**State of Maine: Notice of Agency Rulemaking – May 5, 2021**

**PROPOSALS**

AGENCY: **01-015** – Department of Agriculture, Conservation and Forestry (DACF), **Maine Milk Commission (MMC)**

CHAPTER NUMBER AND TITLE: **Ch. 3**, Schedule of Minimum Prices, **Order #06-21**

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P069**

BRIEF SUMMARY: The principal reason for this rule is the need to respond to Federal Order changes and to certain other conditions affecting prevailing Class I, II and III milk prices in Southern New England in accordance with 7 MRS §2954.

PUBLIC HEARING: May 20, 2021, Thursday, starting at 10:30 a.m. *Because* *of the COVID-19 Public Health Emergency and pursuant to 1 MRS §403-A, enacted by PL 2019 c. 617 part G (eff. March 18, 2020), this hearing could be held remotely by telephonic conference. Directions on how to attend the hearing telephonically will be posted on the Milk Commission website and sent to the interested persons list in advance of May 20, 2021. If the civil emergency is not extended the meeting will be held in Room 101, Deering Building, Augusta, Maine.*

COMMENT DEADLINE: May 20, 2021

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / MMC RULEMAKING LIAISON: Tim Drake, Maine Milk Commission, 28 State House Station, Augusta, ME 04333. Telephone: (207) 287-7521. Email: Tim.Drake@Maine.gov .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None

STATUTORY AUTHORITY FOR THIS RULE: 5 MRS §8054 and 7 MRS §2954

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

MMC WEBSITE: <http://www.maine.gov/dacf/milkcommission/index.shtml> .

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

AGENCY: **10-144** - Department of Health and Human Services (DHHS), **Maine Center for Disease Control and Prevention (Maine CDC)**

CHAPTER NUMBER AND TITLE: **Ch. 262**, Rules and Regulations Post-secondary School Immunizations Required (*New title*: Post-secondary School Immunizations Rule)

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P070**

BRIEF SUMMARY: 10-144 CMR ch. 262 identifies certain preventable diseases for which immunization or immunity is required of all students attending public or private post-secondary schools in the State, unless exempt under Maine law; states dosing requirements consistent with federal recommendations for the specified immunizing agents; and defines the chief administrative officer's responsibilities, exclusion periods, record-keeping and reporting requirements for school officials, in accordance with 20-A MRS §6359. Pursuant to 20-A MRS §6359(6), *Rules and Regulations Post-secondary School Immunizations Required* is a routine technical rule as defined in 5 MRS §8071(2)(A), except for those provisions that specify the diseases for which immunization is required, which are major substantive as defined in 5 MRS §8071(2)(B). The Department is proposing amendments to ch. 262 to implement changes required by PL ch. 154, *An Act to Protect Maine Children and Students from Preventable Disease by Repealing Certain Exemptions from the Laws Governing Immunization Requirements* (the “Act”*)*, enacted by the 129th Maine Legislature and effective June 16, 2020. The Act prohibits the Department from including any provision governing medical exemptions in this rule. (PL 2019 ch. 154, §7.) The Act repeals the exemption from required immunization for post-secondary school students who state a sincere religious belief or philosophical reasons for opposing immunization, effective September 1, 2021. (PL 2019 ch. 154 §6.) Consistent with the Act, this rule proposes to remove language describing authorized exemptions, to minimize potential confusion and the need for subsequent rulemaking. The proposed rule amendments will clarify the chief administrative officer’s responsibility regarding the exclusion of students when there is a public health risk related to a disease outbreak and will specify the required documentation in students’ health records for recording immunization status for all students, including immune students, exempt and non-immunized students. Provisions of the Act that change exemptions will be in effect for the 2021-2022 school year. Additionally, these proposed rule amendments clarify the minimum content for the school’s annual report of students’ immunization status and documentation for school health records for all students, including immune students, exempt students and non-immunized students. These proposed changes further clarify that this information may be accessed by the Department to ensure compliance with the law and inform measures for controlling the spread of certain diseases. The Department is proposing that remote students who do not enter the premises be exempt from immunization requirements. Nothing in this rule may be construed to preclude the governing board of a public or private post-secondary school from adopting immunization requirements that are more stringent than the provisions set forth in this rule. Minor changes to the rule format and a revised title are being proposed for consistency with agency standards.

