**State of Maine: Notice of Agency Rulemaking – June 14, 2023**

**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: **02-288** - Department of Professional and Financial Regulation (PFR), Office of Professional and Occupational Regulation (OPOR), **Maine State Board for Licensure of Architects, Landscape Architects and Interior Designers**

CHAPTER NUMBER AND TITLE *(Repeal and Replace)*: **Ch. 10**, Definitions; **Ch. 13**, Licensure of Landscape Architects

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBERS: **2023-P076, P078** *(2nd publication)*

BRIEF SUMMARY: The Board recently proposed changes to all of its rules, with a comment period ending May 19, 2023. The Board received comments regarding proposed changes to Ch. 13, *Licensure of Landscape Architects*. The commenters requested that the Board consider amending the proposed rule to require that one half of all of the required supervised experience that a landscape architect must have to qualify for examination be under the direct supervision of a licensed landscape architect. The remaining experience could be gained under the direct supervision of a licensed professional in a related field. The Board wanted to adopt this comment and propose the suggested change, and is soliciting comments from the public for an additional 30 days on those changes.

Additional changes are also being proposed due to the following:

Board staff also noted a statutory provision requiring that a landscape architect meet certain minimum requirements for qualifying for examination, as opposed to licensure, and suggested changes to the proposed rule on the basis of this statutory language.

The Board also requested a definition be added to reflect a “year of experience in the regulated profession of landscape architecture” means 40 hours a week for 50 weeks a year.

The Board is soliciting public comment on these changes from the previous versions of proposed Ch. 10 and 13.

PUBLIC HEARING: N/A. *Pursuant to 5 MRS §8052(1) and §8053(3)(B), a hearing may be requested by five (5) interested persons by submitting a request in writing to contact person for this filing.*

COMMENT DEADLINE: Friday, July 14, 2023 by 5:00 p.m. Comments may be submitted in writing to Catherine E. Pendergast, Board Manager, Maine State Board for Licensure of Architects, Landscape Architects and Interior Designers, 35 State House Station, Augusta, ME 04333-0035. Email: [Catherine.Pendergast@Maine.gov](mailto:Catherine.Pendergast@Maine.gov).

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Catherine E. Pendergast, 35 State House Station, Augusta, ME 04333-0035. Telephone: (207) 624-8518. TTY: Maine relay 711. Email: [Catherine.Pendergast@Maine.gov](mailto:Catherine.Pendergast@Maine.gov).

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: N/A

STATUTORY AUTHORITY FOR THIS RULE: 32 MRS §§ 214(1), 220, 221

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

AGENCY WEBSITE: <https://www.maine.gov/pfr/professionallicensing/professions/board-of-licensure-architects-landscape-architects-interior-designers>.

OPOR RULEMAKING LIAISON: [Kristin.Racine@Maine.gov](mailto:Kristin.Racine@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. I Section 4**, Telehealth Services

PROPOSED RULE NUMBER: **2023-P122**

CONCISE SUMMARY: This proposed rulemaking seeks to make the following changes:

**1**. Removes the requirement that providers may deliver covered services through telephonic telehealth only if interactive telehealth services are unavailable. This change aligns the rule with PL 2021 Ch. 219, “An Act Regarding Telehealth Regulations”. The Department also proposes to remove Section 4.04-3, “Telephonic Services”, because the requirements for telephonic and interactive telehealth services are now the same. Services delivered via telephonic telehealth must still be medically necessary, pursuant to Ch. I, Section 1.06-1.

**2**. Allows members to provide written, verbal, or electronic consent to telehealth services; this change aligns the rule with PL 2021 Ch. 219.

**3**. Removes the restriction in Sections 4.07-2(B)(8) and 4.05(E) that the originating facility fee may only be billed when the originating site is in a health care provider’s facility. The Department proposes to allow a provider to bill the originating facility fee if the originating site is somewhere other than a provider’s facility.

**4**. Removes language in Section 4.07-2(B)(1) that suggests the originating facility fee is billable only if the provider makes room and telecommunications equipment available and clarifies that it is billable when a provider supports access to telehealth services. The rule also clarifies what supporting access to telehealth services means.

**5**. Removes a list of services that may not be delivered through telehealth. Section 4.04, “Covered Services”, defines requirements for what can be delivered through telehealth; it is impractical to maintain an all-encompassing list of services that cannot be delivered through telehealth and keeping a partial list in the rule creates ambiguity.

**6**. Removes the table of codes and rates in Section 4.07-4, “Reimbursement Rates”, because codes and rates reside and are updated in the appropriate Sections of the MBM or fee schedules on the MaineCare Health PAS Portal.

**7**. Adds guidance to use the modifier “93” when billing for services delivered through telephonic telehealth.

**8**. Modifies the definition of Originating (Member) Site to clarify that it is not limited to a health care provider’s office or a member’s residence.

**9**. Removes references to the requirement that a primary care referral is needed to see a specialist because this requirement is no longer in effect.

**10**. Moves the content in Sections 4.06-2(A)(5-7) to new Sections 4.06-2(C-E) and makes edits to clarify the requirements.

**11**. Clarifies in Section 4.03-1 that health care providers must be appropriately licensed, accredited, certified, and/or registered in the State where the member is located during the provision of the telehealth service.

**12**. In Section 4.05(B)(2), adds examples of services that require direct physical contact and cannot be delivered through telehealth.

