section 21 and other services specified under Part AAAA are equal to at least 125 percent of minimum wage.

Rulemaking required for these particular rule changes are routine technical per 22 MRS §7404 (for the essential support worker increases), and Part OOO of the Act (for the COLA-related increases) even though ch. III section 21 is generally a major substantive rule*. See, e.g.,* 22 MRS §3195.

On March 22, 2022, the Department implemented these increased rates via an emergency routine technical rule, which shall be effective for up to 90 days. The rates are effective retroactive to January 1, 2022, as directed by the Act. The retroactive application of this rule comports with 22 MRS §42(8), which provides state authority for the Department to adopt rules with a retroactive application for a period not to exceed eight (8) calendar quarters where there is no adverse financial impact on any MaineCare member or provider. Here, the rule change is a beneficial change for the providers. This proposed routine technical rulemaking seeks to make permanent the increases to the reimbursement rates enacted via emergency rule.

Separately, effective December 31, 2021, and coinciding with the adoption of the emergency routine technical rule, the Department shall repeal an emergency major substantive rule that was adopted on April 7, 2021, and that included reimbursement rate increases for certain services under ch. III section 21 pursuant to PL 2019 ch. 616; emergency major substantive rules are effective for up to twelve months, or until Legislative review. The Department has not yet initiated the proposed major substantive rulemaking associated with the April 7, 2021, emergency major substantive rule, and thus there is no provisional major substantive rule pending for review before the Legislature. There is no decrease in reimbursement for any service affected by the repeal of the April 2021 emergency major substantive rule.

The Department shall seek approval from the Centers for Medicare & Medicaid Services (CMS) for the proposed increased reimbursement rates. In addition, the Governor’s proposed budget will ask the legislature for additional funds to support these increases and to meet the intent of Part AAAA of the Act ensuring labor components of all rates are at least equal to 125% of minimum wage.

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

DATE, TIME AND PLACE OF PUBLIC HEARING: April 19, 2022 - 09:00 a.m. Eastern Time (US and Canada). *Due to the ongoing threat posed by COVID-19, DHHS has determined that its public hearing will be conducted solely remotely, via Zoom. This is in accordance with the DHHS Remote Rulemaking Hearings Policy issued September 10, 2021.*

(link to Remote Hearings Policy:

Zoom Meeting link: <https://mainestate.zoom.us/j/87058388564>

Meeting ID: Meeting ID: 870 5838 8564

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*In addition to the public hearing, individuals may submit written comments to DHHS by the date listed in this notice.*

COMMENT DEADLINE: April 29, 2022 by:11:59 p.m. EST

OMS CONTACT PERSON: Heather Bingelis, Comprehensive Health Planner II, MaineCare Services, 109 Capitol Street - 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207) 624-6951. Fax: (207) 287-6106. TTY: 711 (Deaf or Hard of Hearing). Email: Heather.Bingelis@Maine.gov.

IMPACT ON MUNICIPALITIES OR COUNTIES: The Department anticipates that this rulemaking will not have any impact on municipalities or counties.

CONTACT PERSON FOR SMALL BUSINESS INFORMATION: N/A

STATUTORY AUTHORITY: 22 M.R.S. §§ 42, 42(8), 3173; PL 2021 ch. 398

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

OMS RULES WEBSITE: <https://www.maine.gov/dhhs/oms/rules/index.shtml>.

OMS WEBSITE: <https://www.maine.gov/dhhs/oms>.

OMS RULEMAKING LIAISON: Jennifer.Patterson@Maine.gov.

DHHS WEBSITE: <https://www.maine.gov/dhhs>.

DHHS RULEMAKING LIAISON: Kevin.Wells@Maine.gov.

AGENCY: **10-144** - Department of Health and Human Services (DHHS), **Office of MaineCare Services (OMS)**

CHAPTER NUMBER AND TITLE: **Chapter 101**, MaineCare Benefits Manual (MBM): **Chapter III Section 29**, Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder

PROPOSED RULE NUMBER: **2022-P042**

CONCISE SUMMARY: In response to the statewide staffing crisis and to comply with PL 2021 ch. 398(the “Act”), the Department is proposing routine technical rule changes to increase rates for providers of services under ch. III section 29, “Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder”.