DATE, TIME AND PLACE OF PUBLIC HEARING: 9:00 a.m. to 12:00 noon, Monday May 24, 2021. *Hearings conducted during this State of Civil Emergency will be virtual via Zoom (1 MRS §403-A; 2020 PL ch. 617).*

Zoom Meeting Link: <https://mainestate.zoom.us/j/84916286061> .

Meeting ID: 849 1628 6061

COMMENT DEADLINE: Thursday, June 3, 2021

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Bridget Bagley, DHHS – Maine CDC, 286 Water Street - 11 State House Station, Augusta, ME, 04333-0011. Telephone: (207) 287-9394 or 711 (TTY). Fax: (207) 287-2887. Email: Bridget.Bagley@Maine.gov .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None anticipated.

STATUTORY AUTHORITY FOR THIS RULE: 20-A MRS §6359; 22 MRS §806

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: PL ch. 154.

MAINE CDC RULES WEBSITE: <http://www.maine.gov/dhhs/mecdc/rules/> .

MAINE CDC RULEMAKING LIAISON: .Tera.Pare@Maine.gov

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

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

**ADOPTIONS**

AGENCY: **01-670** - Department of Agriculture, Conservation and Forestry (DACF), **Bureau of Parks and Lands (BPL)**

CHAPTER NUMBER AND TITLE: **Ch. 18**, ATV Municipal/County Grant-In-Aid Program

ADOPTED RULE NUMBER: **2021-088**

CONCISE SUMMARY: The amendments will:

**\*** Raise the State’s grant cost share from 70% up to but not to exceed a rate of 90%, reducing the local match from 30% to potentially 10%.

**\*** Add Counties to the eligible government entities to receive the Grant-In-Aid Program.

EFFECTIVE DATE: May 3, 2021

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

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

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

**01-015** – Department of Agriculture, Conservation and Forestry (DACF), **Maine Milk Commission (MMC)**

CHAPTER NUMBER AND TITLE: **Ch. 3**, Schedule of Minimum Prices, **Order #05-21**

ADOPTED RULE NUMBER: **2021-089** *(Emergency)*

CONCISE SUMMARY: Minimum May 2021 Class I price is $20.35/cwt. plus $1.63/cwt. for Producer Margins, an over-order premium of $1.04/cwt. as being prevailing in Southern New England and $0.93/cwt. handling fee for a total of $24.15/cwt. that includes a $0.20/cwt. Federal promotion fee.

EFFECTIVE DATE: May 2, 2021

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / MMC RULEMAKING LIAISON: Tim Drake, Maine Milk Commission, 28 State House Station, Augusta, ME 04333. Telephone: (207) 287-7521. Email: Tim.Drake@Maine.gov .

MMC WEBSITE: <http://www.maine.gov/dacf/milkcommission/index.shtml> .

DACF RULEMAKING LIAISON: Shannon.Ayotte@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 and III Section 19**, Home and Community Benefits for the Elderly and Adults with Disabilities

ADOPTED RULE NUMBER: **2021-090**

CONCISE SUMMARY: This adopted rule aligns and complies with 42 CFR 441.301(c), the federal Home and Community Based Settings (HCBS) rule (the “Settings Rule”). Additionally, the changes update certain Personal Support Services (PSS) and other reimbursement rates pursuant to the State supplemental budget, PL 2019 ch. 616. Pursuant to Resolves 2019 ch. 104, the changes permit spouses to be reimbursed as Personal Support Specialists for eligible members that need extraordinary care. The rule clarifies roles and responsibilities of the Service Coordination Agency (SCA), the Fiscal Intermediary (FI), and the Assessing Services Agency (ASA) Assessor. It adds or clarifies definitions for Extraordinary Care, and the Person-Centered Planning Process.

