**State of Maine: Notice of Agency Rulemaking – May 27, 2020**

**PROPOSALS**

AGENCY: **02-039** - Department of Professional and Financial Regulation (PFR), Office of Professional and Occupational Regulation (OPOR), **Real Estate Commission**

CHAPTER NUMBER AND TITLE: **Ch. 360**, Prerequisites to Licensure by Individuals

PROPOSED RULE NUMBER: **2020-099**

TYPE OF RULE: Routine Technical

BRIEF SUMMARY: Under REC rules at ch. 360 section 4(3), REC requires that as a prerequisite to examination, an applicant for a sales agent license must, within one year of completion of the course, submit a course transcript confirming that the applicant has successfully completed a qualifying education program which covers the minimum competencies defined in the REC-approved model entitled “The Sales Agent Course.” REC examinations are administered by Pearson Vue. Due to the COVID-19 emergency, Pearson Vue testing sites were closed on March 16, 2020. An emergency rule became effective on April 20, 2020 amending Section 4(3) which allows a sales agent candidate to qualify for examination for up to 180 days after Pearson Vue testing sites are fully operational, regardless of whether the candidate’s course completion certificate expired after March 16, 2020. The emergency rule is in place for 90 days. This rule amendment will ensure that sales agent candidates can continue to qualify for examination up to 180 days after the testing sites reopen, regardless of the expiration date of the course completion certificate, and after the emergency rule expires.

These are routine technical rules as defined in the *Maine Revised Statutes*, Title 5 ch. 375 sub-ch. 2-A.

PUBLIC HEARING: None

COMMENT DEADLINE: June 30, 2020

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Karen L. Bivins, Director, Real Estate Commission, Office of Professional and Occupational Regulation, 35 State House Station, Augusta, ME 04333. Telephone: (207) 624-8524. Email: Karen.L.Bivins@Maine.gov .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None

STATUTORY AUTHORITY FOR THIS RULE: 32 MRS §13065

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: 32 MRS §14028

COMMISSION WEBSITE: https://www.maine.gov/pfr/professionallicensing/professions/real\_estate/index.html .

PFR WEBSITE: http://www.maine.gov/pfr .

OPOR/PFR RULEMAKING LIAISON: Anne.L.Head@Maine.gov .

AGENCY: **01-672** - Department of Agriculture, Conservation & Forestry (DACF), **Maine Land Use Planning Commission (LUPC)**

CHAPTER NUMBER AND TITLE: **Ch. 10***,* Land Use Districts and Standards: 2020 Miscellaneous Rule Revisions and New Marijuana Standards

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P100**

BRIEF SUMMARY: The Land Use Planning Commission is proposing new standards for marijuana businesses and routine maintenance of Ch. 10, *Land Use Districts and Standards.* Specifically, in response to Title 28-B §404, the Commission is establishing minimum requirements for marijuana businesses regarding odors, lighting, and signs. All remaining revisions cover general housekeeping matters, unify references, clarify existing provisions, and update a list of applicable FEMA maps.

DATE, TIME AND LOCATION OF PUBLIC HEARING: Not applicable; hearing not scheduled.

COMMENT DEADLINE: Written comments must be submitted on or prior to June 18, 2020; written rebuttal comments must be submitted on or prior to June 26, 2020

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Tim Beaucage, 22 State House Station, Augusta, ME 04333-0022. Telephone: (207) 287-4894. Email: Timothy.Beaucage@Maine.gov .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: Not applicable per 12 MRS §685-A(7-A)(B)

STATUTORY AUTHORITY FOR THIS RULE: 12 MRS §§ 685-A(3), 685-A(7-A); *and* 685-C(5); *and* 28-B MRS §404

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: not applicable

LUPC WEBSITE: www.maine.gov/dacf/lupc .

