**State of Maine: Notice of Agency Rulemaking – May 8, 2024**

**NOTICE OF STATE RULEMAKING**

**Public Input for Rules**

Notices are published each Wednesday to alert the public regarding state agency rulemaking. You may obtain a copy of any rule by notifying the agency contact person. You may also comment on the rule, and/or attend the public hearing. If no hearing is scheduled, you may request one - the agency may then schedule a hearing, and must do so if 5 or more persons request it. If you are disabled or need special services to attend a hearing, please notify the agency contact person at least 7 days prior to it. **Petitions**: you can petition an agency to adopt, amend, or repeal any rule; the agency must provide you with petition forms, and must respond to your petition within 60 days. The agency must enter rulemaking if the petition is signed by 150 or more registered voters, and may begin rulemaking if there are fewer. You can also petition the Legislature to review a rule; the Executive Director of the Legislative Council (115 State House Station, Augusta, ME 04333, phone (207) 287-1615) will provide you with the necessary petition forms. The appropriate legislative committee will review a rule upon receipt of a petition from 100 or more registered voters, or from "...any person who may be directly, substantially and adversely affected by the application of a rule..." (Title 5 §11112). **World‑Wide Web**: Copies of the weekly notices and the full texts of adopted rule chapters may be found on the internet at: <http://www.maine.gov/sos/cec/rules>. There is also a list of rulemaking liaisons (<http://www.maine.gov/sos/cec/rules/liaisons.html>), who are single points of contact for each agency.

**PROPOSALS**

AGENCY: 18-674, Department of Administrative and Financial Services - Maine Board Of Tax Appeals

CHAPTER NUMBER AND TITLE: 100, Maine Board of Tax Appeals Practice And Procedure

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: 2024-P128

BRIEF SUMMARY: This rule updates 18-674 C.M.R. ch. 100 § 105(1) to reflect changes made by P.L. 2023, c. 412 to 36 M.R.S.A. § 151(2)(C) limiting the jurisdiction of the Maine Board of Tax Appeals to matters where the amount in controversy is $500,000 or less, which became effective October 25, 2023.

PUBLIC HEARING: None scheduled. There is a 30-day written comment period. A public hearing will be held if the Board receives more than 5 requests for public hearing before the end of the comment period.

COMMENT DEADLINE: Friday, June 14, 2024

CONTACT PERSON FOR THIS FILING: Derek A. Jones, Esq., Chief Appeals Officer, Maine Board of Tax Appeals; 134 State House Station, Augusta, ME 04333-0134; 207-287-2863; derek.a.jones@maine.gov

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT *(if different)*: Same as above*.* This rulemaking is not anticipated to have any impact on small businesses.

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES *(if any)*:  This rulemaking is not anticipated to have any impact municipalities or counties.

 STATUTORY AUTHORITY FOR THIS RULE: 36 M.R.S.A. § 151-D

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED *(if different)*: None.

AGENCY WEBSITE: <https://www.maine.gov/boardoftaxappeals/>

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: derek.a.jones@maine.gov

**ADOPTIONS**

AGENCY: 09-137 – Inland Fisheries and Wildlife

CHAPTER NUMBER AND TITLE: Chapter 16.08 – Moose Hunting (permit allocations)

ADOPTED RULE NUMBER: 2024-101

CONCISE SUMMARY: The Department of Inland Fisheries and Wildlife has adopted moose permit allocation numbers for moose hunting permits to be issued for the 2024 moose hunting season. Permits will be issued for antlered and antlerless moose. As was done previously, combined units are included wherein a permittee can hunt either WMD. The 4th week of the adaptive hunt has been removed. Permit allocations according to WMD are as follows:

