**State of Maine: Notice of Agency Rulemaking – June 15, 2022**

**PROPOSALS**

AGENCY: **06-481** - Department of Environmental Protection (DEP), **Board of Underground Storage Tank Installers**

CHAPTER NUMBER AND TITLE: **Ch. 3**, Certification of Underground Oil Storage Tank Installers, *and* **Ch. 6**, Certification of Underground Oil Storage Tank Inspectors

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBERS: **2022-P089, P090**

BRIEF SUMMARY: The Board proposes to amend Ch. 3 and Ch. 6 to discontinue the use of the terms "handicap," "handicapped" and "hearing impaired" in accordance with PL 2021 c. 348, “An Act To Discontinue the Use of the Terms "Handicap," "Handicapped" and "Hearing Impaired" in State Laws, Rules and Official Documents”. The amendments replace the use of the word “handicap” with the word “disability”. The proposal also updates citations by replacing M.R.S.A. with M.R.S.

PUBLIC HEARING: No public hearing is scheduled. *There is a 30-day written comment period. A public hearing will be held if the Department receives 5 or more requests before the end of the comment period.*

COMMENT DEADLINE: July 15, 2022

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Christopher Fournier, Maine Department of Environmental Protection, 17 State House Station, Augusta, ME 04333. Telephone: (207) 287-7860. Email: Christopher.G.Fournier@Maine.gov.

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: none

STATUTORY AUTHORITY FOR THIS RULE: 32 MRS §10004

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: n/a

BOARD WEBSITE: <https://www.maine.gov/dep/waste/busti/index.html>.

DEP WEBSITE: <https://www.maine.gov/dep/>.

DEP RULEMAKING LIAISON: Mark.T.Margerum@Maine.gov.

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

CHAPTER NUMBER AND TITLE: **Ch. 25**, Lobster and Crab (Technical corrections)

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2022-P091**

BRIEF SUMMARY: This proposed rule-making makes technical corrections to Ch. 25. Specifically, it provides accurate buoy colors and numbers in Linekin Bay, as well as correcting the name of an island which the owners have renamed “Oak Island”. Finally, it clarifies that a harvester who is selling fish that they caught for bait is not a bait dealer.

PUBLIC HEARING: None scheduled

COMMENT DEADLINE: July 15, 2022

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Amanda Ellis, 21 State House Station, Augusta, Maine 04333-0021. Telephone: (207) 624-6573. Fax: (207) 624-6024. TTY: (2070 624-6500 (Deaf/Hard of Hearing). Email: dmr.rulemaking@maine.gov.

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None

STATUTORY AUTHORITY FOR THIS RULE: 12 MRS §§ 6171, 6526

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: Same

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

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

DMR RULEMAKING LIAISON: Deirdre.Gilbert@Maine.gov.

**ADOPTIONS**

AGENCY: **18-691** - Department of Administrative and Financial Services (DAFS), **Office of Marijuana Policy (OMP)**

CHAPTER NUMBER AND TITLE: **Ch. 1**, Adult Use Marijuana Program Rule

ADOPTED RULE NUMBER: **2022-107** *(Final adoption, major substantive)*

CONCISE SUMMARY: This rulemaking implements statutory changes made to the *Marijuana Legalization Act*, 28-B MRS Ch. 1, specifically PL 2021 chess. 226 and 314, including changes to the definitions of "marijuana trim" and "mother plan", striking the requirement that sample collector licensees obtain a sales tax ID, and permitting the creation of a "controlled entry area" within the licensed premise of a marijuana store. This rulemaking also reconfigures the license application process to require detailed information regarding operations, cultivation, facility layout, and co-location of adult use licensees and/or licensees and medical program registrants at the active licensure phase as opposed to the conditional licensure phase. Finally, this rulemaking clarifies the regulation of licensee "brands" and "logos", permits the use of reusable packaging, and reduces the information required on marijuana and marijuana product labels.

EFFECTIVE DATE: July 1, 2022

OMP CONTACT PERSON: Gabi Pierce, Office of Marijuana Policy - Department of Administrative and Financial Services, 162 State House Station – 19 Union Street, Augusta, ME 04333. Telephone: (207) 530-0507. Email: Gabi.Pierce@Maine.gov.