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

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

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P101**

BRIEF SUMMARY: This rulemaking permanently adopts measures to improve nursing home infection control, surveillance, and infection mitigation; and to improve facilities’ crisis staffing plans in response to any future pandemic in Maine’s skilled nursing and nursing facilities. The proposed rule includes and amends provisions adopted by the emergency rulemaking effective April 28, 2020. This rulemaking also expands the staff allowed at nursing facilities to allow Personal Support Specialists and corrects one provision (10.D.1) to align with federal regulations. This proposed rule merges the current published version consisting of 29 separate documents into one document, removes expired effective dates, and adopts format changes to align with current standards.

In the event of closure of state offices on the above date, an alternate hearing will be held as follows:

COMMENT DEADLINE: June 26, 2020

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Jonathan Leach, Compliance Analyst, DHHS - Division of Licensing and Certification. 41 Anthony Avenue - 11 State House Station. Augusta, Maine 04333-0011. Telephone: (207) 287-5825. Fax: (207) 287-9252. TTY users call Maine relay 711. Email: Jonathan.H.Leach@Maine.gov .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: This rulemaking will have no financial impact on municipalities or counties.

STATUTORY AUTHORITY FOR THIS RULE: 22 MRS ch. 405 §§ 1817, 1820

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

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

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

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

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

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

CHAPTER NUMBER AND TITLE: **Ch. 16**, Hunting: **16.07**, Deer Hunting (Expanded Archery Areas)

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P102**

BRIEF SUMMARY: The Commissioner of Inland Fisheries and Wildlife is proposing to amend existing expanded archery area boundaries to reflect changed road or landmark names and to recommend additions to four of the expanded archery areas: WMD 24 area, Augusta area, Camden area, and Lewiston area. A complete copy of the proposal may be requested by contacting the agency contact person. **NOTICE:** Due to the state of emergency that has been declared by the Governor, public hearings are now closed to the public physically attending. The public is strongly encouraged to submit any comments in writing to the Agency Contact Person. However, if you would like to submit comment via video conference, please contact Becky Orff at (207) 287-5202 or Becky.Orff@Maine.gov for details. Thank you for your understanding while we are experiencing this state of emergency.

PUBLIC HEARING: Wednesday, June 17, 2020 @ 4:00 p.m. – via video conference (Microsoft Teams). Contact the agency contact person for details.

COMMENT DEADLINE: June 29, 2020

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / IFW RULEMAKING LIAISON: Becky Orff, Inland Fisheries and Wildlife, 284 State Street - 41 State House Station, Augusta, ME 04333. Telephone: (207) 287-5202. Fax: (207) 287-6395. Email: Becky.Orff@Maine.gov .

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

STATUTORY AUTHORITY FOR THIS RULE: 12 MRS §§ 10104, 11402

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED:

IFW WEBSITE: www.maine.gov/ifw .

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

CHAPTER NUMBER AND TITLE: **Ch. 16**, Hunting: **16.07**, Deer Hunting (4.A.)(6.)

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P103**

BRIEF SUMMARY: The Commissioner of Inland Fisheries and Wildlife is proposing to adopt antlerless deer permit (ADP) numbers for the 2020 regular deer hunting season and special muzzle-loading season by setting specific permit allocations for the 29 Wildlife Management Districts (WMD) as follows:

