**State of Maine: Notice of Agency Rulemaking – May 11, 2022**

**PROPOSALS**

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

CHAPTER NUMBER AND TITLE: **Ch. 207**, Controlling Interest Transfers

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2022-P063**

BRIEF SUMMARY: MRS is proposing to repeal and replace Rule 207 (“Controlling Interest Transfers”). Rule 207 explains Maine law on the application of the real estate transfer tax under 36 MRS ch. 711-A to the transfer or acquisition of a controlling interest in an entity that owns real property located in Maine. The rule is being changed to replace the current format that relies heavily on examples, to a narrative explanation of the law. Changes also include a more consistent approach to use of terms, an in-depth explanation of complex issues, and an approach that improves readability.

PUBLIC HEARING: N/A

COMMENT DEADLINE: June 15, 2022

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / MRS RULEMAKING LIAISON: Alex Weber, General Counsel, Maine Revenue Services, 51 Commerce Drive – 24 State House Station, Augusta, Maine 04330. Telephone: (207) 624-9712. Email: Alexander.J.Weber@Maine.gov.

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: Minimal

STATUTORY AUTHORITY FOR THIS RULE: 36 MRS §§ 4641(1-A)(C), 4641-E

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

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

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

AGENCY: **02-031** – Department of Professional and Financial Regulation (PFR), **Bureau of Insurance**

CHAPTER NUMBER AND TITLE: **Ch. 130**, Minimum Reserve Standards for Individual & Group Health Insurance Contracts

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2022-P064**

BRIEF SUMMARY: The proposed revisions update the rule to address inconsistencies with the current version of the National Association of Insurance Commissioners Model Rule MO-010, *Health insurance Reserves Model Regulation*, resulting from revisions to the disability insurance actuarial tables.

PUBLIC HEARING: June 2, 2022, at 3:00 p.m. from the Department of Professional and Financial Regulation, Bureau of Insurance, 76 Northern Avenue, Gardiner, ME 04345. *Instructions for registering for and attending the hearing remotely, by audio-visual link or telephone, are on the Bureau of Insurance website,* [*https://www.maine.gov/pfr/insurance/news-public-notices/public-event-notices*](https://www.maine.gov/pfr/insurance/news-public-notices/public-event-notices)*.*

COMMENT DEADLINE: 4:30 p.m. June 13, 2022 by mail or email to the Contact Person.

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Brittnee Greenleaf, 34 State House Station, Augusta, ME 04333-0034. Telephone: (207) 624-8491. TTY users use Maine Relay 711. Email: Brittnee.L.Greenleaf@Maine.gov.

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: none

STATUTORY AUTHORITY FOR THIS RULE: 24-A MRS §§ 212, 952(3), 959(1)

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: n/a

BUREAU RULEMAKING WEBSITE: <https://www.maine.gov/pfr/insurance/legal/rules/index.html#proposed>.

BUREAU WEBSITE: <https://www.maine.gov/pfr/insurance/>.

BUREAU RULEMAKING LIAISON: Benjamin.Yardley@Maine.gov.

AGENCY: **02-031** – Department of Professional and Financial Regulation (PFR), **Bureau of Insurance**

CHAPTER NUMBER AND TITLE: **Ch.** **851**, Clear Choice Designs for Individual and Small Group Health Plans

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2022-P065**

BRIEF SUMMARY: The purpose of the proposed rule amendment is to revise the process for developing health plan cost share designs for individual and, as applicable, small group health plans to conform to amendments to 24-A MRS §2793 by PL 2021 ch. 361 §3 (LD 1725, *An Act To Clarify the Deferral of the Pooled Market and Link Small Employer Clear Choice to Pooling in the Made for Maine Health Coverage Act*), and to make technical changes related to implementation issues observed during the Clear Choice program’s first year.

PUBLIC HEARING: June 2, 2022, at 10:00 a.m. from the Department of Professional and Financial Regulation, Bureau of Insurance, 76 Northern Avenue, Gardiner, ME 04345. *Instructions for registering for and attending the hearing remotely, by audio-visual link or telephone, are on the Bureau of Insurance website,* [*https://www.maine.gov/pfr/insurance/news-public-notices/public-event-notices*](https://www.maine.gov/pfr/insurance/news-public-notices/public-event-notices).

