**State of Maine: Notice of Agency Rulemaking – May 6, 2020**

**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 #06-20**

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P083**

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 21, 2020, 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 will 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 April 23, 2020.**

COMMENT DEADLINE:May 21, 2020

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; 7 MRS §2954

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

AGENCY WEBSITE:http://www.maine.gov/dacf/milkcommission/index.shtml .

AGENCY: **09-137 – Department of Inland Fisheries and Wildlife (IFW)**

CHAPTER NUMBER AND TITLE: **Ch. 16**, Hunting: **16.09**, Bear Hunting

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P084**

BRIEF SUMMARY: The Department of Inland Fisheries and Wildlife has received a valid petition to consider amending Ch. 16 rules as they pertain to bear hunting. The petitioner has requested rules be modified to establish a bear feeding season, establish a bear feeding permit and set limits on the number of bear feeding permits issued annually. Please contact the agency contact person above for a complete copy of the proposed rule or to submit written comments on the proposal.

PUBLIC HEARING: None scheduled

COMMENT DEADLINE: June 5, 2020

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / IFW RULEMAKING LIAISON: Becky Orff, Inland Fisheries & Wildlife, 41 State House Station - 284 State Street, Augusta, ME 04333. Telephone: (207) 287-5202. Email: Becky.Orff@Maine.gov .

IMPACT ON MUNICIPALITIES OR COUNTIES: No fiscal impact is anticipated.

STATUTORY AUTHORITY FOR THIS RULE: 12 MRS §10104

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

IFW WEBSITE: https://www.maine.gov/ifw/ .

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

CHAPTER NUMBER AND TITLE: **Ch. 101**, MaineCare Benefits Manual (MBM): **Ch. I Section 4**, Telehealth Services

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P085**

CONCISE SUMMARY: This proposed rulemaking implements increased access to all pharmacy services, and particularly Substance Use Disorder (SUD) services, through the removal of the blanket prohibition of Pharmacy Services (Section 80). These changes were originally effectuated via emergency rulemaking, effective March 16, 2020 for 90 days. These emergency actions were based on the COVID-19 public health threat, in an effort to limit face-to-face contact and mitigate disease transmission. The Department seeks to make these changes permanent, in part, because they will deliver SUD services more quickly and broadly to MaineCare members, in response to the opioid crisis. Additionally, the changes will be generally preemptive against any future spread of communicable disease threat or outbreak by decreasing in-person contact for pharmacy services, as medically and situationally necessitated.

Additionally, this proposed rule removes two prohibitions within the Telehealth rule, and adds five new definitions to the rule, including, Consultative Physician, Established Patient, Requesting Physician, Specialist, and Treating Provider.

The proposed changes to Telehealth also expand Covered Services by adding Store-and-Forward, Virtual Check-Ins, and Remote Consultations. For example, Store-and-Forward and Remote Consultation services permit Health Care Providers to receive reimbursement for communications regarding a Member’s treatment and diagnoses. This action will align MaineCare rule with recent changes to 24-A MRS §4316, requiring private insurers to more broadly cover services through telehealth. As part of Store-and-Forward modalities, the Department has also added two additional procedure codes associated with Remote Consultation Between Treating Provider and Specialist. Both new added services permit the transmission of member health information between two or more providers and/or allow collaboration between a primary provider and specialist using a virtual platform. Additionally, the two new remote consultation codes allow for the reimbursement of the requesting and consulting physicians, a departure from reimbursement for the other interprofessional consultation codes extant in policy.

Virtual Check-Ins have been added to Covered Services to align MaineCare policy with recently expanded Medicare coverage of telehealth. The addition of Virtual Check-In is intended to allow providers to communicate with members about their health status in between office visits, and to determine medically necessary future in-office visits.

Additionally, the Department is permanently adding codes that were previously opened temporarily through the COVID-19 emergency proposed rule.

The Department shall seek and anticipates receiving CMS approval for these changes.

In light of the global pandemic, the Department recently implemented a separate emergency rule that affects numerous MaineCare policies, 10-144 CMR ch. 101 ch. I section 5, “COVID-19 Public Health Emergency Services” (effective March 20, 2020) (the “COVID Rule”). The COVID Rule shall be effective temporarily to assist members and providers in specific ways during the COVID-19 crisis. The Department intends to repeal the COVID Rule once the public health emergency period has ended.

The COVID Rule makes various changes to the Telehealth rule, including:

(i) Allows selective waiver of the requirement in 4.04-1(2) that the covered service delivered by Interactive Telehealth be of comparable quality to what it would be it delivered in person;

(ii) for 4.04-3 (Telephonic Services) – waives requirement that Interactive Telehealth Services be unavailable before one may utilize Telephonic Services; and

(iii) waives requirement in 4.06-2(B) that provider do member education and obtain written consent from member prior to provision of services via Telehealth.