**WMD:** **# of Permits**

WMD 1: 0

WMD 2: 25

WMD 3: 50

WMD 4: 0

WMD 5: 0

WMD 6: 200

WMD 7: 100

WMD 8: 25

WMD 9: 25

WMD 10: 25

WMD 11: 25

WMD 12: 360

WMD 13: 260

WMD 14: 60

WMD 15: 6,300

WMD 16: 9,750

WMD 17: 13,350

WMD 18: 260

WMD 19: 25

WMD 20: 8,250

WMD 21: 13,000

WMD 22: 13,200

WMD 23: 17,000

WMD 24: 8,400

WMD 25: 16,530

WMD 26: 725

WMD 27: 50

WMD 28: 25

WMD 29: 1,500

Subunit 25a: 225

Subunit 26a: 145

**TOTAL PERMITS: 109,890**

The Department is again recommending issuance of bonus antlerless deer permits in two subunits, Subunit 25a and 26a. These additional permits will allow for additional opportunity to harvest deer in areas experiencing elevated levels of Lyme disease, deer-vehicle collisions and public complaints about deer. A complete copy of the proposal may be requested by contacting the agency contact person. **NOTICE:** Due to the state of emergency that has been declared by the Governor, public hearings are now closed to the public physically attending. The public is strongly encouraged to submit any comments in writing to the agency contact person. However, if you would like to submit comment via video conference, please contact Becky Orff at (207) 287-5202 or Becky.Orff@Maine.gov for details. Thank you for your understanding while we are experiencing this state of emergency.

PUBLIC HEARING: Monday, June 15, 2020 @ 4:00 p.m. – via video conference (Microsoft Teams). Contact the agency contact person for details.

COMMENT DEADLINE: June 25, 2020

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / IFW RULEMAKING LIAISON: Becky Orff, Inland Fisheries and Wildlife, 284 State Street - 41 State House Station, Augusta, ME 04333. Telephone: (207) 287-5202. Fax: (207) 287-6395 Email: Becky.Orff@Maine.gov .

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

STATUTORY AUTHORITY FOR THIS RULE: 12 MRS §§ 11152, 11401

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED:

IFW WEBSITE: www.maine.gov/ifw .

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

CHAPTER NUMBER AND TITLE: **Ch. 16**, Hunting: **16.10**, Wild Turkey Hunting

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P104**

BRIEF SUMMARY: The Department of Inland Fisheries and Wildlife is proposing to amend wild turkey hunting rules to allow harvest during the fall season in Wildlife Management District (WMD) 6. If adopted, WMD 6 would be open during the fall turkey season with a bag limit of one turkey of either sex. All other rules for fall wild turkey hunting will apply. A copy of the complete proposal can be requested from the agency contact person.

PUBLIC HEARING: None scheduled.

COMMENT DEADLINE: June 26, 2020

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / IFW RULEMAKING LIAISON: Becky Orff, Inland Fisheries and Wildlife, 284 State Street - 41 State House Station, Augusta, ME 04333. Telephone: (207) 287-5202. Fax: (207) 287-6395 Email: Becky.Orff@Maine.gov .

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

STATUTORY AUTHORITY FOR THIS RULE: 12 MRS §§ 10104, 11701

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED:

IFW WEBSITE: www.maine.gov/ifw .

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

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

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P105**

BRIEF SUMMARY: The Department of Inland Fisheries and Wildlife is proposing to amend ch. 16 rules in order to comply with new laws enacted during the 129th Legislature. Amendments include changes in use of crossbows during the regular archery only deer season and fall wild turkey hunting season, definition of an “antlerless moose,” and a change in the term used to describe adult supervision of junior hunters to “junior hunter supervisor.” A copy of the complete proposal can be requested from the agency contact person.

PUBLIC HEARING: None scheduled

COMMENT DEADLINE: June 26, 2020

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / IFW RULEMAKING LIAISON: Becky Orff, Inland Fisheries and Wildlife, 284 State Street - 41 State House Station, Augusta, ME 04333. Telephone: (207) 287-5202. Fax: (207) 287-6395 Email: Becky.Orff@Maine.gov .

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

STATUTORY AUTHORITY FOR THIS RULE: 12 MRS §10104

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED:

IFW WEBSITE: www.maine.gov/ifw .