OMP WEBSITE: <https://www.maine.gov/dafs/ocp/> .

OMP RULEMAKING LIAISON: Erik.Gundersen@Maine.gov .

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

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

AGENCY: **02-318** - Department of Professional and Financial Regulation (PFR), Office of Professional and Occupational Regulation (OPOR), **Electricians' Examining Board**

CHAPTER NUMBER AND TITLE:

**Ch. 100**: Definitions

**Ch. 110**: Conflict of Interest

**Ch. 115**: Advisory Rulings

**Ch. 130**: Examination and Licensing Requirements

**Ch. 135**: Electrical Permits

***Repeal:***

**Ch. 125**: Scope of Practice

**Ch. 140**: Board Fees

**Ch. 170**: Denial Appeals

ADOPTED RULE NUMBERS: **2022-108 to 115**

CONCISE SUMMARY: The adopted rule repeals Ch. 100, *Advisory Rulings*, and replaces it with a new Ch. 100, *Definitions*, to set forth definitions to further explain terms used in statute; amends Ch. 110, *Conflict of Interest*, by repealing all but one sentence of this section to supplement 10 MRS §8007, which adequately addresses the duties and responsibilities of board members; moves Advisory Rulings formerly located in Ch. 100 to a newly created Ch. 115, *Advisory Rulings*; repeals Ch. 125, *Scope of Practice*, as the substance of this rule is now adequately addressed in statute in 32 MRS §1202-A, enacted in 2017; makes certain amendments to Ch. 130, *Examination and Licensing Requirements*; repeals in part and amends Ch. 135, *Electrical Permits*, as applications for permits are currently addressed in 32 MRS §1102-C; repeals Ch. 140, *Board Fees*, because 02-041 CMR Ch. 10 and 11 now sets fees for professional and occupational licenses and registrations issued by the Office of Professional and Occupational Regulation; and repeals Ch. 170, *Denial Appeals*, as it contains language that is duplicative of that which is contained in statute, 10 MRS §8003(5-A)(G).

EFFECTIVE DATE: June 7, 2022

AGENCY CONTACT PERSON: Catherine M. Carroll, Board Administrator, Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Electricians' Examining Board, 35 State House Station, Augusta, ME 04333. Telephone: (207) 624-8605. TTY users call Maine Relay 711. Email: Catherine.M.Carroll@Maine.gov.

BOARD WEBSITE: <https://www.maine.gov/pfr/professionallicensing/professions/electricians>.

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

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

ADOPTED RULE NUMBER: **2022-116**

CONCISE SUMMARY: The Commissioner of Inland Fisheries and Wildlife has made several changes to Ch. 16 rules which will affect the antlerless deer permit system. These rules will work in conjunction with [Public Law 2022 Chapter 599](http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP0082&item=3&snum=130). The rule includes a change in reference from any-deer permits to antlerless deer permits, and these antlerless deer permits will allow hunters to take an additional antlerless deer in a designated Wildlife Management District (WMD) or portion of a WMD. The rule allows hunters to choose two preferred WMDs or portions of a WMD when applying for the lottery drawing, and the rule will allow the Commissioner to designate which WMDs will allow hunters to take an antlerless deer without a permit during the youth day and regular archery deer hunting seasons. Youth hunters on youth day will be able to take an antlerless deer without a permit statewide, and archery hunters during the regular archery season will be able to take an antlerless deer without a permit in WMDs 12, 13, 15-18, 20-26, and 29 for the 2022 hunting season. A complete copy of the rule may be requested from the agency contact person.

EFFECTIVE DATE: August 8, 2022

IFW CONTACT PERSON / RULEMAKING LIAISON: Becky Orff, Inland Fisheries and Wildlife, 353 Water Street - 41 State House Station, Augusta, ME 04333. Telephone: (207) 287-5202. Email: Becky.Orff@Maine.gov.

IFW WEBSITE: <https://www.maine.gov/ifw/>.