As such, there is overlap between the COVID Rule and the proposed rulemaking. Specifically, the addition of Virtual Check In, Store and Forward, and Remote Consultation to 4.06-2(B), requiring member education and informed written consent before provision of those services, conflict with the COVID Rule. Where the COVID Rule and a separate MaineCare rule conflict, the COVID Rule supersedes and shall apply. *See* COVID Rule, Sec. 5.01. Thus, per the COVID Rule, no education/written informed consent is required for these new Covered Services while the COVID Rule is in effect.

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

PUBLIC HEARING: For this rulemaking, a public hearing will not be held due to COVID-19 public health emergency. The Department will accept email and standard mail comments for 30 days following rule filing with the Secretary of State.

DEADLINE FOR COMMENTS: Comments must be received by 11:59 p.m. on June 6, 2020.

OMS CONTACT PERSON / SMALL BUSINESS IMPACT INFORMATION: Nicole Jurdak, Comprehensive Health Planner II, MaineCare Services, 109 Capitol Street - 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207) 624-4058. Fax: (207) 287-6106. TTY: 711 (Deaf or Hard of Hearing). Email: Nicole.Jurdak@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, 3173

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

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

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

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

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

AGENCY: **99-346 - Maine State Housing Authority (MaineHousing)**

CHAPTER NUMBER AND TITLE: **Ch. 16**, Low-Income Housing Tax Credit Rule

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P086**

BRIEF SUMMARY: The rule repeals and replaces the current Ch. 16, *Low-Income Housing Tax Credit Rule*. The rule is the qualified allocation plan for allocating and administering the federal low-income housing tax credit in the State of Maine, including the State’s housing credit ceiling for calendar year 2021 and 2022, as required pursuant to Section 42 of the *Internal Revenue Code*.

*Upon sufficient notice, this notice and the proposed rule will be made available in alternative formats for persons with disabilities and in alternative languages for persons with limited English proficiency.*

**DETAILED BASIS STATEMENT / SUMMARY**: This rule is the qualified allocation plan for allocating and administering federal low income housing tax credits (“LIHTC”) in the State of Maine, which MaineHousing, as the State’s designated housing credit agency, is required to adopt pursuant to [Section 42](https://www.law.cornell.edu/uscode/text/26/42) of the *Internal Revenue Code* and the above-referenced sections of the *Maine Housing Authorities Act*.

This rule replaces the prior rule and includes the following changes:

Proposed changes for the 2021-2022 QAP:

**Throughout**:

\* 2 year QAP

\* Updated deadlines, accelerated in 2022.

\* Removed unnecessary and redundant language.

\* Repaired grammatical errors (e.g. capitalization, punctuation, wrong tense, awkward wording, passive voice, etc.)

\* Provided updated links for reference materials.

**Cover Page**: Newly redesigned Cover Page

**Section 2**: Simplified and reworded the housing priorities to match the language in the new Maine Consolidated Plan

**Section 4A**: Pre-apps due July 9, 2020. Moved to June in 2021

**Section 4B**: Applications due September 24. Moved to August in 2021.

**Section 5C**: TDC Index Caps. Adaptive Reuse increased to $270K. New Construction increased to $255K. Acquisition/Rehab increased to $165K. Caps are increased and additional 3% for projects receiving Passive House certification.

**Section 5I**: Market Studies. No longer required to be dated before the application deadline. However, a current market study will be required before award.

**Section 5J**: Recreational Activities. Removed the “Safe Walking Distance” requirement. Now activities locations must be within half a mile by any common means of travel.

**Section 6L**: Housing Need. Updated to reflect changing demographics. Those municipalities that have fallen off will be allowed one additional year to claim points.

**Section 6M**: Tax Credit/Market Rent Differential points removed. The category favored more urban projects.

**Section 6N**: Smart Growth. Proximities to Activities of Daily Living. “Safe Walking Distance” requirement removed. 2 pts. for healthcare-specific services removed and added to total.

**Section 6O**: High Opportunity Areas. Updated to reflect new data regarding access to education, economic growth/jobs, income levels, access to health care, access to transportation. Those municipalities that have fallen off will be allowed one additional year to claim the points.

**Section 6Q**: Owner Performance. Operating Deficit scoring will not be included this year. A deficit will not be required to be funded this year.

**Section 6S**: Management Performance. Changed the way the points were awarded. They are now based off Asset Management’s physical plant inspection, project report submission and MOR scores.

**Section 6U**: Review Process. Developers will be notified of their score, given a week to agree or disagree with it, then MSHA makes a final determination and ranks scores.