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

CHAPTER NUMBER AND TITLE: **Ch. 17**, Trapping

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P106**

BRIEF SUMMARY: The Commissioner of Inland Fisheries and Wildlife is proposing to amend several portions of ch. 17 rules to clarify or simplify existing rules to include the following: define “visible attractor”, there is currently no definition for visible attractor measures that were put in place to reduce the incidental take of lynx and other non-target species in traps; update beaver trapping season dates and closures; clarify muskrat trap placement and modify the existing rule to allow muskrats to be kept if caught incidentally while trapping for beaver; add otter to the exemption to incidental catch requirements when trapping for muskrat; increase the annual fisher bag limit from 10 to 25 statewide; remove the requirement for temporary transportation tags for marten and fisher; and amend the annual survey requirements to only trappers age 16 years and older. A complete copy of the proposal may be requested by contacting the agency contact person. **NOTICE:** Due to the state of emergency that has been declared by the Governor, public hearings are now closed to the public physically attending. The public is strongly encouraged to submit any comments in writing to the agency contact person. However, if you would like to submit comment via video conference, please contact Becky Orff at (207) 287-5202 or Becky.Orff@Maine.gov for details. Thank you for your understanding while we are experiencing this state of emergency.

PUBLIC HEARING: Tuesday, June 16, 2020 @ 4:00pm – via video conference (Microsoft Teams). Contact the agency contact person for details.

COMMENT DEADLINE: June 26, 2020

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / IFW RULEMAKING LIAISON: Becky Orff, Inland Fisheries and Wildlife, 284 State Street - 41 State House Station, Augusta, ME 04333. Telephone: (207) 287-5202. Fax: (207) 287-6395 Email: Becky.Orff@Maine.gov .

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

STATUTORY AUTHORITY FOR THIS RULE: 12 MRS §§ 10104, 12251

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED:

IFW WEBSITE: www.maine.gov/ifw .

AGENCY: **02-392** - Department of Professional and Financial Regulation (PFR), Office of Professional and Occupational Regulation (OPOR), **Board of Pharmacy**

CHAPTER NUMBER AND TITLE: **Ch. 36**, Licensure of Opioid Treatment Programs

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P107**

BRIEF SUMMARY: The principal purpose is to make permanent the emergency rule adopted by the Maine Board of Pharmacy (“Board”) on April 4, 2020. The emergency rule changes in 02-392 CMR ch. 36, *Licensure of Opioid Treatment Programs* (“OTPs”) pursuant to 32 MRS §13751(2)(A) and (3) and the Board’s emergency rulemaking authority under 5 MRS §8054 and in response to the Governor’s *Proclamation of State of Civil Emergency to Further Protect Public Health* (dated March 15, 2020) and the Governor’s Executive Order 19 FY 19/20, *An Order Regarding Essential Businesses and Operations* (effective March 24, 2020).

This emergency rule amended sections 4(2) and (3) of ch. 36 to remove the requirement that that the PIC be “physically present” for the preparation of all take-home doses and allow other licensed pharmacists who are authorized by the PIC to be present instead. This rule is scheduled to terminate on July 3, 2020 and the Board is taking measures to make this rule permanent and to expand it any state of civil emergency proclamation and not just the on-going COVID-19 public health emergency.

Allowing another licensed pharmacist to be physically present instead of the PIC will not compromise the ability of OTPs to safely prepare take-home doses. During any state of civil emergency declared by the Governor, no pharmacist will be required to be physically present to prepare drugs for delivery, provided that such drugs are prepared by either an advanced practice registered nurse, a registered professional nurse, or a licensed practical nurse who is: 1) licensed by the State Board of Nursing; 2) licensed by the board as a pharmacy technician; and 3) explicitly designated by the pharmacist in charge to prepare drugs in the absence of a pharmacist.

PUBLIC HEARING: June 16, 2020 at 8:00 a.m. EST. **Location:** Due to the current situation of the 2019 novel coronavirus (COVID-19) and the need to avoid public gatherings, maintain public distance, and for everyone’s safety this meeting will be held virtually. Information to listen in to this meeting will be posted on the Board’s website at http://www.maine.gov/pfr/professionallicensing/professions/pharmacy/board\_meetings.shtml .