Section AAAA-1 of the Act enacts 22 MRS ch. 1627, “Essential Support Worker Reimbursement’. The new law requires that, effective January 1, 2022, the labor components of MaineCare reimbursement rates for specified services delivered by “essential support workers” must equal at least 125% of the minimum wage established in Title 26 section 664 subsection 1. Essential support workers are individuals who by virtue of employment generally provide to individuals direct contact assistance with activities of daily living or instrumental activities of daily living or have direct access to provide care and services to clients, patients or residents regardless of the setting. 22 MRS §7401. In addition, part AAAA states that the reimbursement rate must include an amount necessary to reimburse the provider for taxes and benefits related to the wages. 22 MRS §7402(2). Section AAAA-2 of the Act specifies that the 125% of minimum wage requirement for essential support workers applies to Ch. III section 29 services.

Additionally, part OOO of the Act authorizes the Department to implement cost of living increases (COLAs). In calculating the rate increases necessary to comply with part AAAA of the Act, the Legislature and the Department took into consideration the impact of the planned COLAs on ensuring the labor components of the reimbursement rates for section 29 and other services specified under part AAAA are equal to at least 125 percent of minimum wage.

Rulemaking required for these particular rule changes are routine technical per 22 MRS §7404 (for the essential support worker increases), and part OOO of the Act (for the COLA-related increases) even though ch. III section 29 is generally a major substantive rule*. See, e.g.,* 22 MRS §3195.

On March 22, 2022, the Department implemented these increased rates via an emergency routine technical rule, which shall be effective for up to 90 days. The rates are effective retroactive to January 1, 2022, as directed by the Act. The retroactive application of this rule comports with 22 MRS §42(8), which provides state authority for the Department to adopt rules with a retroactive application for a period not to exceed eight (8) calendar quarters where there is no adverse financial impact on any MaineCare member or provider. Here, the rule change is a beneficial change for the providers. This proposed routine technical rulemaking seeks to make permanent the increases to the reimbursement rates enacted via emergency rule.

Separately, effective December 31, 2021, and coinciding with the adoption of the emergency routine technical rule, the Department shall repeal an emergency major substantive rule that was adopted on April 7, 2021, and that included reimbursement rate increases for certain services under ch. III section 29 pursuant to PL 2019, ch. 616; emergency major substantive rules are effective for up to twelve months, or until Legislative review. The Department has not yet initiated the proposed major substantive rulemaking associated with the April 7, 2021, emergency major substantive rule, and thus there is no provisional major substantive rule pending for review before the Legislature. There is no decrease in reimbursement for any service affected by the repeal of the April 2021 emergency major substantive rule.

The Department shall seek approval from the Centers for Medicare & Medicaid Services (CMS) for the proposed increased reimbursement rates. In addition, the Governor’s proposed budget will ask the legislature for additional funds to support these increases and to meet the intent of Part AAAA of the Act ensuring labor components of all rates are at least equal to 125% of minimum wage.

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

DATE, TIME AND PLACE OF PUBLIC HEARING: April 19, 2022, 02:00 p.m. Eastern Time (US and Canada). *Due to the ongoing threat posed by COVID-19, DHHS has determined that its public hearing will be conducted solely remotely, via Zoom. This is in accordance with the DHHS Remote Rulemaking Hearings Policy issued September 10, 2021.*

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       +1 669 900 6833 US (San Jose)

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In addition to the public hearing, individuals may submit written comments to DHHS by the date listed in this notice.

COMMENT DEADLINE: April 29, 2022 by:11:59 p.m. EST

OMS CONTACT PERSON: Heather Bingelis, Comprehensive Health Planner II, MaineCare Services, 109 Capitol Street - 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207) 624-6951. Fax: (207) 287-6106. TTY: 711 (Deaf or Hard of Hearing). Email: Heather.Bingelis@Maine.gov.

IMPACT ON MUNICIPALITIES OR COUNTIES: The Department anticipates that this rulemaking will not have any impact on municipalities or counties.

CONTACT PERSON FOR SMALL BUSINESS INFORMATION: N/A

STATUTORY AUTHORITY: 22 M.R.S. §§ 42, 42(8), 3173; PL 2021 ch. 398

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

OMS RULES WEBSITE: <https://www.maine.gov/dhhs/oms/rules/index.shtml>.

OMS WEBSITE: <https://www.maine.gov/dhhs/oms>.

OMS RULEMAKING LIAISON: Jennifer.Patterson@Maine.gov.

DHHS WEBSITE: <https://www.maine.gov/dhhs>.