**Section 7F**: Market Study. Will still be required, just not at application deadline.

**Section 9F**: Developer Fee limits. Removed language about Developers applying for interest-bearing debt and credit only.

**Section 10D**: We will give no more than 15 days’ notice for inspections as required by the IRS.

**Section 10E**: We will give no more than 15 days’ notice for inspections as required by the IRS.

**Definitions**: Above Average clarified. Activities Important to Daily Living clarified.

**PUBLIC HEARING**: A public hearing will be held on Tuesday, May 26, 2020 at 10:00 a.m. To listen or testify, please contact Gerrylynn Ricker at MaineHousing, 353 Water Street, Augusta, Maine 04330-4633; (207) 626-4600 (voice); 1-800-452-4668 (voice in state only); or 711 (Maine Relay) or via e-mail: gricker@mainehousing.org .

*Upon sufficient notice, appropriate communication auxiliary aids and services will be provided to persons with disabilities and persons with limited English proficiency.*

COMMENT DEADLINE: Friday, June 5, 2020 at 5:00 p.m.

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / MAINEHOUSING RULEMAKING LIAISON: Linda Uhl, Chief Counsel, Maine State Housing Authority, State House Station #89, 353 Water Street, Augusta, Maine, 04330-4633. Telephone: (207) 626-4600. Maine Relay 711. Email: luhl@mainehousing.org .

IMPACT ON MUNICIPALITIES OR COUNTIES: None

STATUTORY AUTHORITY FOR THIS RULE: 30-A MRS §§ 4741(1), 4741(14), and Section 42 of the *Internal Revenue Code of 1986*, as amended

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: Same as above

AGENCY WEBSITE: https://mainehousing.org/ .

AGENCY: **99-346 - Maine State Housing Authority (MaineHousing)**

CHAPTER NUMBER AND TITLE: **Ch. 24**, Home Energy Assistance Program

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P087**

BRIEF SUMMARY: This replacement rule repeals and replaces in its entirety the current *Home Energy Assistance Program Rule*. The rule establishes standards for administering fuel assistance, emergency fuel assistance, TANF Supplemental Benefits, weatherization, and heating system repair and replacement funds to low-income households in the State of Maine. This replacement rule: amends the definitions of “Dwelling Unit”, “Live-in Care Attendant”, and “Priority Applicant”; allows expired government-issued photo identification cards to be accepted as documentation for a Primary Applicant; expands Dwelling Unit eligibility; modifies the amount of a Household’s HEAP Benefit that can be recuperated to address Overpayments; establishes the Benefit amount available for eligible Households that have no calculated energy costs; expands allowable costs for Energy Crisis Intervention Program funds; removes the requirement that all Central Heating Improvement Program jobs over $1,000 have a final inspection; allows Subgrantees to charge support costs associated with taking and processing HEAP Applications to Administrative dollars; removes the option to have HEAP Benefits retroactively applied to Home Energy deliveries that have already been paid; adjusts the minimum monthly payment amount for Households entering into a repayment agreement for an Overpayment; and clarifies that HEAP Applicants will be provided an opportunity for a fair administrative hearing if they dispute the amount of their HEAP Benefit. Other changes correct errors or provide clarification to the previous version of the rule.

A copy of the proposed replacement rule may be found at www.mainehousing.org.

*Upon sufficient notice, this notice and the proposed rule will be made available in alternative formats for persons with disabilities and in alternative languages for persons with limited English proficiency.*

PUBLIC HEARING: A public hearing will be held on Tuesday, May 26, 2020 at 9:30 a.m.. To listen or testify, please contact Gerrylynn Ricker at MaineHousing, 353 Water Street, Augusta, Maine 04330-4633; (207) 626-4600 (voice); 1-800-452-4668 (voice in state only); or 711 (Maine Relay) or via e-mail: gricker@mainehousing.org.

*Upon sufficient notice, appropriate communications auxiliary aids and services will be provided to persons with disabilities and persons with limited English proficiency.*

COMMENT DEADLINE: Friday, June 5, 2020 at 5:00 p.m.

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / MAINEHOUSING RULEMAKING LIAISON: Linda Uhl, Chief Counsel, Maine State Housing Authority, State House Station #89, 353 Water Street, Augusta, Maine, 04330-4633. Telephone: (207) 626-4600. Maine Relay 711. Email: luhl@mainehousing.org .

IMPACT ON MUNICIPALITIES OR COUNTIES: None

STATUTORY AUTHORITY FOR THIS RULE: 30-A MRS §§ 4722(1)(W), 4741(1) and (15), and 4991 *et seq.*; 42 USCA §§ 8621 *et seq.*

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: Same as above

AGENCY WEBSITE: https://mainehousing.org/ .