|  |  |
| --- | --- |
| WMD 1 – 450 antlered / 175 antlerless | WMD 14 & 17 (combined) – 40 antlered |
| WMD 2 – 350 antlered /175 antlerless | WMD 16 – 0 permits |
| WMD 3 – 200 antlered / 125 antlerless | WMD 18 – 40 antlered |
| WMD 4 – 400 antlered / 100 antlerless | WMD 19 – 60 antlered |
| WMD 4A (adaptive hunt) – 550 antlerless | WMD 27 & 28 (combined) – 40 antlered |
| WMD 5 – 250 antlered / 125 antlerless |  |
| WMD 6 – 200 antlered / 60 antlerless | Totals: 4,105 – 2,645 (antlered); 1,460 (antlerless) |
| WMD 7 & 13 (combined) – 140 antlered |  |
| WMD 8 – 200 antlered / 150 antlerless |  |
| WMD 9 - 125 antlered  |
| WMD 10 – 60 antlered |  |
| WMD 11 – 50 antlered  |  |
| WMD 12 & 15 (combined) – 40 antlered  |  |

Please contact the agency contact person for a complete copy of the rule.

EFFECTIVE DATE: Tuesday, April 30, 2024

AGENCY CONTACT PERSON: Becky Orff; Inland Fisheries and Wildlife; 353 Water Street, 41 SHS, Augusta, ME 04333; 207-287-5202

AGENCY: 05-071 - Education

CHAPTER NUMBER AND TITLE: Chapter 83 School Transportation Operations Program

ADOPTED RULE NUMBER: 2024-102

CONCISE SUMMARY: The purpose of Rule Chapter 83 is to determine who is eligible for access to the School Transportation Operations Program and provide a process for eligible schools to access the software subsidy. This rule has been revised to make clear the role of the Department of Education in providing the subsidy, the technical start-up process, and the distribution of state payment of approved subsidies.

EFFECTIVE DATE: Sunday, May 5, 2024

AGENCY CONTACT PERSON: Laura Cyr; Maine Department of Education; 23 State House Station, Augusta, ME 04330; 207-446-8791

AGENCY: 05-071 - Education

CHAPTER NUMBER AND TITLE: Ch 84 School Bus Refurbishment Program

ADOPTED RULE NUMBER: 2024-103

CONCISE SUMMARY: This regulation established procedures for school administrative units (SAUs) to contract for school bus refurbishment services through the Maine School Bus Refurbishment Program. The program provided subsidy to school administrative units (SAUs) in order to offset the partial cost of refurbishment for school buses used to transport students to and from home and school and school events. This program was operated by the Maine State Military Authority which no longer refurbishes school buses. As a result, the Department of Education is proposing a full repeal of the rule.

EFFECTIVE DATE: Monday, May 6, 2024

AGENCY CONTACT PERSON: Laura Cyr; Maine Department of Education23 State House Station, Augusta, ME 04330; 207-446-8791

AGENCY: 10-144 - Department of Health and Human Services, MaineCare Services

CHAPTER NUMBER AND TITLE: 10-144 C.M.R. Chapter 101, MaineCare Benefits Manual, Chapter III, Section 29, Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder

ADOPTED RULE NUMBER: 2024-104

CONCISE SUMMARY: The Department is finally adopting the following changes to this major substantive rule:

The Department has added new services, effective March 1, 2024, which will be reimbursed pursuant to this rule:

* + - * Home Support - Quarter Hour (Self-Directed)
* Shared Living – Two Members served
* Shared Living - One Member, Increased level of support
* Shared Living - Two Members, Increased level of support
* Home Accessibility Adaptations (Self-Directed)
* Home Accessibility Adaptations Repairs (Self-Directed)
* Assistive Technology – Devices (Self-Directed)
* Assistive Technology – Transmission (Self-Directed)
* Community Support - Community Only – Individual (Self-Directed)
* Community Support - Community Only - Individual (Provider-Managed)
* Community Support - Community Only – Group
* Financial Management Services (Self-Directed)
* Supports Brokerage (Self-Directed)
* Individual Goods and Services (Self-Directed)

Provision of these services was originally implemented through the Appendix K: Emergency Preparedness and Response authority in response to the COVID-19 Public Health Emergency, which was approved by the Centers for Medicare & Medicaid Services (CMS) but was not added to MBM Chapter II, Section 29 at that time. The Department has permanently added these services to the Chapter II, Section 29 rule, when it adopted the rule amendment, which was legally effective on January 24, 2024. The Department received approval from CMS for the added services and for the increased reimbursement rates, in the Section 29 § 1915(c) home and community-based services waiver. MBM Chapter II, Section 29 had a prospective legal application date of March 1, 2024, for the new services.