AGENCY: **02-380 - State Board of Nursing** (*affiliated with the* Department of Professional and Financial Regulation – PFR)

CHAPTER NUMBER AND TITLE: **Ch. 13** *(New)*, Criminal History Record Information

ADOPTED RULE NUMBER: **2022-117**

CONCISE SUMMARY The State Board of Nursing adopted a new rule to ensure proper implementation of fingerprint-based background checks for all applicants for initial licensure or licensure by endorsement, including applications for multistate licensure.

EFFECTIVE DATE: June 13, 2022

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

BOARD WEBSITE: <https://www.maine.gov/boardofnursing/>.

BOARD RULEMAKING LIAISON: Jessica.A.Richardson@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. III Section 29**, Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder.

ADOPTED RULE NUMBER: **2022-118**

CONCISE SUMMARY: This letter gives notice of adopted rule: 10-144 CMR Ch. 101, *MaineCare Benefits Manual*, Ch. III Section 29, “Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder”.

In response to the statewide staffing crisis and to comply with PL 2021 Ch. 398(the “Act”), the Department is adopting routine technical rule changes to increase rates for providers of services under Ch. III Section 29, “Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder”.

Section AAAA-1 of the Act enacts 22 MRS Ch. 1627, Essential Support Worker Reimbursement. The new law requires that, effective January 1, 2022, the labor components of MaineCare reimbursement rates for specified services delivered by “essential support workers” must equal at least 125% of the minimum wage established in Title 26 section 664 subsection 1. Essential support workers are individuals who by virtue of employment generally provide to individuals direct contact assistance with activities of daily living or instrumental activities of daily living or have direct access to provide care and services to clients, patients or residents regardless of the setting. 22 MRS §7401. In addition, Part AAAA states that the reimbursement rate must include an amount necessary to reimburse the provider for taxes and benefits related to the wages. 22 MRS §7402(2). Section AAAA-2 of the Act specifies that the 125% of minimum wage requirement for essential support workers applies to Ch. III Section 29 services.

Additionally, Part OOO of the Act authorizes the Department to implement cost of living increases (COLAs). In calculating the rate increases necessary to comply with Part AAAA of the Act, the Legislature and the Department took into consideration the impact of the planned COLAs on ensuring the labor components of the reimbursement rates for Section 29 and other services specified under Part AAAA are equal to at least 125 percent of minimum wage. In addition, per PL 2021 Ch. 635, *An Act To Make Supplemental Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and To Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2022 and June 30, 2023*, the Legislature has approved additional funds to support these increases and to meet the intent of Part AAAA of the Act ensuring labor components of all rates are at least equal to 125% of minimum wage.

The Department had previously implemented rates to include these labor component amounts (that are all equal to at least 125% of the minimum wage) in the emergency rule and also proposed the same rates. This final adopted rule includes rates with labor components that are all at least equal to 125% of the minimum wage.

Rulemaking required for these particular rule changes are routine technical per 22 MRS §7404 (for the essential support worker increases), and Part OOO of the Act (for the COLA-related increases) even though Ch. III Section 29 is generally a major substantive rule*. See, e.g.,* 22 MRS §3195.

On March 22, 2022, the Department implemented these increased rates via an emergency routine technical rule, which shall be effective for up to 90 days. The rates are effective retroactive to January 1, 2022, as directed by the Act. The retroactive application of this rule comports with 22 MRS §42(8), which provides state authority for the Department to adopt rules with a retroactive application for a period not to exceed eight (8) calendar quarters where there is no adverse financial impact on any MaineCare member or provider. Here, the rule changes are beneficial for the providers. This adopted routine technical rulemaking seeks to make permanent the increases to the reimbursement rates enacted via emergency rule.

The Department received temporary approval on March 7, 2022 and intends to seek permanent approval from the Centers for Medicare & Medicaid Services (CMS) for the adopted increased reimbursement rates with a retroactive effective date of January 1, 2022.

The Department did not make any additional changes to the adopted rule as a result of public comments.

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

EFFECTIVE DATE: June 15, 2022

OMS CONTACT PERSON: Heather Bingelis, Comprehensive Health Planner, DHHS–OMS-Division of Policy, 109 Capitol Street - 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207) 624-6951. Fax: (207) 287-6106. TTY users call Maine relay 711. Email: Heather.Bingelis@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: **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. III Section 21**, Allowances for Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder.

