**State of Maine: Notice of Agency Rulemaking – May 20, 2020**

**PROPOSALS**

AGENCY: **16-219** – Department of Public Safety (DPS), **Office of State Fire Marshal (FMO)**

CHAPTER NUMBER AND TITLE: **Ch. 5**, Portable Fire Extinguishers

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P089**

BRIEF SUMMARY: The adoption of NFPA #10, *Standard for Portable Fire Extinguishers*, 2018 edition is needed to allow for flexibility in the inspection and verification of fire extinguishers within a structure. There are also allowances for installation of additional extinguishers without requiring strict adherence to the standard, providing the protection provided by the additional extinguishers is not required as minimum compliance.

CHAPTER NUMBER AND TITLE: **Ch. 7** *(repeal)*, Dry Cleaning Plants

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P090**

BRIEF SUMMARY: This rule is being repealed because the adoption of the 2018 edition of NFPA #1, *Uniform Fire Code,* in ch. 3 has incorporated the subject matter of the State Fire Marshal’s rule ch. 7.

CHAPTER NUMBER AND TITLE: **Ch. 8** *(repeal)*, Spray Applications

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P091**

BRIEF SUMMARY: This rule is being repealed because the adoption of the 2018 edition of NFPA #1, *Uniform Fire Code,* in ch. 3 has incorporated the subject matter of the State Fire Marshal’s rule ch. 8.

CHAPTER NUMBER AND TITLE: **Ch. 9** *(repeal)*, Dip Tanks

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P092**

BRIEF SUMMARY: This rule is being repealed because the adoption of the 2018 edition of NFPA #1, *Uniform Fire Code,* in ch. 3 has incorporated the subject matter of the State Fire Marshal’s rule ch. 9.

CHAPTER NUMBER AND TITLE: **Ch.11** *(repeal)*, Bulk Oxygen and Hydrogen Systems

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P093**

BRIEF SUMMARY: This rule is being repealed because the adoption of the 2018 edition of NFPA #1, *Uniform Fire Code,* in ch. 3 has incorporated the subject matter of the State Fire Marshal’s rule ch. 11.

CHAPTER NUMBER AND TITLE: **Ch.13** *(repeal)*, Welding, Cutting and Allied Processes and Acetylene Cylinder Charging Plants Systems

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P094**

BRIEF SUMMARY: This rule is being repealed because the adoption of the 2018 edition of NFPA #1, *Uniform Fire Code,* in ch. 3 has incorporated the subject matter of the State Fire Marshal’s rule ch. 13.

**PUBLIC HEARING**: N/A

COMMENT DEADLINE: June 22, 2020

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / FMO RULEMAKING LIAISON: Michelle Mason Webber, Sr. Planning and Research Analyst, 52 State House Station, Augusta, ME 04333-0052. Telephone: (207) 626-3873. Email: Michelle.Mason@Maine.gov .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: No fiscal impact

STATUTORY AUTHORITY FOR THIS RULE: 25 MRS §2452

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

FMO RULEMAKING WEBSITE: https://www.maine.gov/dps/fmo/fire-service-laws/rules/proposed .

FMO WEBSITE: https://www.maine.gov/dps/fmo/ .

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

CHAPTER NUMBER AND TITLE: **Ch. 511**, Standards for Actively Seeking Work

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P095**

BRIEF SUMMARY: This rule sets out the standards and definitions to be applied in determining under 5 MRS §§ 1729(2)(B)(1) and 18529(2)(B)(1) whether a disability retirement benefit recipient is actively seeking work. The current rule requires that a disability retirement benefit recipient who is found to be able to engage in substantially gainful activity must actively seek work. The proposed amendment temporarily suspends that requirement due to the COVID-19 crisis for the period starting March 1, 2020, and continuing until 30 days after the termination of the state of emergency declared by the Governor in accordance with title 37-B §742 due to the outbreak of COVID-19.