DHHS RULEMAKING LIAISON: Kevin.Wells@Maine.gov.

**ADOPTIONS**

AGENCY: **01-672** – Department of Agriculture, Conservation and Forestry (DACF), **Maine Land Use Planning Commission (LUPC)**

CHAPTER NUMBER AND TITLE: **Chapter 10**,Land Use Districts and Standards

ADOPTED RULE NUMBER: **2022-041**

CONCISE SUMMARY: This rulemaking is in direct response to the citizens’ petition filed with the Maine Land Use Planning Commission (the LUPC) pursuant to 5 MRS §8055. The petition sought to prohibit all development and activities involving cultivation, extraction, processing, manufacturing, testing, or sale of medical marijuana and adult use marijuana within the Community Center Development (D‑GN2) Subdistrict. Consistent with the hearing record and the applicable Prospective Zoning Plan for the Rangeley Lakes Region, the LUPC has adopted the proposed rulemaking that will prohibit all development and activities involving medical marijuana or adult use marijuana cultivation, extraction, processing, manufacturing, testing, or retail sale, except those protected by Title 22 ch. 558-C, or Title 28-B.

EFFECTIVE DATE: March 29, 2022

LUPC CONTACT PERSON: Stacie Beyer, Maine Land Use Planning Commission, Department of Agriculture, Conservation and Forestry, 22 State House Station, Augusta, ME 04333. Telephone: (207) 287-2631. Email: Stacie.R.Beyer@Maine.gov.

LUPC WEBSITE: <https://www.maine.gov/dacf/lupc/index.shtml>.

LUPC RULEMAKING LIAISON: Judith.C.East@Maine.gov.

AGENCY: **94-293 - Baxter State Park Authority**

CHAPTER NUMBER AND TITLE: **Chapter 1**, Baxter State Park Rules and Regulations

ADOPTED RULE NUMBER: **2022-042**

CONCISE SUMMARY:

**Revising Rule 1.2 in Section 1:** **Camping, Reservations and Registration**

The Authority is proposing to remove from this rule information concerning season length, check in and check out times, and specific areas where group camping can occur, and to remove language around whether campers are permitted to set up tents at lean-to sites.

**Revising Rule 3.1 in Section 3**: **Hunting, Trapping and Fishing**

The Authority proposes to add “crossbow” to the list of weapons in this Rule. Crossbow hunting has enjoyed increasing popularity in recent years and it is useful from an enforcement standpoint to list this specific activity.

**Revising Rule 4.6 in Section 4: Resource Protection and Wilderness Preservation**

The Authority proposes to include provisions which call out specific actions for those with human waste to dispose above treeline to align with Leave No Trace™ practices.

**Revising Rule 5.4 in Section 5: Vehicles and Transportation**

The Authority proposes to modify the existing rule to allow motorcycles to travel on certain and limited gravel sections of the Park Tote road outside the main gates.

**Revising Rule 5.5 in Section 5: Vehicles and Transportation**

The Authority proposes to modify rule language to make drone (UAV) prohibitions more clear and defensible.

**EFFECTIVE DATE**: March 27, 2022

AGENCY CONTACT PERSON / RULEMAKING LIAISON: Georgia Manzo, Baxter State Park Authority, 64 Balsam Drive, Millinocket, ME 04462. Telephone: (207) 723-9616 x222. Email: Georgia.Manzo@BaxterStatePark.org.

WEBSITE: <https://baxterstatepark.org/>.

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

CHAPTER NUMBER AND TITLE: **Chapter 620** *(New)*, Maine Health Care Provider Loan Repayment Pilot Program

ADOPTED RULE NUMBER: **2022-043**

CONCISE SUMMARY: The rule implements legislation enacted by the Legislature during the First Regular Session of the 130th Maine Legislature as part of LD 1733, (now PL 2021 ch. 483 (part H)), the bill directing various federal relief funds as a result of *American Rescue Plan Act of 2021* (ARPA). The Maine Health Care Provider Loan Repayment Pilot Program Fund will make loan repayments to eligible program participants to address critical workforce shortages exacerbated by the COVID-19 pandemic, including, but not limited to, the behavioral health and oral care sectors. The program will be geared toward certain health care professionals who commit to living and working in Maine for at least three years. Under the program, FAME shall pay up to $25,000 per year and, in aggregate, the lesser of $75,000 and 50% of the recipient's outstanding loan balance.