The reimbursement provisions in this rule, for the new services listed above, have a retroactive effective date of March 1, 2024, while the annual cost of living increase provision is effective retroactive to January 1, 2024. Other changes in Chapter III, Section 29 are effective upon final adoption of this rule. As a result, both the new services and provisions for their reimbursement share the same legal effective date. Retroactive application, authorized by 22 M.R.S. § 42(8), benefits and does not harm MaineCare Members or providers.

The Department received CMS approval of provisions for reimbursing the newly added services in this rule with an effective date of March 1, 2024.

In accordance with 22 M.R.S. §§ 7402 and 3173-J, the Department implements annual rate adjustments every January 1st. Specifically, Section 29 services that have standard unit rates and that did not receive a rate adjustment within the prior twelve months will receive an annual adjustment equal to the annual increase in the Maine minimum wage, in accordance with 26 M.R.S. § 664(1).

The rule language provides that rates are sufficient to allow reimbursement for services provided by essential support workers to equal to at least 125% of the minimum wage established in 26 M.R.S. § 664. 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 M.R.S. § 7401. This annual rate adjustment is effective retroactive to January 1, 2024. This retroactive application is authorized by 22 M.R.S. § 42(8), as this benefits and does not harm any MaineCare member or provider.

After this rule was approved by the Legislature, it was brought to the attention of the Department that the precise statutory directive in 22 M.R.S. Sec. 7402(1), was that the Department needed to ensure that the COLA increase would be sufficient to ensure that the labor components of the reimbursement rates (not the entire reimbursement rate) for essential support workers equaled at least 125% of the minimum wage established in 26 M.R.S. Sec. 664. After conferring with the Office of the Attorney General, the Department determined it would not make a change to the rule language, but rather inserted a “NOTE” into the rule. The Department will enforce the precise statutory directive in 22 M.R.S. Sec. 7402(1).

The Department removed reimbursement rates from the rule in accordance with 22 M.R.S. § 3173-J. All Section 29 reimbursement rates are now solely listed on the MaineCare Provider Fee Schedule, which is posted on the Department’s website.

The Maine State Legislature authorized final adoption of this Ch. III major substantive rule. Resolves 2023, ch. 133 was approved by Governor Mills on March 6, 2024. The final adopted rule makes the permanent changes to this rule as required by the Maine State Legislature. The Resolve contained an emergency clause, so that the legislation took effect when approved, on March 6, 2024. Pursuant to the Maine Administrative Procedure Act, this final major substantive rule shall become effective thirty days after filing with the Secretary of State’s Office. 5 M.R.S. §8072(8).

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

ADOPTION DATE: Thursday, May 30, 2024

AGENCY CONTACT PERSON: Heather Bingelis, Comprehensive Health Planner; Division of Policy; 109 Capitol Street; 11 State House Station, Augusta, Maine 04333-0011; heather.bingelis@maine.gov; (207)-624-6951 FAX: (207) 287-6106; TTY users call Maine relay 711

AGENCY: 09-137 – Inland Fisheries and Wildlife

CHAPTER NUMBER AND TITLE: Chapter 16.11 – Migratory Game Bird Hunting

ADOPTED RULE NUMBER: 2024-105

CONCISE SUMMARY: The Commissioner of Inland Fisheries and Wildlife has amended Chapter 16.11 rules pertaining to season dates and bag limits for the hunting of ducks, geese, and other migratory game birds. The rule is similar to the previous year’s final season framework with two notable changes. The first notable change is reducing the daily bag limit for eiders from 3 to 2. This change comes from concerns of seeing fewer eiders along the coast in the winter over the last few years. The second notable change is for the first segment of the coastal waterfowl hunting zone to begin on Saturday, October 5th. Traditionally, the season would start on October 1st. Starting the season on October 5th and ending on the following Saturday will provide two Saturdays of waterfowl hunting in this zone in the first segment. A complete copy of the rule may be obtained from the agency contact person.