COMMENT DEADLINE: 4:30 p.m. June 13, 2022 by mail or email to the Contact Person.

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Brittnee Greenleaf, 34 State House Station, Augusta, ME 04333-0034. Telephone: (207) 624-8491. TTY users use Maine Relay 711. Email: Brittnee.L.Greenleaf@Maine.gov.

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: none

STATUTORY AUTHORITY FOR THIS RULE: 24-A MRS §§ 212, 2793.

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: n/a

BUREAU RULEMAKING WEBSITE: <https://www.maine.gov/pfr/insurance/legal/rules/index.html#proposed>.

BUREAU WEBSITE: <https://www.maine.gov/pfr/insurance/>.

BUREAU RULEMAKING LIAISON: Benjamin.Yardley@Maine.gov.

AGENCY: **02-313 -** **Maine Board of Dental Practice** (*affiliated with the* Department of Professional and Financial Regulation - PFR)

TYPE OF RULE: Routine Technical

CHAPTER NUMBER AND TITLE: **Ch. 14**, Rules for Use of Sedation and General Anesthesia

PROPOSED RULE NUMBER: **2022-P066**

BRIEF SUMMARY: This is an amendment to an existing rule that identifies the sedation permit qualifications and the supervision responsibilities required when an operating dentist utilizes the sedation and/or general anesthesia services of a Certified Registered Nurse Anesthetist (“CRNA”). This rule amendment aligns with the statutory provisions and adopted rulemaking governing the advanced practice of CRNAs with the State Board of Nursing requiring supervision of a dentist. The amended rule also provides transition language such that existing, board-approved 14 day agreements between an operating dentist and a CRNA will automatically terminate the effective date of the rule.

PUBLIC HEARING: June 3, 2022 at 8:00 a.m., Maine Board of Dental Practice, Androscoggin Conference Room, 76 Northern Avenue, Gardiner, ME 04345

COMMENT DEADLINE: June 13, 2022 at 5:00 p.m.

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / BOARD RULEMAKING LIAISON: Penny Vaillancourt, Executive Director, 143 State House Station, Augusta, ME 04333. Telephone: (207) 287-3333. Fax: (207) 287-8140. TTY 711. Email: Penny.Vaillancourt@Maine.gov.

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None known at this time but anticipate permit fees to be required when seeking to utilize the sedation services of an advanced registered nurse anesthetist.

STATUTORY AUTHORITY FOR THIS RULE: 32 MRS §§ 18324, 18379

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: N/A

BOARD WEBSITE: [www.maine.gov/dental](http://www.maine.gov/dental).

AGENCY: **16-633** - Department of Public Safety (DPS), **Gambling Control Board**

CHAPTER NUMBER AND TITLE: **Ch. 13**; Exclusion

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2022-P067**

BRIEF SUMMARY: The rule package adds the requirement for a reinstatement interview with a problem gambling service agency approved by the Board.

PUBLIC HEARING: None applicable *Written comment only*.

COMMENT DEADLINE: June 13, 2022

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / AGENCY RULEMAKING LIAISON: Milton Champion, 45 Commerce Drive - Suite 3, Augusta, ME 04333-0087. Telephone: (207) 626-3901. Email: Milton.F.Champion@Maine.gov.

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: N/A

STATUTORY AUTHORITY FOR THIS RULE:8 MRS §1003(1)(B), (1)(L), (2)(U); 8 MRS §§ 1071-1072

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: N/A

AGENCY WEBSITE: <https://www.maine.gov/dps/gamb-control/>.

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

CHAPTER NUMBER AND TITLE: **Ch. 208**, Guidelines for Professional Assessing Firms that Provide Revaluation Services to Municipalities

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2022-P068**

BRIEF SUMMARY: MRS is proposing to repeal and replace Rule 208 (*Guidelines for Firms that Provide Revaluation Services to Municipalities*). The following changes are being made to the proposed rule. Rule 208 explains the requirements for professional assessing firms that provide revaluation services to municipalities in Maine. The rule is being changed to replace obsolete procedures, provide a more consistent approach to explanations, and to improve readability.

