**State of Maine: Notice of Agency Rulemaking – April 21, 2021**

**PROPOSALS**

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

CHAPTER NUMBER AND TITLE: **Ch. 101**, MaineCare Benefits Manual (MBM): **Ch. II Section 17**, Community Support Services

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P060**

CONCISE SUMMARY: The Department of Health and Human Services (“the Department”) proposes the following changes to 10-144 CMR ch. 101, *MaineCare Benefits Manual*, ch. II section 17, “Community Support Services”.

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

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

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

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

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

PUBLIC HEARING: No public hearing scheduled. *During the Civil State of Emergency declared by the Governor, public hearings are now closed to the public physically attending. During this State of Emergency, the Department will be providing a 30-day comment period instead of a public hearing.*

DATE FILED WITH THE SECRETARY OF STATE’S OFFICE: April 13, 2021

30-DAY DEADLINE FOR COMMENTS: Comments must be received by 11:59 p.m. on May 21, 2021.

OMS CONTACT PERSON / SMALL BUSINESS IMPACT INFORMATION: Melanie Miller, Comprehensive Health Planner II, MaineCare Services, 109 Capitol Street - 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207) 624-4087. Fax: (207) 287-6106. TTY: 711 (Deaf or Hard of Hearing). Email: [Melanie.Miller@Maine.gov](mailto:Melanie.Miller@Maine.gov) .

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

STATUTORY AUTHORITY: 22 MRS §§ 42(1), 3173; PL 2017 ch. 407

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

OMS RULEMAKING LIAISON: [Thomas.Leet@Maine,gov](mailto:Thomas.Leet@Maine,gov) .

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

DHHS RULEMAKING LIAISON: [Kevin.Wells@Maine.gov](mailto: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: **Ch. 101**, MaineCare Benefits Manual (MBM): **Ch. II Section 92**, Behavioral Health Home Services

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P061**

CONCISE SUMMARY: The Department of Health and Human Services (“the Department”) proposes the following changes to 10-144 CMR ch. 101, *MaineCare Benefits Manual* (MBM), ch. II section 92, “Behavioral Health Home Services”.

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

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

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

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

PUBLIC HEARING: No public hearing scheduled. *During the Civil State of Emergency declared by the Governor, public hearings are now closed to the public physically attending.  During this State of Emergency, the Department will be providing a 30-day comment period instead of a public hearing.*

30-DAY DEADLINE FOR COMMENTS: Comments must be received by 11:59 p.m. on May 21, 2021.

OMS CONTACT PERSON / SMALL BUSINESS IMPACT INFORMATION: Melanie Miller, Comprehensive Health Planner II, MaineCare Services, 109 Capitol Street - 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207) 624-4087. Fax: (207) 287-6106. TTY: 711 (Deaf or Hard of Hearing). Email: [Melanie.Miller@Maine.gov](mailto:Melanie.Miller@Maine.gov) .

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

STATUTORY AUTHORITY: 22 MRS §§ 42(1), 3173; PL 2017 ch. 407

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

OMS RULEMAKING LIAISON: [Thomas.Leet@Maine,gov](mailto:Thomas.Leet@Maine,gov) .

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

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

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

CHAPTER NUMBER AND TITLE: **Ch. 102**, Electronic Funds Transfer (EFT)

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P062**

BRIEF SUMMARY: MRS proposes amending Rule 102 ("Electronic Funds Transfer (EFT)") to make various clarification and formatting changes. In addition, MRS proposes amending section .02 ("Mandatory EFT Participation") to provide that, effective January 1, 2022, the requirement to remit all Maine tax payments electronically for which an electronic processing method is provided by the State Tax Assessor applies automatically once a person has met the conditions to become subject to the requirement. MRS also proposes amending section .05 ("Tax Returns") to provide that payment of taxes by electronic funds transfer automatically eliminates the necessity of filing estimate, coupon, voucher, or other similar forms otherwise required by the State Tax Assessor. In addition, MRS proposes eliminating the provision in section .06 ("Request for Waiver from Mandatory EFT Participation") that provides that a waiver from mandatory EFT participation will generally be allowed if the taxpayer's bank does not participate in ACH in any form. Finally, MRS proposes amending section .11 ("Interest and Penalties"), subsection D ("Waiver or Abatement of Penalties") to better reflect how the waiver/abatement provisions in Title 36 apply to payment-related penalties.

PUBLIC HEARING: N/A

COMMENT DEADLINE: May 28, 2021

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / MRS RULEMAKING LIAISON: Alex Weber, General Counsel, Maine Revenue Services, 51 Commerce Drive, Augusta, ME 04330. Telephone: (207) 624-9712.

Email: [Alexander.J.Weber@Maine.gov](mailto:Alexander.J.Weber@Maine.gov) .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: N/A

STATUTORY AUTHORITY FOR THIS RULE: 36 MRS §§ 112, 193

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

CHAPTER NUMBER AND TITLE: **Ch. 103**, Recordkeeping and Retention

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P063**

BRIEF SUMMARY: MRS proposes amending Rule 103 ("Recordkeeping and Retention") to make various clarification and formatting changes. In addition, MRS proposes updating section 9 ("Records retention time period") to reflect that, in addition to Title 36 ch. 575, which is currently referenced in this section, Maine's law on the estate tax now also includes Title 36 ch. 577, which was enacted after Rule 103 was last updated.

PUBLIC HEARING: N/A

COMMENT DEADLINE: May 28, 2021

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / MRS RULEMAKING LIAISON: Alex Weber, General Counsel, Maine Revenue Services, 51 Commerce Drive, Augusta, ME 04330. Telephone: (207) 624-9712.