CHAPTER NUMBER AND TITLE: **Ch. 601**, Group Life Insurance

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P096**

BRIEF SUMMARY: This rule sets out the categories of employees eligible to participate in the Group Life Insurance Program administered by the Maine Public Employees Retirement System, and other regulations relating to the Program. The current rule requires a lapse of insurance coverage when insurance premiums are not timely paid during a period of lay-off or unpaid leave of absence. The proposed amendment provides that, commencing January 1, 2020, coverage does not lapse as long as due premiums, plus regular interest, are paid within 60 days after returning to paid status. The proposed amendment also provides that, in the event of the participant’s death within the 60-day period and prior to the payment of all premiums due, the remaining amount due is deducted from any benefit payments. The proposed amendment also makes void any claim arising during a period of time for which due premiums are not paid.

CHAPTER NUMBER AND TITLE: **Ch. 702**, Appeals of Decisions of the Executive Director

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P097**

BRIEF SUMMARY: This rule sets out the process for appeals of decisions of the Executive Director to the Board of Trustees. It provides for the appointment of a hearing officer to conduct an appeal and to prepare a recommended decision for action by the Board. The current rule requires that non-expert witnesses in an appeal provide testimony orally before the hearing officer. The proposed amendment requires that all hearings will be conducted using audio or video conferencing during the state of emergency declared by the Governor in accordance with Title 37-B §742 due to the outbreak of COVID-19 and continuing for 30 days thereafter. Hearings may be conducted in person after the requirement to conduct hearings by audio or video conferencing has expired.

CHAPTER NUMBER AND TITLE: **Ch. 803**, Participating Local District Consolidated Retirement Plan

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P098**

BRIEF SUMMARY: This rule governs the Consolidated Plan for Participating Local Districts. Under the current rule, local districts may only join the Plan or change their plans effective the next July 1 or January 1. Due to delays in meetings of local districts’ governing bodies resulting from the COVID-19 crisis, local districts may be unable to meet these deadlines. The proposed amendment grants the Executive Director temporary authority to permit a local district to join the Plan or change their plans on dates other than July 1 or January 1, or to do so retroactively to July 1, 2020.

**PUBLIC HEARING**: None

EMAIL FOR PUBLIC TO SUBMIT COMMENTS: rulemaking@mainepers.org .

COMMENT DEADLINE: June 19, 2020

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / MAINEPERS RULEMAKING LIAISON: Kathy J. Morin, Manager, Actuarial and Legislative Affairs, Maine Public Employees Retirement System, P.O. Box 349, Augusta, ME 04332-0349. Telephone: 1 (800) 451-9800 or (207) 512-3190. Email: Kathy.Morin@MainePERS.org .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None

STATUTORY AUTHORITY FOR THIS RULE: 5 MRS §17103(4)

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

MAINEPERS WEBSITE: mainepers.org .

**ADOPTIONS**

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

CHAPTER NUMBER AND TITLE: **Ch. 101**, MaineCare Benefits Manual, **Ch. I Section 5**, COVID-19 Public Health Emergency Services

ADOPTED RULE NUMBER: **2020-116**

CONCISE SUMMARY: This emergency rulemaking institutes measures, effective immediately, to expedite and improve access to medical care for MaineCare members due to the 2019 Novel Coronavirus (COVID-19). Pursuant to 5 MRS §§ 8054 and 8073, 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 COVID-19. On March 11, 2020 the World Health Organization declared COVID-19 a worldwide pandemic. On March 15, 2020, Governor Janet T. Mills declared a state of civil emergency in Maine.

On March 20, 2020, the Department implemented the first COVID-19 Public Health Emergency Services rule (the “COVID-19 Rule”). This is the second set of emergency changes to the COVID-19 Rule (the “Second COVID-19 Rule”).

On April 28, 2020, the Governor issued Executive Order No. 48 FY 19/20, *An Order Modifying Certain Procedural Requirements for Emergency Rulemaking to Maximize Federal COVID-19 Funding for MaineCare* (the “Executive Order”). Pursuant to 5 MRS. §§ 8054 and 8073, and the Executive Order, this single emergency rulemaking implements temporary changes to various sections of the *MaineCare Benefits Manual* (MBM) in order to expedite and improve access to medical care for MaineCare members in light of the substantial public health threat posed by COVID-19.

