**State of Maine: Notice of Agency Rulemaking – June 23, 2021**

**PROPOSALS**

AGENCY: **10-144** - Department of Health and Human Services (DHHS), Office for Family Independence (OFI), **Division of Support Enforcement and Recovery (DSER)**

CHAPTER NUMBER AND TITLE: **Ch. 351**, Maine Child Support Enforcement Manual:

**Ch. 2**, Definitions, page 11

**Ch. 5**, Limitation of Debt; Bar Against Collection (19-A MRSA §2302); SSI. Rule 5(1), Limitation of Debt, page 23

PROPOSED RULE NUMBER: **2021-P108**

BRIEF SUMMARY: The proposal implements technical corrections made to 45 CFR §307.11. To meet mandatory federal requirements, the proposal adds Social Security Retirement (SSR) benefits when referring to concurrent Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) in the existing Rule 5(1) to prevent garnishment or income withholding of SSI payments and either SSDI or SSR benefits. The proposal also adds definitions for SSR, SSI and SSDI to ch. 2.

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

PUBLIC HEARING: None.

COMMENT DEADLINE: July 23, 2021

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Gregory J. Garneau, Staff Attorney, Department of Health and Human Services, Office for Family Independence, Division of Support Enforcement and Recovery, 109 Capitol Street – 11 State House Station, Augusta, ME 04330-6841. Telephone: (207) 624-6983. Fax: (207) 287-6883. TT Users Call Maine Relay – 711. Email: Gregory.J.Garneau@Maine.gov .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None anticipated.

STATUTORY AUTHORITY FOR THIS RULE: 22 MRS §42(1); 19-A MRS §2302; and federal regulation 45 CFR §307.11.

OFI RULES WEBSITE: <http://www.maine.gov/dhhs/ofi/rules/index.shtml> .

OFI WEBSITE: <https://www.maine.gov/dhhs/ofi> .

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

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

**ADOPTIONS**

AGENCY: **18-553** - Department of Administrative and Financial Services (DAFS), **Bureau of Alcoholic Beverages and Lottery Operations (BABLO) / Maine State Liquor and Lottery Commission**

CHAPTER NUMBER AND TITLE: **Ch. 20**, Powerball Rules

ADOPTED RULE NUMBER: **2021-125**

CONCISE SUMMARY: This amendment updates the existing rules governing the jackpot draw game Powerball. This amendment makes necessary changes to update the number of drawings, technical changes to clarify language, and fix typographical errors. The changes do not impact the way the game is played by consumers or sold by lottery retailers.

EFFECTIVE DATE: See Section 20.0 of adopted rules: "These rules shall become effective for drawings beginning August 23, 2021.”

AGENCY CONTACT PERSON: Michael Boardman, Deputy Director Lottery, Bureau of Alcoholic Beverages and Lottery Operations, 8 State House Station, Augusta, ME 04333-0008. Telephone: (207) 287-4614. Fax: (207) 287-6769. Email: Michael.Boardman@Maine.gov .

BUREAU WEBSITE: <https://www.maine.gov/dafs/bablo/> .

BABLO RULEMAKING LIAISON: Tim.Poulin@Maine.gov .

AGENCY: **18-553** - Department of Administrative and Financial Services (DAFS), **Bureau of Alcoholic Beverages and Lottery Operations (BABLO) / Maine State Liquor and Lottery Commission**

CHAPTER NUMBER AND TITLE: **Ch. 50**, Lucky for Life Rules

ADOPTED RULE NUMBER: **2021-126**

CONCISE SUMMARY: This amendment updates the existing rules governing the draw game Lucky for Life. This amendment makes necessary changes to update the number of drawings, technical changes to clarify language, and fix typographical errors. The changes do not impact the way the game is played by consumers or sold by lottery retailers.

EFFECTIVE DATE: See Section 9.0 of adopted rule: "These rules shall become effective for the drawing of July 18, 2021."

AGENCY CONTACT PERSON: Michael Boardman, Deputy Director Lottery, Bureau of Alcoholic Beverages and Lottery Operations, 8 State House Station, Augusta, ME 04333-0008. Telephone: (207) 287-4614. Fax: (207) 287-6769. Email: Michael.Boardman@Maine.gov .

BUREAU WEBSITE: <https://www.maine.gov/dafs/bablo/> .

BABLO RULEMAKING LIAISON: Tim.Poulin@Maine.gov .

AGENCY: **18-125** - Department of Administrative & Financial Services (DAFS), **Bureau of Revenue Services (BRS)**

CHAPTER NUMBER AND TITLE: **Ch. 201**, Rules of Procedure Used to Develop State Valuation

ADOPTED RULE NUMBER: **2021-127**

CONCISE SUMMARY: The State Tax Assessor must annually perform state valuation for each municipality and for each county containing unorganized territory, to determine market value of all taxable property in the state. Municipal market values are used to calculate the distribution of municipal revenue sharing and State aid for education. Rule 201 establishes the guidelines for the state valuation process. The rule has been amended to clarify current policy, make adjustments for consistency, and make various technical changes.