ADOPTED RULE NUMBER: **2022-119**

CONCISE SUMMARY: This letter gives notice of adopted rule: 10-144 CMR Ch. 101, *MaineCare Benefits Manual*, Ch. III Section 21, “Allowances for Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder”.

In response to the statewide staffing crisis and to comply with PL 2021 Ch. 398(the “Act”), the Department is adopting routine technical rule changes to increase rates for providers of services under Ch. III Section 21, “Allowances for Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder”.

Section AAAA-1 of the Act enacts 22 MRS Ch. 1627, Essential Support Worker Reimbursement. The new law requires that, effective January 1, 2022, the labor components of MaineCare reimbursement rates for specified services delivered by “essential support workers” must equal at least 125% of the minimum wage established in Title 26 section 664 subsection 1. Essential support workers are individuals who by virtue of employment generally provide to individuals direct contact assistance with activities of daily living or instrumental activities of daily living or have direct access to provide care and services to clients, patients or residents regardless of the setting. 22 MRS §7401. In addition, Part AAAA states that the reimbursement rate must include an amount necessary to reimburse the provider for taxes and benefits related to the wages. 22 MRS §7402(2). Section AAAA-2 of the Act specifies that the 125% of minimum wage requirement for essential support workers applies to Ch. III Section 21 services.

Additionally, Part OOO of the Act authorizes the Department to implement cost of living increases (COLAs). In calculating the rate increases necessary to comply with Part AAAA of the Act, the Legislature and the Department took into consideration the impact of the planned COLAs on ensuring the labor components of the reimbursement rates for Section 21 and other services specified under Part AAAA are equal to at least 125 percent of minimum wage.

Rulemaking required for these particular rule changes are routine technical per 22 MRS §7404 (for the essential support worker increases), and Part OOO of the Act (for the COLA-related increases) even though Ch. III Section 21 is generally a major substantive rule*. See, e.g.,* 22 MRS §3195.

On March 22, 2022, the Department implemented these increased rates via an emergency routine technical rule, which shall be effective for up to 90 days. The rates are effective retroactive to January 1, 2022, as directed by the Act. The retroactive application of this rule comports with 22 MRS §42(8), which provides state authority for the Department to adopt rules with a retroactive application for a period not to exceed eight (8) calendar quarters where there is no adverse financial impact on any MaineCare member or provider. Here, the rule changes are beneficial for the providers. This adopted routine technical rulemaking seeks to make permanent the increases to the reimbursement rates enacted via emergency rule.

As noted in detail in the Summary of Comments and Responses, certain commenters incorrectly asserted that (1) the final rule, Sec. 1300(3), implements a reduction in per diem rates, and (2) the changes in reimbursement do not fully include rates equal to at least 125% of the minimum wage.

With regard to (1), this rule continues the previous policy of lower reimbursement for hours in excess of 168; the actual rate for hours in excess of 168 has increased by $3.95. Hence there is no reduction and no violation of the Maintenance of Effort required under Section 9817 of the American Rescue Plan.

With regard to (2), per PL 2021 Ch. 635, *An Act To Make Supplemental Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and To Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2022 and June 30, 2023*, the Legislature has approved additional funds to support these increases and to meet the intent of Part AAAA of the Act ensuring labor components of all rates are at least equal to 125% of minimum wage.

The Department had previously implemented rates to include these labor component amounts (that are all equal to at least 125% of the minimum wage) in the emergency rule and also proposed the same rates. This final adopted rule includes rates with labor components that are all at least equal to 125% of the minimum wage.

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The Department did not make any additional changes to the adopted rule as a result of public comments.

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

EFFECTIVE DATE: June 15, 2022

OMS CONTACT PERSON: Heather Bingelis, Comprehensive Health Planner, DHHS–OMS-Division of Policy, 109 Capitol Street - 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207) 624-6951. Fax: (207) 287-6106. TTY users call Maine relay 711. Email: Heather.Bingelis@Maine.gov.

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