The COVID-19 Rule impacts the following sections of MaineCare policy: Ch. I Section 1 (General Administrative Policies and Procedures); Ch. 1 Section 4 (Telehealth Services); Ch. II Section 12 (Consumer-Directed Attendant Services); Ch. II Section 17 (Community Support Services); Ch. II and III Section 31 (Federally Qualified Health Center Services); Ch. II and III Section 40 (Home Health Services); Ch. II and III Section 45 (Hospital Services); Ch. II Section 55 (Laboratory Services); Ch. II Section 60 (Medical Supplies and Durable Medical Equipment); Ch. II Section 67 (Nursing Facility Services); Ch. II and III Section 94 (Early and Periodic Screening, Diagnosis and Treatment Services); Ch. II and III Section 96 (Private Duty Nursing and Personal Care Services); Ch. III Section 97 (Private Non-Medical Institution Services); Ch. X Section 3 (Katie Beckett Benefit); and Ch. X Section 1 (Benefit for People Living with HIV/AIDS).

This emergency rulemaking implements the following changes to the COVID-19 Rule:

* The Department is waiving co-payments for some MaineCare services for Consumer Directed Attendant Services and Private Duty Nursing, Personal Care Services, and under the Benefit for People Living with HIV/AIDS.
* The Department is waiving all enrollment fees, premiums, and similar charges for all beneficiaries.
* The Department is authorizing and adding Advanced Practice Providers to prescribe Durable Medical Equipment.
* The Department is waiving the requirement that an MD, DO, PA, or APRN must prescribe an order for hearing aids. A note from an audiologist will justify medical necessity.
* The Department is authorizing Advanced Practice Providers as qualified providers to order and recertify a Plan of Care for Home Health Services.
* The Department is adding various CPT coverage codes to Telehealth Services.
* The Department is allowing, under Bright Futures Health Assessment Visits in Early and Periodic Screening, Diagnosis and Treatment, for one additional health assessment visit per member within a year following an initial assessment via Telehealth for each age shown on the MaineCare Bright Futures periodic health assessment schedule.
* The Department is allocating a special supplemental pool for privately owned and operated Acute Care Non-Critical Access Hospitals and Critical Access Hospitals.
* The Department is increasing reimbursement under Private Non-Medical Institution Services for Substance Abuse Treatment Facilities from 3/1/2020 to 5/31/2020.
* The Department is covering the cost of testing and diagnosis of COVID-19 for a new uninsured eligibility group.
* The Department, under Community Support Services, is allowing, for Members who require annual verification, the retention of eligibility through previously-rendered diagnoses and clinical judgment.
* The Department, under Community Support Services, is changing the verification of Eligibility Requirements from within 60 days of the start of the date of services. If eligibility is not submitted by close of business on day 60, MaineCare will cease payment for services under this section on day 61.
* The Department is extending Personal Support Specialist training requirements under Private Duty Nursing and Personal Care Services.
* The Department is waiving the Preadmission Screening and Resident Review (PASRR) requirement for Nursing Facility Services.

Except as otherwise noted in the COVID-19 Rule, the changes shall be retroactive to March 18, 2020. The Executive Order suspended and modified the relevant provisions of the MAPA in order for these emergency rule changes to: (1) remain in effect until the later of the end of the Federal Proclamation of Emergency or the end of CMS’s approval of the MaineCare program changes, even if that period exceeds ninety days; and (2) automatically repeal upon termination of the Federal Proclamation of Emergency or the end of CMS’s approval of the MaineCare program changes (whichever is later), without further rulemaking by the Department.

In the event of conflict between the COVID-19 Rule and any other MaineCare rule, the terms of this rule supersede other rules and shall apply.