EFFECTIVE DATE: Jene 17, 2021

BRS 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 .

WEBSITE: <https://www.maine.gov/revenue/> .

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

CHAPTER NUMBER AND TITLE: **Ch. 917**, Suitability in Annuity Transactions

ADOPTED RULE NUMBER: **2021-128**

CONCISE SUMMARY: The purpose of the rule, originally adopted in 2007, is to require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed. The proposed amendments adopt a best interest standard of conduct for producers and insurers and comply with Section 989J of the *Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010* by adopting standards that meet or exceed the minimum requirements of the NAIC model rule.

EFFECTIVE DATE: January 1, 2022

AGENCY 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 (OMS) – Division of Policy**

CHAPTER NUMBER AND TITLE: **Ch. 101**, MaineCare Benefits Manual (MBM): **Ch. II Section 97**, Private Non-Medical Institution Services

ADOPTED RULE NUMBER: **2021-129**

CONCISE SUMMARY: The Department of Health and Human Services (the “Department”) adopts these rule changes to 10-144 CMR ch. 101, *MaineCare Benefits Manual*, ch. II section 97, to enhance safeguards and protections of client rights under the *Bates, et al. v. Commissioner, DHHS, et al*, consent decree by creating new provisions addressing terminations from and referrals to Appendix E Private Non-Medical Institutions.

First, under section 97.07-10, Termination, prior to terminating a member’s services, providers must receive written approval from the Office of Behavioral Health (OBH); must issue a 30-day advanced written termination notice to the member, with an exception for cases involving imminent harm; and must assist the member in obtaining clinically necessary services from another provider prior to termination. Adoption of this rule will protect members from inappropriate discharge from these services.

Second, under section 97.07-11, Referrals, providers must acknowledge receipt of Department referrals within three business days for members eligible for Appendix E services and must accept or request permission to decline referrals in accordance with a Department-defined process within five business days of receipt of referral. Providers can only decline a referral with written approval from OBH, otherwise they must admit members within thirty days of receipt of the referral. This adopted language will assist members in receiving timely access to Appendix E services.

This adopted rule also provides clarity and consistency in record-keeping processes to align with other MaineCare policies. Specifically, the adopted rule changes the frequency requirement for entering and signing progress notes from a monthly to a daily expectation within Appendix E facilities. This adoption will improve accuracy and quality within member records.

In addition, as a result of further review by the Department and the Office of the Attorney General following the comment period, this adopted rule updates offensive terminology throughout the rule. This includes replacing references to “substance abuse” with “substance use” per Public Law 2017 ch. 407 part B sec. B-1.

Finally, this adopted rule include non-substantive technical, grammatical, and other minor changes, including updating the outdated references to current Department office names. The Summary of Public Comments and Department Responses document identifies changes that were made to the final rule following the comment period.

This rulemaking will take effect on July 1, 2021 to coincide with the anticipated adoption of changes to the *MaineCare Benefits Manual*, section 17 and section 92, which similarly enhance and safeguard client rights under the Bates consent decree.

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

EFFECTIVE DATE: July 1, 2021

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

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

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 of MaineCare Services (OMS) – Division of Policy**

CHAPTER NUMBER AND TITLE: **Ch. 101**, MaineCare Benefits Manual (MBM): **Ch. II Section 17**, Community Support Services

ADOPTED RULE NUMBER: **2021-130**

CONCISE SUMMARY: This letter gives notice of an adopted rule: 10-144 CMR ch. 101, *MaineCare Benefits Manual*, ch. II section 17, “Community Support Services”.

The Department of Health and Human Services (“the Department”) adopted the following changes to 10-144 CMR ch. 101, *MaineCare Benefits Manual*, ch. II section 17, “Community Support Services”.

This adopted rule enhances safeguards and protections of client rights under the *Bates, et al. v. Commissioner, DHHS, et al.*, consent decree. The rule addresses referrals to and terminations from Community Integration Services and Assertive Community Treatment (ACT) Services for members with Serious and Persistent Mental Illness. Prior to terminating a member's services, providers must receive written approval from the Office of Behavioral Health (OBH); must issue a 30-day advanced written termination notice to the member, with an exception for cases involving imminent harm; and must assist the member in obtaining clinically necessary services from another provider prior to termination. In addition, providers must accept Department referrals for services within seven (7) calendar days and may only decline referrals with written approval from OBH.

The adopted rule also removed the “temporary transition period” from the timeliness and duration of care provisions that were added in a prior rulemaking pursuant to Resolves 2015 ch. 82.