The Settings Rule specifies that service planning for HCBS waiver members must be developed through a Person-Centered Planning (PCP) process that addresses health and long-term services and support needs in a manner that reflects individual preferences and goals. Moreover, the rule requires that this process be member-directed. This adopted rule adds language to further define the PCP process as it relates to recipients of Section 19 services. Separately, the Department is developing a Global HCBS Settings Rule that will make changes to all the HCBS MaineCare rules to implement in more detail the requirements of the Settings Rule.

Additionally, the adoption defines Extraordinary Care to support comprehensive planning and service delivery processes and more readily meet member’s needs.

Furthermore, the rule updates Section 19 rates to comply with PL 2019 ch. 616, *An Act Making Supplemental Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2020 and June 30, 2021*. Many of the changes are effective retroactive to April 1, 2020. In light of this increased reimbursement for providers, to protect members, the program cap in Section 19.06(A) has been increased to $6,565, effective retroactive to April 1, 2020.

The adopted rule also transitions reimbursement for the SCA, which provides care coordination services, from fee for service to a per member per month reimbursement; this shall take effect prospectively. Due to this change in reimbursement, the Department seeks to remove the limits on care coordination in Section 19.06; members may receive care coordination services as appropriate to their medical needs, without limits to the amount.

Additionally, the adopted rule to clarifies roles and responsibilities of the SCA, the Fiscal Intermediary (FI), and the ASA Assessor. The rule outlines the responsibilities of the SCA to promote the Person-Centered Planning process and clarifies the authority of the SCA to reduce, suspend, and deny members’ services. Additionally, the adopted rule outlines the qualifications and role of the ASA Assessor. Further, the rule identifies and outlines the data and reports required of the SCA and the FI to ensure collection and tracking of quality data in support of the transition to Per Member Per Month reimbursement for care coordination.

As reflected in the adopted rules, certain changes in the rule have a retroactive effective date of either April 1, 2020, or July 1, 2020, while the remainder are effective with this final adoption of the rule pursuant to 5 MRS §8052(6). Further, the Department has received final approval from the Centers for Medicare and Medicaid Services (CMS) on amendments to the Section 1915(c) waiver to implement same.

Finally, as a result of public comments and further review by the Department and the Office of the Attorney General, there were additional minor changes to the adopted rule language for purposes of clarity. Importantly, the Department increased the reimbursement for Respite Services in ch. III from $163.49 to $219.76, in order to be consistent with the waiver amendment approved by CMS. The Summary of Public Comments and Department Responses document identifies more specifically all changes that were made to the final rule.

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

EFFECTIVE DATE: May 2, 2021

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. Email: Heather.Bingelis@Maine.gov .

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

OMS RULEMAKING LIAISON: Thomas.Leet@Maine.gov .

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

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

AGENCY: **02-032** - Department of Professional and Financial Regulation (PFR), **Office of Securities**

CHAPTER NUMBER AND TITLE: **Ch. 536**, Securities Manuals

ADOPTED RULE NUMBER: **2021-091**

CONCISE SUMMARY: Ch. 536 is amended to remove “Fitch” securities manuals from the list of nationally recognized securities manuals for use with the manual exemption under Section 16202(2) of the *Maine Uniform Securities Act*.

EFFECTIVE DATE: May 8, 2021

CONTACT PERSON: Judith M. Shaw, Administrator, Office of Securities, 121 State House Station, Augusta, ME 04333-0121. Telephone: (207) 624-8551. Email: Judith.M.Shaw@Maine.gov .

SECURITIES WEBSITE: <https://www.maine.gov/pfr/securities/index.shtml> .