EFFECTIVE DATE: March 29, 2022

FAME CONTACT PERSON: William Norbert, Esq., Finance Authority of Maine, 5 Community Drive, Augusta, ME 04332. Telephone: (207) 623-3263 x 3540. Email: wnorbert@famemaine.com.

FAME WEBSITE: <https://www.famemaine.com/>.

FAME RULEMAKING LIAISON: CRoney@FameMaine.com.

AGENCY: **10-144** - Department of Health and Human Services (DHHS), **Office of MaineCare Services (OMS) – Division of Policy**

CHAPTER NUMBER AND TITLE: **Chapter 101**, MaineCare Benefits Manual (MBM): **Chapter III Section 21**, Allowances for Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder

ADOPTED RULE NUMBER: **2022-044** *(Emergency Repeal, Major Substantive)*

CONCISE SUMMARY: The Department is repealing an emergency major substantive rule that was effective on April 7, 2021, that included reimbursement rate increases for certain services under *MaineCare Benefits Manual*, ch. III section 21, “Allowances for Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder”, pursuant to PL 2019 ch. 616. Per 5 MRS §8072, emergency major substantive rules are effective for up to 12 months or until Legislative review. The Department has not yet initiated the proposed major substantive rulemaking associated with the April 7, 2021, emergency major substantive rule, and thus there is no provisional major substantive rule pending for review before the Legislature.

There is no decrease in reimbursement for any service affected by this repeal of the April 2021 emergency major substantive rule changes. The Department is repealing this emergency major substantive rule because of additional Section 21 reimbursement rate changes that were required by PL 2021 ch. 398 (the “Act”).

Simultaneous with the repeal of the emergency major substantive rule, pursuant to the Act, the Department will implement separate emergency routine technical rule changes that increase rates for section 21 providers. As set forth in the MAPA documents for the separate rulemaking, the Act authorized the Department to make those specific section 21 reimbursement rate changes on an emergency basis via routine technical rulemaking, even though ch. III section 21 rulemaking is typically major substantive. All of the section 21 reimbursement rates that were increased via the April 7, 2021, emergency major substantive rule (that is now being repealed) are included in the rate increases for the separate emergency routine technical rule. Because of the separate routine technical emergency rule, the repeal of the emergency major substantive rule will not have the effect of causing the reimbursement rates to revert to the lower rates that were in the current permanent major substantive Ch. III section 21 (eff. 7/28/2019).

The separate routine technical emergency rule changes shall be effective for up to 90 days. The Department intends to proceed with proposed routine technical rulemaking to make permanent the increases to reimbursement rates enacted through the emergency rule changes. These increased rates in the separate routine technical rulemaking will be effective retroactive to January 1, 2022, as directed by the Act, per 22 MRS §42(8).

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

EFFECTIVE DATE: March 23, 2022

OMS CONTACT PERSON: Heather Bingelis, Comprehensive Health Planner, Division of Policy, 109 Capitol Street - 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207) 624-6951. Fax: (207) 287-6106. TTY users call Maine relay 711. E‑mail: Heather.Bingelis@Maine.gov.

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OMS RULEMAKING LIAISON: Jennifer.Patterson@Maine.gov.

DHHS WEBSITE: <https://www.maine.gov/dhhs>.

DHHS RULEMAKING LIAISON: Kevin.Wells@Maine.gov.

AGENCY: **10-144** - Department of Health and Human Services (DHHS), **Office of MaineCare Services (OMS) – Division of Policy**

CHAPTER NUMBER AND TITLE: **Chapter 101**, MaineCare Benefits Manual (MBM): **Chapter III Section 21**, Allowances for Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder

ADOPTED RULE NUMBER: **2022-045** *(Emergency adoption, routine technical)*

CONCISE SUMMARY: In response to the statewide staffing crisis and to comply with PL 2021 ch. 398(the “Act”), the Department is implementing emergency routine technical rule changes to increase rates for providers of services under ch. III section 21, “Allowances for Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder”.

Section AAAA-1 of the Act enacts 22 MRS ch.1627, Essential Support Worker Reimbursement. The new law requires that, effective January 1, 2022, the labor components of MaineCare reimbursement rates for specified services delivered by “essential support workers” must equal at least 125% of the minimum wage established in Title 26 section 664 subsection 1. Essential support workers are individuals who by virtue of employment generally provide to individuals direct contact assistance with activities of daily living or instrumental activities of daily living or have direct access to provide care and services to clients, patients or residents regardless of the setting. 22 MRS §7401. In addition, Part AAAA states that the reimbursement rate must include an amount necessary to reimburse the provider for taxes and benefits related to the wages. 22 MRS §7402(2). Section AAAA-2 of the Act specifies that the 125% of minimum wage requirement for essential support workers applies to ch. III, section 21 services.