Email: [Alexander.J.Weber@Maine.gov](mailto:Alexander.J.Weber@Maine.gov) .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: N/A

STATUTORY AUTHORITY FOR THIS RULE: 36 MRS §§ 112, 135

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

CHAPTER NUMBER AND TITLE: **Ch. 104**, Filing of Maine Tax Returns

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P064**

BRIEF SUMMARY: MRS proposes amending Rule 104 ("Filing of Maine Tax Returns") to make various clarification and formatting changes. In addition, MRS proposes updating section .01 ("Definitions") and section .05 ("Mandatory participation - income tax withholding, competitive skills scholarship fund, and unemployment compensation insurance returns") to reflect changes in MRS and Maine Department of Labor processes that have occurred since Rule 104 was last updated.

PUBLIC HEARING: N/A

COMMENT DEADLINE: May 28, 2021

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / MRS RULEMAKING LIAISON: Alex Weber, General Counsel, Maine Revenue Services, 51 Commerce Drive, Augusta, ME 04330. Telephone: (207) 624-9712.

Email: [Alexander.J.Weber@Maine.gov](mailto:Alexander.J.Weber@Maine.gov) .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: N/A

STATUTORY AUTHORITY FOR THIS RULE: 36 MRS §§ 112, 193, 5220(7)

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

CHAPTER NUMBER AND TITLE: **Ch. 201**, Rules of Procedure Used to Develop State Valuation

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P065**

BRIEF SUMMARY: MRS is proposing to amend Rule 201 ("Rules of Procedure Used to Develop State Valuation"). The State Tax Assessor must annually perform state valuation for each municipality and for each county containing unorganized territory, to determine market value of all taxable property in the state. Municipal market values are used to calculate the distribution of municipal revenue sharing and State aid for education. Rule 201 establishes the guidelines for the state valuation process. The following changes are being made to the proposed Rule. The rule must be amended to clarify current policy, make adjustments for consistency, and make various technical changes.

PUBLIC HEARING: N/A

COMMENT DEADLINE: May 28, 2021

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / MRS RULEMAKING LIAISON: Alex Weber, General Counsel, Maine Revenue Services, 51 Commerce Drive, Augusta, ME 04330. 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 §§ 112, 201, 208, 305

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) .

**ADOPTIONS**

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

CHAPTER NUMBER AND TITLE: **Ch. 202**, Tree Growth Tax Law Valuations – 2021

ADOPTED RULE NUMBER: **2021-081** *(Repeal and replace)*

CONCISE SUMMARY: Maine Revenue Services has repealed and replaced Rule 202 (*Tree Growth Tax Law Valuations – 2021*). The replaced rule provides updated valuation rates for each forest type by region.

EFFECTIVE DATE: April 20, 2021

CONTACT PERSON FOR THIS FILING / MRS RULEMAKING LIAISON: Alex Weber, General Counsel, Maine Revenue Services, 51 Commerce Drive, Augusta, ME 04330. Telephone: (207) 624-9712. Email: [Alexander.J.Weber@Maine.gov](mailto:Alexander.J.Weber@Maine.gov) .

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

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

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

CHAPTER NUMBER AND TITLE: **Ch. 301**, Food Supplement Program: **Section FS 999‑3**, Charts; **FS217A** – Increases Pursuant to PL 116-260 and PL 117-2

ADOPTED RULE NUMBER: **2021-082**

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

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

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

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

Additionally, a rule change is necessary to remain in compliance with Federal regulation 7 C.R §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 FPLs are published. This year, they were published at <https://aspe.hhs.gov/poverty-guidelines> on January 13. See also, Annual Update of the HHS Poverty Guidelines, 86 Fed. Reg. 7,732 (February 1, 2021) <https://www.federalregister.gov/documents/2021/02/01/2021-01969/annual-update-of-the-hhs-poverty-guidelines>. The Department is making this change retroactive to January 13, 2021. Retroactive rulemaking is authorized by the Legislature in accordance with 22 MRS §42(8) because this rule provides a benefit to recipients or beneficiaries and does not have an adverse financial effect on either providers or beneficiaries or recipients.

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

EFFECTIVE DATE: May 1, 2021

AGENCY CONTACT PERSON: 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) .

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

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

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

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

CHAPTER NUMBER AND TITLE: **Ch. 275**, Emerald Ash Borer Quarantine

ADOPTED RULE NUMBER: **2021-083**

CONCISE SUMMARY: This chapter establishes a quarantine against the Emerald Ash Borer (*Agrilus planipennis*) (EAB) to prevent its movement to un-infested parts of the State, in order to protect Maine's forest and timber resources. This adoption extends the quarantined area in Aroostook County to six new towns, plantations, or townships; adds an exterior quarantine to regulate EAB infested materials moving into Maine from other infested states or infested Canadian provinces; and removes ash chips from the list of regulated articles.

EFFECTIVE DATE: April 21, 2021

DACF CONTACT PERSON: Shannon Ayotte, Department of Agriculture, Conservation and Forestry, 22 State House Station, Augusta, ME 04333. Telephone: (207) 287-5976. Email: [Shannon.Ayotte@Maine.gov](mailto:Shannon.Ayotte@Maine.gov) .

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

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

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

ADOPTED RULE NUMBER: **2021-084**

CONCISE 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 amended 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.

EFFECTIVE DATE: April 19, 2021

MAINEPERS CONTACT PERSON: Kathy J. Morin, Manager, Actuarial and Legislative Affairs, Maine Public Employees Retirement System, P.O. Box 349, Augusta, ME 04332-03449. Telephone:1-800-451-9800 or (207) 512-3190. Email: [Kathy.Morin@MainePERS.org](mailto:Kathy.Morin@MainePERS.org) .

MAINEPERS WEBSITE: <https://www.mainepers.org/> .