COMMENT DEADLINE: June 26, 2020 by 5:00 p.m. EST

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Geraldine L. Betts, Administrator, OPOR, 35 State House Station, Augusta, ME 04333. Telephone: (207) 624-8625. Email: Geraldine.L.Betts@Maine.gov .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES *(if any)*: None

STATUTORY AUTHORITY FOR THIS RULE: 32 MRS §13751(2)(A) and (3)

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: N/A

BOARD WEBSITE: https://www.maine.gov/pfr/professionallicensing/professions/pharmacy/index.html .

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

CHAPTER NUMBER AND TITLE: **Ch. 292**, Rules Relating to The Lead Poisoning Control Act

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P108**

BRIEF SUMMARY: The Department is proposing this rule change to permanently implement revised federal standards for dust-lead hazards to identify and abate lead-based substances in dwellings and child-occupied facilities, decreasing the risk of exposure to environmental lead hazards and child lead poisoning. The proposed rule change is consistent with the current 10-144 CMR ch. 292 adopted on an emergency basis to amend the definition of “lead-contaminated dust” to align with the U.S. Environmental Protection Agency (EPA) dust-lead hazard standards, effective January 2020. This rule proposes to use the EPA’s lower standards (10 µg/ft2 on floors and 100 µg/ft2 on window sills, as specified in 40 CFR §745.65) for on-going environmental inspections to identify the presence of environmental lead hazards that must be removed in accordance with the Maine’s *Lead Poisoning Control Act* (22 MRS ch. 252).

Date, time and location of PUBLIC HEARING *(if any)*: None scheduled.

COMMENT DEADLINE:June 26, 2020

CONTACT PERSON FOR THIS FILING/ SMALL BUSINESS IMPACT INFORMATION: Bridget Bagley. Maine CDC, 286 Water Street - 11 State House Station, Augusta, ME, 04333-0011. Telephone: (207) 287-4490 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: 22 MRS §§ 1320, 1320-A, 1323

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: 40 CFR §745.65

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

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

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

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

**ADOPTIONS**

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

CHAPTER NUMBER AND TITLE: **Ch. 850**, Health Plan Accountability

ADOPTED RULE NUMBER: **2020-120**

CONCISE SUMMARY: The amendments conform the rule to changes made to the *Health Plan Improvement Act* by legislation enacted during the First Regular Session of the 129th Maine Legislature. The legislation specifically authorizes routine technical amendments to achieve this purpose. The legislation is as follows:

\* PL 2019 ch. 171, "An Act To Ensure Protection of Patients in Medical Reviews by Health Insurance Carriers," which amended the clinical peer requirements for carriers' medical reviews;

\* PL 2019 ch. 238, "An Act To Protect Patients and the Prudent Layperson Standard," which amended the requirements for coverage of emergency services and defined "emergency service" and "emergency medical condition"; and

\* PL 2019 ch. 273, "An Act Regarding the Process for Obtaining Prior Authorization for Health Insurance Purposes," which amended the requirements for prior authorization of nonemergency services.

EFFECTIVE DATE: May 24, 2020

BUREAU CONTACT PERSON / 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/ .

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 & III Section 65**, Behavioral Health Services

ADOPTED RULE NUMBER: **2020-121** *(Emergency)*

CONCISE SUMMARY: The Department of Health and Human Services (Department) adopts the following emergency rule changes in 10-144 CMR ch. 101, *MaineCare Benefits Manual*, ch. II and III section 65, “Behavioral Health Services”.

In ch. III, the Department is increasing the rate of reimbursement for Medication Assisted Treatment with Methadone (MAT) retroactive to July 1, 2019. Pursuant to PL 2019 ch. 343, *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, 2019, June 30, 2020 and June 30, 2021*, (effective June 17, 2019), the Legislature increased funding for the weekly reimbursement rate for MAT services for the FY2020 and FY2021 state budgets. In light of the state’s ongoing opioid crisis, the Department finds that the immediate adoption of the MAT rate increase is necessary to avoid an immediate threat to public health, safety, or general welfare under 5 MRS §8054. The emergency rate increase benefits both providers and members and will further support the delivery of these critical services to those in need.