PUBLIC HEARING: none

COMMENT DEADLINE: June 15, 2022

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / MRS RULEMAKING LIAISON: Alex Weber, General Counsel, Maine Revenue Services, 51 Commerce Drive – 24 State House Station, Augusta, Maine 04330. Telephone: (207) 624-9712. Email: Alexander.J.Weber@Maine.gov.

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: Minimal

STATUTORY AUTHORITY FOR THIS RULE: 36 MRS §§ 112, 328, 330, 331

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

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

DAFS WEBSITE: .

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

**ADOPTIONS**

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

CHAPTER NUMBER AND TITLE: **Ch. 211** *(New)*, Deferred Collection of Homestead Property Taxes

ADOPTED RULE NUMBER: **2022-075** *(Emergency)*

CONCISE SUMMARY: The Deferred Collection of Homestead Property Taxes Program, 36 MRS §§ 6250-6266, (the “Deferral Program”) allows seniors and disabled resident homeowners to defer property tax on their primary residence if they meet certain criteria. The rule explains the documentation for the disability qualification portion of the Deferral Program.

EFFECTIVE DATE: May 9, 2022

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

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

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

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

AGENCY: **02-031** - Department of Professional & Financial Regulation (PFR), **Bureau of Insurance**

CHAPTER NUMBER AND TITLE: **Ch. 425**, Long-Term Care Insurance

ADOPTED RULE NUMBER: **2022-076**

CONCISE SUMMARY: The primary purposes of the 2021 amendments are to increase the notice to policyholders of rate increases from 60 to 90 days prior to the approved rate increase, to amend reporting requirements, and to reflect changes in rating standards consistent with June 2014 amendments to the National Association of Insurance Commissioners Model Regulation. The adoption also makes changes to insurers’ annual reporting requirements. Several other minor clarifying changes are adopted.

EFFECTIVE DATE: May 9, 2022

BUREAU CONTACT PERSON / SMALL BUSINESS IMPACT INFORMATION / RULEMAKING LIAISON: Benjamin Yardley, Senior Staff Attorney, Department of Professional & Financial Regulation - Bureau of Insurance, 76 Northern Avenue – 34 State House Station, Gardiner, ME 04345. Telephone: (207) 624-8537. Email: Benjamin.Yardley@Maine.gov.

BUREAU WEBSITE: <https://www.maine.gov/pfr/insurance/home>.

AGENCY: **15-210 - Department of Defense, Veterans and Emergency Management** - General

CHAPTER NUMBER AND TITLE: **Ch. 1** (*Repeal)*, Grievance Procedures for the Handicapped

ADOPTED RULE NUMBER: **2022-077**

CONCISE SUMMARY: The Department of Defense, Veterans and Emergency Management (DVEM) is adopting the repeal of department rule 15- 210 ch. 1, *Grievance Procedures for the Handicapped*. Recently the State of Maine implemented 2021 Public Law ch. 348 which requires all branches of State Government to discontinue the use of the term "handicap", "handicapped" and "hearing impaired". Upon searching departmental official documents, it is determined rule 15-210 ch. 1 is in violation of the new law. In consultation with the State of Maine Bureau of Human Resources and the Office of Employee Relations, rule 15-210 ch. 1 which was originally published December 19, 1984 is determined to be antiquated and obsolete. The Department of Labor has published a state-wide grievance procedure, rule 12-168 ch. 50, *Nondiscrimination Policy and Grievance Procedure*.

EFFECTIVE DATE: May 10, 2022

DVEM CONTACT PERSON / RULEMAKING LIAISON: Scott A. Young, Department of Defense, Veterans and Emergency Management, 23 Blue Star Avenue - 33 State House Station, Augusta, ME 04333. Telephone: (207) 430-5997. Email: Scott.A.Young@Maine.gov.

DVEM WEBSITE: <https://www.maine.gov/dvem/>.