**13**. The Department also removed an unused definition and made minor technical corrections.

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

PUBLIC HEARING: 1:00 p.m. Thursday, July 6, 2023. *The Department will hold a combined in-person and remote (via Zoom) public hearing.* Location: State Office Building, Conference Rooms Maine A and Maine B, 109 Capitol Street, Augusta, ME

Zoom Meeting link: <https://mainestate.zoom.us/j/82109155776>. Meeting ID: 821 0915 5776. *Some devices may require downloading a free app from Zoom prior to joining the public hearing event. The Department requests that any individual requiring special arrangements to attend the hearing in person contact the agency person listed below 5 days in advance of the hearing.*

*In addition to the public hearing, individuals may submit written comments to DHHS by the date listed in this notice.*

DEADLINE FOR COMMENTS: Comments must be received by 11:59 p.m. on July 16, 2023.

AGENCY 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](mailto:Henry.Eckerson@Maine.gov).

IMPACT ON MUNICIPALITIES OR COUNTIES: The Department anticipates that this rulemaking will not have any impact on municipalities or counties.

STATUTORY AUTHORITY: 22 MRS §§ 42, 3173; PL 2021 Ch. 291

CONTACT PERSON FOR SMALL BUSINESS INFORMATION: N/A

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

OMS RULEMAKING LIAISON: [Jennifer.Patterson@Maine.gov](mailto:Jennifer.Patterson@Maine.gov).

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

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

DHHS RULEMAKING LIAISON: [Emily.A.Cathcart@Maine.gov](mailto:Emily.A.Cathcart@Maine.gov).

**ADOPTIONS**

AGENCY: **90-590 - Maine Health Data Organization (MHDO)**

CHAPTER NUMBER AND TITLE: **Ch. 570**, Uniform Reporting System for Prescription

Drug Prices *(Major Substantive)*

ADOPTED RULE NUMBER: **2023-083**

BRIEF SUMMARY: This rule change is necessary to align the requirements in PL 2021 Ch. 305, “An Act To Increase Prescription Drug Pricing Transparency”, with the requirements in 90-590 CMR Ch. 570.

Copies of these rules can be reviewed and printed from the MHDO website at <https://mhdo.maine.gov/rules.htm> or, to receive a paper copy call 287-6722.

EFFECTIVE DATE: July 8, 2023

CONTACT PERSON: Karynlee Harrington, Executive Director, Maine Health Data Organization, 151 Capitol Street – 102 State House Station, Augusta, ME 04333-0102. TELEPHONE: (207) 287-6722. Email: [Karynlee.Harrington@Maine.gov](mailto:Karynlee.Harrington@Maine.gov).

IMPACT ON MUNICIPALITIES, COUNTIES, OR SMALL BUSINESSES. This rule will not have a fiscal impact on municipalities, counties, or small businesses.

STATUTORY AUTHORITY FOR THIS RULE: 22 MRS §§ 8703(1), 8704(1), 8705-A and 8705-A(3), 8731, 8732, 8733, 8734, 8735 and 8737.

MHDO WEBSITE: <https://mhdo.maine.gov/>.

MHDO RULEMAKING LIAISON: [Debra.J.Dodge@Maine.gov](mailto:Debra.J.Dodge@Maine.gov).

AGENCY: **13-188 - Department of Marine Resources (DMR)**

CHAPTER NUMBER AND TITLE: **Ch. 55**, Gear Restrictions: **55.99**, Fishing in the Saco River above the Footbridge between Saco and Biddeford

TYPE OF RULE: Routine Technical

ADOPTED RULE NUMBER: **2O23-084** *(Emergency)*

CONCISE SUMMARY: This rulemaking is in response to increased recreational fishing catch and release mortality on the Saco River below the Cataract Dam. Anglers are reporting large amounts of dead striped bass below this area and the DMR has concluded that this is directly linked to targeting fish in a confined area with no way to properly release fish without causing a high discard mortality. The striped bass is in a rebuilding stage due to a significant increase in 2022 recreational removals which substantially reduced the probability of rebuilding the stock by 2029. This emergency rule is part of a larger regulatory framework to ensure this stock rebuilds and is required to avoid unusual damage to the striped bass resource. For these reasons, the Commissioner hereby adopts an emergency action to modify Maine’s Gear Restriction Regulation, Ch. 99, as authorized by 12 MRS §6171(3)(A).

EFFECTIVE DATE: June 10, 2023

DMR CONTACT PERSON: Patrick Keliher, Commissioner, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021. Telephone: (207) 624-6553). Fax: (207) 624-6024. TTY: (888) 577-6690 (Deaf/Hard of Hearing). Email: [Patrick.Keliher@Maine.gov](mailto:Patrick.Keliher@Maine.gov).

DMR RULEMAKING WEBSITE: <http://www.maine.gov/dmr/rulemaking/>.

DMR WEBSITE: <http://www.maine.gov/dmr/>.

DMR RULEMAKING LIAISON: [Deirdre.Gilbert@Maine.gov](mailto:Deirdre.Gilbert@Maine.gov).

AGENCY: **01-015** – Department of Agriculture, Conservation and Forestry (DACF), **Maine Milk Commission (MMC)**

CHAPTER NUMBER AND TITLE: **Ch. 27**, Retail Margins *(Repeal and replace)*

ADOPTED RULE NUMBER: **2023-085**

CONCISE SUMMARY: The principal reason for this rulemaking is the need to establish retail margins for milk marketing areas within the State of Maine in accordance with 7 MRS §2954. The Commission adopted the rates recommended by the study conducted in 2022.

EFFECTIVE DATE: June 18, 2023

MMC CONTACT PERSON / SMALL BUSINESS IMPACT INFORMATION / RULEMAKING LIAISON: Julie-Marie R. Bickford, Maine Milk Commission - Agriculture, 28 State House Station, Augusta, ME 04333. Telephone: (207) 287-7521. Email: [Julie-Marie.Bickford@Maine.gov](mailto:Julie-Marie.Bickford@Maine.gov).

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