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

EFFECTIVE DATE: May 13, 2020

AGENCY CONTACT PERSON: Derrick Grant, Division of Policy, 109 Capitol Street - 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207) 624-6931. Fax: (207) 287-1606. TTY users call Maine relay 711. Email: Derrick.Grant@Maine.gov .

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

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

DHHS RULEMAKING LIAISON: Kevin.Wells@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. 258**, Rules for the Control of Notifiable Diseases and Conditions

ADOPTED RULE NUMBER: **2020-117** *(Emergency)*

CONCISE SUMMARY: The emergency adoption of amendments to 10-144 CMR ch. 258 immediately implements (1) requirements for designated health care facilities to report the number and type of available beds and medical supply inventory (i.e. personal protective equipment, pharmaceuticals, ventilator machines) to improve emergency management operations, following the Governor’s proclamation, *Proclamation of State of Civil Emergency to Further Protect Public Health* (March 15, 2020) and authorized by Public Law 2020 ch. 617, *An Act to Implement Provisions Necessary to the Health, Welfare and Safety of the Citizens of Maine in Response to the COVID-19 Public Health Emergency* (effective March 18, 2020); and (2) clarification of the Department’s authority in Section 2(H) to access hospital and provider records to include directly accessing the state health information exchange described at 22 MRS §1711-C(18).

EFFECTIVE DATE: May 12, 2020

MAINE CDC CONTACT PERSON: Bridget Bagley, Maine CDC, 286 Water Street - 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207) 287-9394. Email: Bridget.Bagley@Maine.gov .

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

MAINE CDC WEBSITE: https://www.maine.gov/dhhs/mecdc/ .

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

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

AGENCY: **10-144 - Department of Health and Human Services (DHHS)**

CHAPTER NUMBER AND TITLE: **Ch. 104**, Maine State Services Manual: **Section 8**, Wholesale Prescription Drug Importation Program

ADOPTED RULE NUMBER: **2020-118** *(Final adoption, major substantive)*

CONCISE SUMMARY: This rule is a major substantive rule and has been approved by the Maine Legislature with specified amendments.

On January 10, 2020, the DHHS Commissioner adopted a provisionally adopted major substantive rule to implement PL 2019 ch. 472, *An Act to Increase Access to Low-cost Prescription Drugs*, as codified in 5 MRS §§ 2041-2044. That law directed the Department to develop a program to allow for the wholesale importation of prescription drugs from Canada and to submit a proposal to the federal Secretary of Health and Human Services to approve the Maine program.

The provisionally adopted major substantive rule:

**1.** Created a process for the design of a wholesale prescription drug importation program, in anticipation of the release of federal rules establishing an application pathway for demonstration projects allowing importation by states and other entities. On December 18, 2019 the U.S. Department of Health and Human Services and the U.S. Food and Drug Administration issued a notice of proposed rulemaking that, if finalized, would allow for the importation of certain prescription drugs from Canada by states and certain other non-federal government entities. Those regulations will be codified in 21 CFR parts 1 and 251. The federal rules will be based on 21 USC §384, the same federal law that PL 2019 ch. 472 requires the Department to comply with.

**2.** Provided that the Department of Health and Human Services will submit an application on behalf of the State of Maine, as soon as it is practicable after finalization of the federal rule.

**3.** Provided for a stakeholder engagement process, which includes public meetings hosted and facilitated by the Department, with opportunities for comments and questions from attendees, between January 1st, 2020 and July 1, 2020.

In accordance with 5 MRS §8072, the Department submitted the provisionally adopted rule to the Maine Legislature for its review and approval. The Legislature approved the provisionally adopted major substantive rule with certain changes. Resolves 2019 ch. 136, was approved by the Governor on March 18, 2020.