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

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

ADOPTED RULE NUMBER: **2022-078**

CONCISE 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 new section .04 to reflect recently enacted corporate income tax nexus thresholds for tax years beginning on or after January 1, 2022
* Repeal section .05 (Other Exceptions) in current rule as unnecessary
* Relocate section .06 (Imputed Activity) in current rule to section .05
* Make other technical changes

EFFECTIVE DATE: May 10, 2022

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

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

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

DAFS RULEMAKING LIAISON: Anya.Trundy@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 90**, Physician Services

ADOPTED RULE NUMBER: **2022-079**

CONCISE SUMMARY: This final rule makes the following changes:

Pursuant to PL 2021 ch. 398 sec. A-17, *An Act Making Unified 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, 2021, June 30, 2022 and June 30, 2023* (the “Budget”), and in alignment with the recommendations from the comprehensive rate setting evaluation conducted by Myers and Stauffer at the request of the Department, this final rule increases the reimbursement rate from 70% of the lowest level in the 2009 Medicare fee schedule to 72.4% of the current year’s Medicare rate per code. In addition, the final rule sets the reimbursement rates for select primary care services at 100% of current Medicare rates, from 100% of 2014 Medicare rates, for eligible primary care providers, which is an additional reimbursement increase. These reimbursement changes shall be effective July 1, 2022, as authorized and required by the Budget.

Also per the Budget, the final rule adds a new provision, section 90.04-7(B), “Physician-Administered Drugs that have Biosimilar Equivalents and/or Prior Authorization (PA) Criteria”. This provision implements a Biosimilar Preferred Drug List which establishes preferred and non-preferred drug statuses based on cost and biosimilar equivalency for physician-administered drugs. Physician-administered drugs are those that satisfy the criteria in 90.04-7(A), but they also may be drugs administered orally. For drugs that are not administered orally, the adopted changes require providers not only to go through the steps set forth in 90.04-7(A), but also to use physician-administered biosimilar drugs when a physician-administered drug has a Food and Drug Administration- (FDA) approved, biosimilar equivalent that the Department identifies as more affordable. Annually, the Department shall identify drugs that have a more affordable FDA-approved biosimilar equivalent on the Biosimilar Preferred Drug List on the MaineCare Health PAS Online Portal. Physicians shall submit a PA request to administer the original drug. For physician-administered drugs that are administered orally, providers must satisfy the requirements in 90.04-7(B).

Section 90.04-7 also requires that some physician-administered drugs may require PA to ensure members meet age, clinical, or other requirements for MaineCare to provide payment and that the MaineCare Health PAS Online Portal contains a complete list of physician-administered drugs that require PA and corresponding PA criteria sheets. Providers must make requests for PA on the Department’s approved form and get approval prior to the date of service. This new PA process is in addition to the requirements for PA in 90.04-7(A).

The final rule (sec. 90.04-30) allows members under the age of 21 to receive the application of topical fluoride varnish up to four times per calendar year from eligible providers, rather than two times per calendar year or three times for members with a high caries rate or new restorations placed in the last 18 months. This change aligns with other states’ Medicaid program limitations on fluoride treatment and the current American Academy of Pediatrics recommendation on fluoride treatment. The final rule also removes the list of allowable providers who may provide topical fluoride varnish and has replaced “eligible providers” and “providers” with “qualified providers.” The adopted rule (sec. 90.04-31) also allows all members to receive an oral health risk assessment if they do not have a dental home and/or have not seen a dentist in the past year, rather than restricting the service to members under three years of age. In addition, the final rule adds dental hygienists to the list of providers in association with physician services in section 90.04-15.

The final rule (sec. 90.05-2(A)) clarifies that medication abortions are covered and shall be performed in compliance with applicable Food and Drug Administration law and guidelines.

The 130th Maine Legislature enacted PL 2021 ch. 348, *An Act to Discontinue the Use of the Terms "Handicap," "Handicapped" and "Hearing Impaired" in State Laws, Rules and Official Documents*. The final rule replaces the term ‘handicapped’ with ‘person with disabilities’ pursuant to PL 2021 ch. 348.