This rule additionally removed the definition and requirement to complete the Adult Needs and Strengths Assessment (ANSA). The Department has determined the ANSA is no longer a viable option for assessment and treatment, and this assessment is not being used in practice.

The Department also updated formatting, citations, and references where necessary, including changing “Office of Substance Abuse and Mental Health Services” to “Office of Behavioral Health” and removed potentially stigmatizing language based on recommendations from the Maine’s opioid task force and legislation passed in 2018 to minimize stigma (PL 2017 ch. 407).

Considering public comment, in addition to the changes to the final rule described above, the Department made the following changes to the final rule:

**\*** The Department has amended the term “Department referrals” to “referrals” under 17.08-5 D in the adopted rule.

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

EFFECTIVE DATE: July 1, 2021

OMS CONTACT PERSON: Melanie Miller, Comprehensive Health Planner II, Office of MaineCare Services. 109 Capitol Street - 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207) 624-4087. Fax: (207) 287-6106. TTY: 711 (Deaf or Hard of Hearing). Email: Melanie.Miller@Maine.gov .

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

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 of MaineCare Services (OMS) – Division of Policy**

CHAPTER NUMBER AND TITLE: **Ch. 101**, MaineCare Benefits Manual (MBM): **Ch. II Section 92**, Behavioral Health Home Services

ADOPTED RULE NUMBER: **2021-131**

CONCISE SUMMARY: This letter gives notice of an adopted rule: 10-144 CMR ch. 101, *MaineCare Benefits Manual*, ch. II section 92, “Behavioral Health Home Services”.

The Department of Health and Human Services (“the Department”) adopted the following changes to 10-144 CMR ch. 101, *MaineCare Benefits Manual*, ch. II section 92, “Behavioral Health Home Services”.

This adopted rule enhances safeguards and protections of client rights under the *Bates, et al. v. Commissioner, DHHS, et al*, consent decree. The rule addresses referrals to and terminations from Behavioral Health Home Services for members with Serious and Persistent Mental Illness. Prior to terminating a member's services, providers must receive written approval from the Office of Behavioral Health (OBH); must issue a 30-day advanced written termination notice to the member, with an exception for cases involving imminent harm; and must assist the member in obtaining clinically necessary services from another provider prior to termination. In addition, providers must accept Department referrals within seven (7) calendar days and may only decline referrals with written approval from OBH.

Additionally, in furtherance of consent decree principles, this rule added language for timeliness standards for Adults with Serious and Persistent Mental Illness, consistent with those in Section 17 Community Support Services for this population. These standards require that providers must conduct an initial face-to-face intake or initial assessment visit within seven (7) calendar days of the date of referral. This rule also gives members the option to request to “hold for service” if providers are unable to meet the seven (7) calendar day face-to-face requirement of new referrals but the member would still like to wait until that provider can accept their referral. Members may elect to hold for service only after an agency has adequately informed the member of their other area service options.

The Department also updated formatting, citations, and references where necessary, including changing “Office of Substance Abuse and Mental Health Services” to “Office of Behavioral Health” and removing potentially stigmatizing language based on recommendations from Maine’s opioid task force and legislation passed in 2018 to minimize stigma (PL 2017 ch. 407).

Considering public comment, in addition to the changes to the final rule described above, the Department made the following change to the final rule:

**\*** The Department has amended the term “Department referrals” to “referrals” under 92.02-3 D in the adopted rule.

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

EFFECTIVE DATE: July 1, 2021

OMS CONTACT PERSON: Melanie Miller, Comprehensive Health Planner II, Office of MaineCare Services. 109 Capitol Street - 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207) 624-4087. Fax: (207) 287-6106. TTY: 711 (Deaf or Hard of Hearing). Email: Melanie.Miller@Maine.gov .

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

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

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

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

CHAPTER NUMBER AND TITLE: **Ch. 36**, Consumer Fireworks Sales License

ADOPTED RULE NUMBER: **2021-132** *(Emergency)*

CONCISE SUMMARY: We currently have ch. 7 of NFPA (National Fire Protection Association) 1124 adopted, that covers the retail sales portion of consumer fireworks. It has come to our attention that several consumer fireworks retailers are currently storing consumer fireworks in storage facilities remote from their retail location. Without having the entire 1124 standard at our disposal there are not standards for consumer firework storage. LD 180 was presented to the 130th legislature to rectify this issue but the bill has been carried over, to another session. Without this Standard we have no standard to require compliance with. This could pose a public safety issue when there are no safety standards adopted.

EFFECTIVE DATE: June 21, 2021

FMO CONTACT PERSON / RULEMAKING LIAISON: Richard E. Taylor, Senior Research and Planning Analyst, Office of the Maine State Fire Marshal, 52 State House Station, Augusta, Maine 04333-0052. Telephone: (207) 626-3873 or (207) 592-6105. Email: Richard.E.Taylor@Maine.gov .

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