The Department is seeking and anticipates approval from the Centers for Medicare and Medicaid Services (CMS) for the MAT rate increase. The Department published a Notice of MaineCare Reimbursement Methodology Change on June 28, 2019 notifying providers of this increase and is awaiting approval of a state plan amendment. Pending that approval, the Department will reimburse MAT services at the increased rate retroactive to July 1, 2019.

Additionally, this rulemaking will increase the rates of reimbursement in ch. III for Functional Family Therapy (FFT), Multisystemic Therapy (MST), Multisystemic Therapy for Problem Sexualized Behaviors (MST-PSB) by 20% effective January 1, 2020 in accordance with Resolves 2019 ch. 110, *Resolve, To Increase Funding for Evidence-based Therapies for Treating Emotional and Behavioral Problems in Children* (effective January 12, 2020)*.* In approving this legislation (which became law without the Governor’s signature), the Legislature determined that an immediate effective date was necessary given the rates had “not been adjusted in more than 8 years” and the rates were “insufficient to enable some providers to continue to provide services.” The Department agrees with and incorporates these findings in support of this emergency rulemaking under 5 MRS §8054.

The Department is seeking and anticipates CMS approval for the 20% rate increases for FFT, MST, and MST-PSB services. The Department published a Notice of MaineCare Reimbursement Methodology Change on June 28, 2019 of the intended 20% rate increases with the expectation that the Legislature would approve the increases effective July 1, 2019. The Department believes this notice is sufficient despite the legislation not taking effect until January 12, 2020. Pending CMS approval, the Department will reimburse FFT, MST, and MST-PSB services at increased rates retroactive to January 1, 2020.

Additionally, following the completion of the rate study directed by Resolves 2019 ch. 110 and completed by Burns and Associates, the Department has developed new increased rates for MST, MST-PSB, and FFT. The additional funding has been approved for the FY2021 state budget pursuant to 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 Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2020 and June 30, 2021* (effective March 18, 2020). Through the rate study process and in line with the Legislature’s directive in the Resolve, the Department has made the determination to switch reimbursement from quarter hour billing to a weekly case rate to reflect the requirements for the evidence-based models. Concurrent with these rate changes in ch. III, in ch. II, the Department has ended Collateral Contacts for MST, MST-PSB, and FFT as these services have been incorporated into the new weekly case rate. The Department has also adopted minimum contact standards for providers to provide guidance to providers accessing this new weekly case rate. In ch. III, the Department has deleted the prior quarter hour codes and added in the new weekly codes and rates. In response to financial challenges and civil emergency created by the COVID-19 pandemic, the Department has advanced the increased rates from the anticipated July 1, 2020 start date retroactively to May 1, 2020, in order to provide financial relief, to support stability in the workforce, and to increase access to members in need. Because of this, the Department has determined emergency rulemaking is necessary to support these providers and members receiving these services under 5 MRS §8054

The Department published a Notice of MaineCare Reimbursement Methodology Change on April 30, 2020 of the intended rate increases and intends to file a State Plan Amendment within the quarter. Pending CMS approval, the Department will reimburse MST, MST-PSB, and FFT at increased weekly rates retroactive to May 1, 2020.

Finally, PL 2019 ch. 616 also included funding for the Department to increase rates for certain services effective July 1, 2020. In response to the COVID-19 emergency and hardships created during this period of civil emergency, the Department has made the decision to advance these rate increases to be effective retroactively to April 1, 2020. The rate changes include an increase for physicians delivering medication management, and an increase for Behavioral Health Professionals providing Home and Community-based Treatment (HCT) services. In order for physicians to access the increased rate of reimbursement, they will be required to use the AF modifier on their claims. The Department has determined emergency rulemaking is necessary to support these providers and members receiving these services under 5 MRS §8054.

The Department published a Notice of MaineCare Reimbursement Methodology Change on March 31, 2020 of the intended rate increases and intends to file a State Plan Amendment within the quarter. Pending CMS approval, the Department will reimburse Behavioral Health Professionals delivering HCT and physicians delivering Medication Management at increased rates retroactive to April 1, 2020.