Effective June 21, 2022, this section 90 rulemaking also eliminates sec. 90.09-4, “Primary Care Provider Incentive Payment (PCPIP)”, as part of the new Primary Care Plus (PCPlus) initiative. PCPIP authorizes an incentive payment to primary care practices (PCP) based on their performance on several access, utilization, and quality measures. Retaining this payment after PCPlus takes effect would be duplicative of the reimbursement PCPs will receive under the new PCPlus rule. PCPs who currently receive the Incentive Payment may instead apply to participate in PCPlus and, if approved as part of the program, will receive reimbursement based on their performance for members attributed to their practice.

To complete the transition to PCPlus, the Department also significantly revises MBM, ch. II sec. 91 (adopted to be titled “Health Home Services – Community Care Teams”), which includes repealing Health Home Practices. All of these rulemakings make up the PCPlus initiative, will be adopted simultaneously, and will have the same effective date.

The PCPlus program is intended to give primary care providers (PCPs) greater flexibility and incentives to effectively meet MaineCare members’ health care needs by transitioning away from a volume-based (fee-for-service) payment system with little connection to value, toward an approach that provides risk-adjusted Population-Based Payments tied to cost- and quality-related outcomes. To receive reimbursement under PCPlus, providers are required to locate, coordinate, and monitor health care services for members who are attributed to them. The Department will continue to reimburse other MaineCare covered services under the fee-for-service system. Interested parties should refer to the new PCPlus rule (MBM, ch. VI sec. 3) for more details.

On April 21, 2022, the Department received approval from the Centers for Medicare and Medicaid Services (CMS) for the state plan amendment (SPA) to implement the PCPlus program. The Department shall seek approval from CMS for SPAs to repeal and revise any other programs necessary to implement the PCPlus program. The Department will publish notice of changes in reimbursement methodology pursuant to 42 CFR 447.205.

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

EFFECTIVE DATE: May 14, 2022

OMS CONTACT PERSON: Henry Eckerson, Comprehensive Health Planner II, MaineCare Services, 109 Capitol Street - 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207) 624-4085. Fax: (207) 287-6106. TTY: 711 (Deaf or Hard of Hearing). Email: Henry.Eckerson@Maine.gov.

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: **03-201 - Maine Department of Corrections (MDOC)**

CHAPTER NUMBER AND TITLE: **Ch. 4** *(New)*, Line of Duty Death Benefit for Corrections Officers

ADOPTED RULE NUMBER: **2022-080**

CONCISE SUMMARY: The purpose of the rule is to establish a process governing the award of death benefits to the child, spouse, or parent of a corrections officer who dies while in the line of duty as required by 25 MRSA §1612.

EFFECTIVE DATE: May 18, 2022

MDOC CONTACT PERSON / RULEMAKING LIAISON: Mary Lucia, Maine Department of Corrections, 111 State House Station, Augusta, Maine 04333. Telephone: (207) 530-0983. Email: Mary.A.Lucia@Maine.gov.

MDOC WEBSITE: <https://www.maine.gov/corrections/>.

AGENCY: **12-170** – Maine Department of Labor (MDOL), **Bureau of Labor Standards (BLS)**

CHAPTER NUMBER AND TITLE: **Ch. 13**, Rules Governing the Establishment and Use of Fair Minimum Wage Rates on State Construction Projects

ADOPTED RULE NUMBER: **2022-081**

CONCISE SUMMARY: The purpose of this chapter is to implement changes made by statute PL 2019 ch. 545, update two incorporation by reference sources and streamline the data collection process.

EFFECTIVE DATE: May 4, 2022

MDOC CONTACT PERSON / RULEMAKING LIAISON: Isaac H. Gingras, Maine Department of Labor – Bureau of Labor Standards, 54 State House Station, Augusta, Maine 04333. Telephone: (207) 626-6232. Email: Isaac.H.Gingras@Maine.gov.

BLS WEBSITE: <https://www.maine.gov/labor/bls/>.

MDOL WEBSITE: <https://www.maine.gov/labor/>.