Additionally, part OOO of the Act authorizes the Department to implement cost of living increases (COLAs). In calculating the rate increases necessary to comply with part AAAA of the Act, the Legislature and the Department took into consideration the impact of planned COLAs on ensuring the labor components of the reimbursement rates for section 21 and other services specified under part AAAA are equal to at least 125 percent of minimum wage.

Rulemaking required for these particular rule changes are routine technical per 22 MRS §7404 (for the essential support worker increases), and part OOO of the Act (for the COLA-related increases) even though ch. III section 21 is generally a major substantive rule*. See, e.g.,* 22 MRS §3195.

Section GGGG-1 of the Act provides the Department with authority to enact these routine technical changes on an emergency basis, without the need to make findings in support of an emergency per 5 MRS §8054. These routine technical emergency rule changes shall be effective for up to 90 days. The Department intends to proceed with proposed routine technical rulemaking to make permanent the increases to reimbursement rates enacted through this emergency adoption.

These increased rates will be effective retroactive to January 1, 2022, as directed by the Act. The retroactive application of this rule comports with 22 MRS §42(8), which provides state authority for the Department to adopt rules with a retroactive application for a period not to exceed eight (8) calendar quarters where there is no adverse financial impact on any MaineCare member or provider. Here, the rule change is a beneficial change for the providers.

Separately, effective December 31, 2021, and coinciding with the adoption of this emergency routine technical rule, the Department shall repeal an emergency major substantive rule that was adopted on April 7, 2021, and that included reimbursement rate increases for certain services under ch. III section 21 pursuant to PL 2019 ch. 616; emergency major substantive rules are effective for up to twelve months, or until Legislative review. The Department has not yet initiated the proposed major substantive rulemaking associated with the April 7, 2021, emergency major substantive rule, and thus there is no provisional major substantive rule pending for review before the Legislature. There is no decrease in reimbursement for any service affected by the repeal of the April 2021 emergency major substantive rule.

The Department shall seek approval from the Centers for Medicare & Medicaid Services (CMS) for the increased reimbursement rates. In addition, the Governor’s proposed budget will ask the legislature for additional funds to support these increases and to meet the intent of part AAAA of the Act ensuring labor components of all rates are at least equal to 125% of minimum wage.

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

EFFECTIVE DATE: March 23, 2022

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AGENCY: **10-144** - Department of Health and Human Services (DHHS), **Office of MaineCare Services (OMS) – Division of Policy**

CHAPTER NUMBER AND TITLE: **Chapter 101**, MaineCare Benefits Manual (MBM): **Chapter III Section 29**, Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder

ADOPTED RULE NUMBER: **2022-046** *(Emergency Repeal, Major Substantive)*

CONCISE SUMMARY: The Department is repealing an emergency major substantive rule that was effective on April 7, 2021 that included reimbursement rate increases for certain services under *MaineCare Benefits Manual*, ch. III section 29, “Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder”, pursuant to PL 2019 ch. 616. Per 5 MRS §8072, emergency major substantive rules are effective for up to 12 months or until Legislative review. The Department has not yet initiated the proposed major substantive rulemaking associated with the April 7, 2021, emergency major substantive rule, and thus there is no provisional major substantive rule pending for review before the Legislature.

There is no decrease in reimbursement for any service affected by this repeal of the April 2021 emergency major substantive rule changes. The Department is repealing this emergency major substantive rule because of additional Section 29 reimbursement rate changes that were required by PL 2021 ch. 398 (the “Act”).

Simultaneous with the repeal of the emergency major substantive rule, pursuant to the Act, the Department will implement separate emergency routine technical rule changes that increase rates for Section 29 providers. As set forth in the MAPA documents for the separate rulemaking, the Act authorized the Department to make those specific Section 29 reimbursement rate changes on an emergency basis via routine technical rulemaking, even though ch. III section 29 rulemaking is typically major substantive. All of the Section 29 reimbursement rates that were increased via the April 7, 2021, emergency major substantive rule (that is now being repealed) are included in the rate increases for the separate emergency routine technical rule. Because of the separate routine technical emergency rule, the repeal of the emergency major substantive rule will not have the effect of causing the reimbursement rates to revert to the lower rates that were in the current permanent major substantive ch. III section 29 (eff. 7/28/2019).