SECURITIES RULEMAKING LIAISON: Karla.Black@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: **MaineCare Rule #295A**, Updates to **Parts 9**, “(Special) Limited Benefit Groups”, and **18**, “Presumptive Eligibility Determined by Hospitals”

ADOPTED RULE NUMBER: **2021-092**

CONCISE SUMMARY: The Department is making various substantive and technical changes in Part 9, as well as in Part 18 of the *MaineCare Eligibility Manual*, 10-144 CMR ch. 332. The primary substantive changes are 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. Additionally, the Department regularly reviews policies to ensure clarity and conformity with state and federal Medicaid requirements. The Department is adding 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 is making the following changes. References to “HIV/AIDS Waiver” is changed to “Benefit for People living with HIV/AIDS” to align this manual section with the *MaineCare Benefits Manual*, 10-144 CMR ch. 101, Chapter X. Language is added to specify that this benefit is also referred to as the Special Benefit Waiver or SBW. This term is the one used in mailings to applicants and participants and is the name by which they know the program. For clarity, and to lend consistency throughout this Part, the information in the first paragraph is reorganized to first provide a description of the program and discuss eligibility later. 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. For emphasis, the exception allowing an individual to have SBW and DEL so long as DEL is supplementing Part D is moved to its own sentence. The Department is making changes in subsection 1(A) specifying that this requirement only applies to individuals who qualify for SSI-Related MaineCare based on disability (not age), and reorganizing the paragraph to start with the requirement and then move into ways the requirement can be met. The Assets Subsection is moved before the Income Subsection for consistency with other Parts of the manual and the flow of the eligibility determination process. Language is added to Subsection 1(C) specifying that SSI-Related budgeting procedures (in Part 7) apply. To improve specificity, the due date of premiums is added to the first paragraph of Subsection 2. Subsection 2(A)(1) is amended to clarify that multiple month payments should be made in advance of the due date. In the Example in Subsection 2(A)(1), the figures are updated to current premium amounts. Subsection 2(A)(2) is 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) is amended to clarify that the date in question is the last day of the grace period. Subsection 2(B)(2)(b) is amended to allow for a person other than a relative to be responsible for an individual’s premium payments. Subsection 3(A) is amended to clarify that continuous coverage shall 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 is making the following change to clarify that there are, in fact, two distinct Breast and Cervical Cancer programs. A sentence is 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 is adding language 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. On September 22, 2020, the Centers for Medicare and Medicaid Services (CMS) approved a State Plan Amendment (SPA) authorizing these changes in the MaineCare program, effective October 1, 2020. Pursuant to 22 MRS §42(8), these changes shall be applied retroactive to October 1, 2020. The changes benefit both providers and MaineCare beneficiaries.

Other changes are part of a standardization of practice across all OFI rules. Enumeration and lettering of subsections, paragraphs, etc. is updated as part of a general effort to make these systems consistent throughout OFI rules and as necessary to accommodate the addition and deletion of material. Cross references are updated where information had been moved as part of a prior rule making. Changes include use of gender inclusive pronouns. Other grammatical and typographical errors are corrected. Redundant terms are removed. References to MaineCare coverage that does not limit its coverage to a specific system or condition are consistently changed to “full MaineCare”. This term is familiar to applicants and participants as it is used in mailings to them. The Department finds that this term is less cumbersome and confusing than alternatives such as “Categorically Needy or Medically Needy coverage” and more accurate than some instances where one type of coverage was referenced and the other, inadvertently, left out.

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

As a result of comments, Part 9 §1(1)(A) is further amended to allow eligibility for the Special Benefits Waiver coverage group for individuals complying with any treatment regimen determined by their licensed healthcare professional.

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

EFFECTIVE DATE: Monday, May 10, 2021

OFI CONTACT PERSON: 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 .

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

OFI RULEMAKING LIAISON: Dan.Cohen@Maine.gov .

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

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