This emergency rulemaking will take effect upon filing with the Secretary of State and will remain in effect for ninety days. 5 MRS §§ 8052(6), 8054(3). To avoid a lapse, the Department is concurrently proposing non-emergency routine technical changes.

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

EFFECTIVE DATE: May 21, 2020

OMS CONTACT PERSON: Dean Bugaj, Comprehensive Health Planner, Division of Policy, 109 Capitol Street - 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207) 624-4045. Fax: (207) 287-1864. TTY users call Maine relay 711. Email: Dean.Bugaj@Maine.gov .

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: **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 #292A**: **Part 10**, Medically Needy Coverage

ADOPTED RULE NUMBER: **2020-122**

CONCISE SUMMARY: The Department regularly reviews policies to ensure clarity and conformity with state and federal requirements. Clarification was added as to which categorically needy coverage groups have a correlating Medically Needy group, and which would not qualify for Medically Needy if they exceed the income or asset limits for Categorically Needy coverage. Clarification was added where the Medically Needy budgeting process differs from the Categorically Needy budgeting process. Obsolete references to asset limits were removed. Clarification was added that the household must be liable for medical expenses and those expenses must be medically necessary for them to be applicable to a deductible. Additional changes were made to formatting and word choice for readability.

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

EFFECTIVE DATE: July 1, 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 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/ .

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

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

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

AGENCIES:

*Affiliated with the* Department of Professional and Financial Regulation (PFR):

**02-373 - Board of Licensure in Medicine**

**02-380 - State Board of Nursing**

**02-383 - Board of Osteopathic Licensure**

*Associated with the Office of Professional and Occupational Regulation (OPOR):*

**02-396 - Board of Licensure of Podiatric Medicine**

CHAPTER NUMBER AND TITLE: **Ch. 21**, Use of Controlled Substances for Treatment of Pain

ADOPTED RULE NUMBERS: **2020-123** *thru* **126**

CONCISE SUMMARY In this rulemaking, the Board of Licensure in Medicine, State Board of Nursing, Board of Osteopathic Licensure, and Board of Licensure of Podiatric Medicine amended the rule to: add a table of contents; add new definitions for “hospice services” and “terminally ill”; add section three, applicability of rule, to clarify that the rule does not apply to treatment of inpatients at medical facilities or any custodial care facility where patients do not have possession or control over their medications and medications are dispensed or administered by a licensed, certified, or registered health care provider, or to the treatment of patients who are terminally ill and who are receiving hospice services as defined by this rule; provide clarification by merging the sections for exemptions to dosage limits with exemptions to days’ supply; provide clarification regarding the use of the CDC Guidelines for Prescribing Opioids for Chronic Pain; and incorporate existing continuing medical education requirements for podiatrists.

EFFECTIVE DATE: May 27, 2020

AGENCY CONTACT PERSONS:

**Board of Licensure in Medicine**: Dennis E. Smith, Executive Director, 137 State House Station, Augusta, ME 04333-0137. Telephone: (207) 287-3605. Email: Dennis.E.Smith@Maine.gov .

**State Board of Nursing**: Kimberly Esquibel, Executive Director, 158 State House Station, Augusta, ME 04333-0158. Telephone: (207) 287-1148. Email: Kim.Esquibel@Maine.gov .

**Board of Osteopathic Licensure**: Susan E. Strout, Executive Secretary, 142 State House Station, Augusta, ME 04333-0142. Telephone: (207) 287-2480 Email: Susan.E.Strout@Maine.gov .

**Board of Licensure of Podiatric Medicine**: Kristina M. Halvorsen, Regulatory Board Administrator, 35 State House Station, Augusta, ME 04333-0035. Telephone: (207) 624-8420. Email: Kristina.M.Halvorsen@Maine.gov .

**RULES WEBSITE**: https://www.maine.gov/sos/cec/rules/02/chaps02.htm .