The separate routine technical emergency rule changes shall be effective for up to 90 days. The Department intends to proceed with proposed routine technical rulemaking to make permanent the increases to reimbursement rates enacted through the emergency rule changes. These increased rates in the separate routine technical rulemaking will be effective retroactive to January 1, 2022, as directed by the Act, per 22 MRS §42(8).

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

EFFECTIVE DATE: March 23, 2022

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AGENCY: **10-144** - Department of Health and Human Services (DHHS), **Office of MaineCare Services (OMS) – Division of Policy**

CHAPTER NUMBER AND TITLE: **Chapter 101**, MaineCare Benefits Manual (MBM): **Chapter III Section 29**, Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder

ADOPTED RULE NUMBER: **2022-047** *(Emergency adoption, routine technical)*

CONCISE SUMMARY: In response to the statewide staffing crisis and to comply with PL 2021 ch. 398(the “Act”), the Department is implementing emergency routine technical rule changes to increase rates for providers of services under ch. III section 29, Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder.

Section AAAA-1 of the Act enacts 22 MRS ch. 1627, “Essential Support Worker Reimbursement”. The new law requires that, effective January 1, 2022, the labor components of MaineCare reimbursement rates for specified services delivered by “essential support workers” must equal at least 125% of the minimum wage established in Title 26 section 664 subsection 1. Essential support workers are individuals who by virtue of employment generally provide to individuals direct contact assistance with activities of daily living or instrumental activities of daily living or have direct access to provide care and services to clients, patients or residents regardless of the setting. 22 MRS §7401. In addition, part AAAA states that the reimbursement rate must include an amount necessary to reimburse the provider for taxes and benefits related to the wages. 22 MRS §7402(2). Section AAAA-2 of the Act specifies that the 125% of minimum wage requirement for essential support workers applies to ch. III section 29 services.

Additionally, part OOO of the Act authorizes the Department to implement cost of living increases (COLAs). In calculating the rate increases necessary to comply with part AAAA of the Act, the Legislature and the Department took into consideration the impact of planned COLAs on ensuring the labor components of the reimbursement rates for section 29 and other services specified under part AAAA are equal to at least 125 percent of minimum wage.

Rulemaking required for these particular rule changes are routine technical per 22 MRS §7404 (for the essential support worker increases), and part OOO of the Act (for the COLA-related increases) even though ch. III section 29 is generally a major substantive rule*. See, e.g.,* 22 MRS §3195.

Section GGGG-1 of the Act provides the Department with authority to enact these routine technical changes on an emergency basis, without the need to make findings in support of an emergency per 5 MRS §8054. These routine technical emergency rule changes shall be effective for up to 90 days. The Department intends to proceed with proposed routine technical rulemaking to make permanent the increases to reimbursement rates enacted through this emergency adoption.

These increased rates will be effective retroactive to January 1, 2022, as directed by the Act. The retroactive application of this rule comports with 22 MRS §42(8), which provides state authority for the Department to adopt rules with a retroactive application for a period not to exceed eight (8) calendar quarters where there is no adverse financial impact on any MaineCare member or provider. Here, the rule change is a beneficial change for the providers.

Separately, effective December 31, 2021, and coinciding with the adoption of this emergency routine technical rule, the Department shall repeal an emergency major substantive rule that was adopted on April 7, 2021, and that included reimbursement rate increases for certain services under ch. III section 29 pursuant to PL 2019 ch. 616; emergency major substantive rules are effective for up to twelve months, or until Legislative review. The Department has not yet initiated the proposed major substantive rulemaking associated with the April 7, 2021, emergency major substantive rule, and thus there is no provisional major substantive rule pending for review before the Legislature. There is no decrease in reimbursement for any service affected by the repeal of the April 2021 emergency major substantive rule.

The Department shall seek approval from the Centers for Medicare & Medicaid Services (CMS) for the increased reimbursement rates. In addition, the Governor’s proposed budget will ask the legislature for additional funds to support these increases and to meet the intent of part AAAA of the Act ensuring labor components of all rates are at least equal to 125% of minimum wage.

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

EFFECTIVE DATE: March 23, 2022

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