**ADOPTIONS**

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 #05-20**

ADOPTED RULE NUMBER: **2020-110** *(Emergency)*

CONCISE SUMMARY: Minimum May 2020 Class I price is $16.20/cwt. plus $1.63/cwt. for Producer Margins, an over-order premium of $1.04/cwt. as being prevailing in Southern New England and $1.40/cwt. handling fee for a total of $23.72/cwt. that includes a $0.20/cwt. Federal promotion fee.

EFFECTIVE DATE: May 3, 2020

MMC CONTACT PERSON / RULEMAKING LIAISON: Tim Drake, Maine Milk Commission - Agriculture, 28 State House Station, Augusta, ME 04333. Telephone: (207) 287-7521. Email: Tim.Drake@Maine.gov .

MMC WEBSITE: https://www.maine.gov/dacf/milkcommission/index.shtml .

AGENCY: **10-144** - Department of Health and Human Services (DHHS), **Division of Licensing and Certification (DLC)**

CHAPTER NUMBER AND TITLE: **Ch. 110**, Regulations Governing the Licensing and Functioning of Skilled Nursing Facilities and Nursing Facilities

ADOPTED RULE NUMBER: **2020-111** *(Emergency)*

CONCISE SUMMARY: This emergency rulemaking institutes measures, effective immediately, to improve nursing home infection control, surveillance, and infection mitigation, and to require facility crisis staffing plans in response to the increased spread of the 2019 Novel Coronavirus (COVID-19) in Maine's skilled nursing and nursing facilities. Pursuant to 5 MRS §8054, this emergency rule amends 10-144 ch. 110,*Regulations Governing the Licensing and Functioning of Skilled Nursing Facilities and Nursing Facilities*, ch. 21 section A, “Infection Control”. Pursuant to 5 MRS §8054, the Department has determined that immediate adoption of this rule is necessary to avoid a potentially severe and immediate threat to public health, safety, or general welfare. The Department's findings of emergency are set forth in detail in the Emergency Basis Statement. Maine is facing a substantial public health threat posed by the global spread of the 2019 Novel Coronavirus (COVID-19). This emergency rule change will take effect upon adoption and will be in effect for up to 90 days pursuant to 5 MRS §8054. Rules and related rulemaking documents may be accessed at https://www.maine.gov/dhhs/dlc/rulemaking/index.shtml.

EFFECTIVE DATE: April 28, 2020

AGENCY CONTACT PERSON: Jonathan Leach, Social Services Manager I, Division of Licensing and Certification, 41 Anthony Avenue - 11 State House Station Augusta, Maine 04333-0011. Telephone: (207) 287-5825. Fax: (207) 287-5807. TTY users call Maine relay 711. Email: Jonathan.H.Leach@Maine.gov .

DLS WEBSITE: https://www.maine.gov/dhhs/dlc/rulemaking/index.shtml

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

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

AGENCY: **01-017** - Department of Agriculture, Conservation and Forestry (DACF), **Maine State Harness Racing Commission**

CHAPTER NUMBER AND TITLE: **Ch. 1**, Administration

ADOPTED RULE NUMBER: **2020-112** *(Emergency)*

CONCISE SUMMARY: On April 24, the Maine State Harness Racing Commission adopted an emergency amendment to ch. 1 section 10 which simply allows the Commission to issue licenses to participants prior to receiving the license fee.

EFFECTIVE DATE: May 1, 2020

COMMISSION CONTACT PERSON / RULEMAKING LIAISON: Henry Jennings, Maine State Harness Racing Commission, 28 State House Station, Augusta, ME 04333-0028. Telephone: (207) 287-7568. Email: Henry.Jennings@Maine.gov .

COMMISSION WEBSITE: https://www.maine.gov/dacf/harnessracing/index.shtml .

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

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

AGENCY: **65-407 – Maine Public Utilities Commission (MPUC)**

CHAPTER NUMBER AND TITLE: **Ch. 320**, Electric Transmission and Distribution Utility Service Standards

ADOPTED RULE NUMBER: **2020-113**

CONCISE SUMMARY: The Public Utilities Commission adopts amendments to ch. 320, *Electric Transmission and Distribution Utility Service Standards*. The amendments implement the legislative directives pursuant to Public Law 2019 ch. 104, *An Act to Establish Minimum Service Standards for Electric Utilities* (codified at 35-A MRS §3106).

EFFECTIVE DATE: May 6, 2020

MPUC CONTACT PERSON / RULEMAKING LIAISON: Jamie Waterbury, Maine Public Utilities Commission, 18 State House Station, Augusta, Maine 04333. Telephone: (207) 287-1360. Email: Jamie.A.Waterbury@Maine.gov .

MPUC WEBSITE: https://www.maine.gov/mpuc/ .