The Resolve required that the Department make the following changes to the rule:

**a.** Amend Section 8.01 to provide that the Department shall submit an application no later than May 1, 2020, and, if the federal rule is not finalized prior to May 1, 2020, that the Department shall submit a subsequent or revised application as soon as practicable after finalization of the federal rule;

**b.** Amend Section 8.02 by amending the time allowed for input from between January 1, 2020 and July 1, 2020 to between January 1, 2020 and March 16, 2020, and to allow for additional input from stakeholders as necessary after the federal rule is finalized;

**c.** Amend Section 8.03 to require the Department, following the conclusion of the stakeholder input process and as required by Title 5 section 2042, to submit an application to the U.S. Department of Health and Human Services to establish a state importation program no later than May 1, 2020. The rule must be amended to also require that, if the final federal rule is not released before May 1, 2020, the Department shall submit a subsequent or revised application to establish a state importation program as soon as is practicable after the release of the final federal rule. The rule must also be amended to require that, if the Department determines further rulemaking is necessary to implement the requirements of the program design, addition rules will be proposed.

The Department made all of those changes in this final rule.

The Legislature further determined that the Department is not required to hold hearings or undertake further proceedings prior to the final adoption of the rule. The Resolve included an Emergency Clause, to the effect that in view of the emergency cited in the Resolve preamble this legislation will take effect when approved. Governor Mills approved the Resolve on March 18, 2020.

**Note:** The Department did file an application on May 1, 2020, in compliance with the Resolve. As of May 1, 2020, the federal government had not finalized the federal rule.

This rulemaking will not impose any costs on municipal or county governments, or on small businesses employing twenty or fewer employees.

See https://www.maine.gov/dhhs/dhhs-rulemaking.shtml for rules and related rulemaking documents.

EFFECTIVE DATE: June 14, 2020

DHHS CONTACT PERSON: Megan Garratt-Reed, Senior Advisor for Coverage and Affordability, Maine Department of Health and Human Services, 109 Capitol Street - 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207) 624-6956. Fax: (207) 287-3005. TTY users call Maine relay 711. Email: Megan.Garratt-Reed@Maine.gov ,

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

DHHS RULEMAKING LIAISON: Kevin.Wells@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 #298E** (COVID-19 Testing for Uninsured Individuals): **Part 9**, Limited Benefit Groups

ADOPTED RULE NUMBER: **2020-119** *(Emergency)*

CONCISE SUMMARY: The *Families First Coronavirus Response Act* (FFCRA) HR 6201, 116 Cong. (2019-2020), PL No. 116-127 (3/18/2020), 134 STAT 178 *et seq*. specified in Division F, Section 6004(a)(3) that State Medicaid programs were authorized to create an optional coverage group to ensure services related to testing and diagnosis of COVID-19 are available in response to the pandemic, pursuant to Section 1902(a)(10)(A)(ii)(XXIII) of the **Social Security Act**, 42 USC 1396a(a)(10) as amended. This is a limited coverage benefit that is effective March 18, 2020 and ends on the last day of the month within which the federal public health emergency (PHE) ends, unless otherwise directed by CMS, even if that period exceeds 90 days, pursuant to the Governor’s Executive Order 48, FY 19/20. Coverage under this group is available to individuals who are without health insurance, or whose health insurance coverage does not meet the requirements for minimum essential coverage. This rule change adopts the eligibility criteria established within the Act into the *MaineCare Eligibility Manual*. This rule change will reduce barriers to COVID-19 testing and treatment which will improve health outcomes for the specific individuals covered and reduce the spread of this virus throughout the Maine population as a whole.

Pursuant to 5 MRS §8054, the Department finds that emergency rulemaking is necessary to provide this essential service during the current health emergency.

Due to the emergency nature of the legislation establishing this coverage group, the Department was unable to adopt this rule prior to March 18, 2020. Therefore, the Department is adopting this emergency rule to apply retroactively to eligibility determinations made on or after March 18, 2020. 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. Modification of the usual rulemaking procedures under the *Maine Administrative Procedure Act* is necessary to ensure the public health, safety and welfare of Maine residents as more fully described in the Basis Statement accompanying this rulemaking..

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

EFFECTIVE DATE: March 18, 2020

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 04333-0011. 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/ .

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

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

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