EFFECTIVE DATE: Tuesday, May 7, 2024

AGENCY CONTACT PERSON: Becky Orff; Inland Fisheries and Wildlife; 353 Water Street, 41 SHS, Augusta, ME 04333; 207-287-5202

AGENCY: 02-313 - Maine Board of Dental Practice, Office of Professional and Occupational Regulation, Department of Professional and Financial Regulation

CHAPTER NUMBER AND TITLE:

Chapter 2: Qualifications for Dental Hygienist Licensure and Dental Hygienist Practice Authorities

Chapter 3: Qualifications for Expanded Function Dental Assistant Licensure

Chapter 4: Qualifications for Dental Radiography Licensure

Chapter 5: Qualifications for Denturist Licensure

Chapter 6: Qualifications for Dentist Licensure

Chapter 11: Qualifications for Licensure by Endorsement; Requirements for Renewal, Late Renewal, and Reinstatement of Licensure and Authorities

Chapter 12: Practice Requirements

Chapter 13: Continuing Education

ADOPTED RULE NUMBER: 2024-106 through 2024-113

CONCISE SUMMARY: The purpose of the rulemaking proposal is to fully implement the various statutory changes pursuant to three public laws during the 131st First Special Legislative session - see P.L. 2023 ch. 165 (temporary licensure), P.L. 2023 ch. 351 (dental hygiene/dental therapy); and P.L. 2023 ch. 17 (Part P Dental’s move into OPOR). The proposed change to Chapter 3 is to align the rule with the statutory requirements. Below is a summary of the proposed rulemaking changes:

1. Chapters 2, 5, and 6: Amend the temporary licensure sections to remove references to Title 10 and add language authorizing the board to waive the license fee. (*See* 32 M.R.S. § 18347-A).
2. Chapters 2, 3, 4, 5, and 6: Amend the life support certification requirement to BLS certification. (*See* 32 M.R.S. §18341(4).
3. Chapter 2: Amend the public health dental hygiene section by removing the written practice agreement requirement and replace it with verification of services to be offered in a public health setting. (*See* 32 M.R.S. § 18376(1) – removed the dentist supervision agreement requirement).
4. Chapter 3: Amend the EFDA qualifications by removing “and” and replace it with “or” as this was a technical error and aligns with the statutory requirements. (*See* 32 M.R.S. §18344(1)(B)).
5. Chapter 11: Amend the practice authority section by removing public health dental hygiene authority and adding it to the section that does not require a written practice agreement to renew or reinstate a practice authority. (*See* 32 M.R.S. § 18376(1) – amended the scope by removing a supervision agreement with a dentist).
6. Chapter 12: Amend the IPDH practice requirements by removing references to requiring a written practice agreement with a dentist to review dental radiographs within 21 days from the date the radiograph was taken. (*See* 32 M.R.S. §18375(1)(P) – removed the written practice agreement and 21-day requirement).
7. Chapter 12: Amend citation in the summary to be 10 M.R.S. §8003(5-A). (*See* 10 M.R.S. §8003(5-A)).
8. Chapter 13: Amend the sections identifying CPR certification and replace it with BLS certification. (See 32 M.R.S. §18350).

EFFECTIVE DATE: Sunday, May 12, 2024

AGENCY CONTACT PERSON: Penny Vaillancourt, Executive Director; Maine Board of Dental Practice; 143 State House Station, Augusta, ME 04333-0143; (207) 287-3333

AGENCY: 02-031 – Dept. of Professional & Financial Regulation, Bureau of Insurance

CHAPTER NUMBER AND TITLE: 865, Standard for Fertility Coverage

ADOPTED RULE NUMBER: 2024-114

CONCISE SUMMARY: The purpose of the proposed rule is to establish fertility care coverage requirements.

EFFECTIVE DATE: Saturday, May 11, 2024

AGENCY CONTACT PERSON: Stacy L. Bergendahl, Senior Staff Attorney; Department of Professional & Financial Regulation, Bureau of Insurance; 76 Northern Avenue, Gardiner, ME 04345; 207-624-8475