**NOTICE OF STATE RULEMAKING**

**PUBLIC INPUT FOR RULES**  A list of state agency rule proposals is published here each Wednesday. You can get a copy of a proposed rule by contacting the person listed in the notice. You can comment on a proposed rule by submitting a written comment to the agency or by attending the public hearing, if one is scheduled. If no hearing is scheduled, you can request one.  The agency must hold a hearing if it receives 5 or more requests.  If you have a disability and need assistance to participate in a hearing you should tell the agency at least 7 days before the hearing. **ONLINE INFORMATION** Weekly notices, full text of adopted rules, and a list of agency rulemaking contacts are available at this website: [https://www.maine.gov/sos/cec/rules/index.html](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.maine.gov%2Fsos%2Fcec%2Frules%2Findex.html&data=05%7C02%7CJ.Chris.Parr%40maine.gov%7C645b27059f0346864d7008dc94834bf0%7C413fa8ab207d4b629bcdea1a8f2f864e%7C0%7C0%7C638548538834447354%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=K93i9Iukz%2F4M1hnG1XnmVSNiEpRD2zB99vb6RheIZ8A%3D&reserved=0)

**PROPOSALS**

There are no rulemaking proposals this week.

**ADOPTIONS**

**AGENCY: 01-015 Maine Milk Commission, Department of Agriculture, Conservation, and Forestry**

**CHAPTER NUMBER AND TITLE: Chapter 3-Schedule of Minimum Prices Order#07-24**

**ADOPTED RULE NUMBER: 2024-148**

CONCISE SUMMARY

Minimum July 2024 Class I price is $24.36cwt. plus $1.63/cwt. for Producer Margins, an over-order premium of $1.04/cwt as being prevailing in Southern New England and $0.47/cwt. handling fee for a total of $27.70/cwt. that includes a $0.20/cwt Federal promotion fee.

EFFECTIVE DATE: Sunday, June 30, 2024

AGENCY CONTACT PERSON: Julie-Marie R. Bickford

AGENCY NAME: Maine Milk Commission, DACF

ADDRESS: 28 SHS, Augusta, ME 04333

TELEPHONE: 207-287-7521

**AGENCY: 03-201 Maine Department of Corrections**

**CHAPTER NUMBER AND TITLE: Ch. 10, Sec. 2.15: Agreements with Community Agencies - Fiscal Management**

**ADOPTED RULE NUMBER: 2024-149**

CONCISE SUMMARY:

This rule was repealed because the statutory authority for the rule (Title 34-A, Section 1205) has been repealed and the rule is therefore moot.

EFFECTIVE DATE: Sunday, June 30, 2024

AGENCY CONTACT PERSON: Mary Lucia

AGENCY NAME: Maine Department of Corrections

ADDRESS: 111 State House Station, Augusta, Maine 04333

TELEPHONE: (207) 530-0983

**AGENCY: 05-071 Department of Education**

**CHAPTER NUMBER AND TITLE: Chapter 101, Maine Unified Special Education Rule Birth to Age Twenty**

**ADOPTED RULE NUMBER: 2024-150**

CONCISE SUMMARY:

This amendment makes two sets of changes.

First, Public Law 2023, Chapter 450 amends 20-A MRSA §7001, 7002, 7258, and 8305 to amend the upper age limit to under 22 years of age, changes hearing impairment to deafness, including hearing loss, changes serious emotional disturbance to emotional disability, and changes deafness and blindness to deaf-blindness. Public Law 2023, Chapter 450 also amended outdated language by changing the term pupil evaluation to individualized education program. These changes are now reflected in the revised MUSER. The rule has now been amended to make these changes.

Second, last year, the Department of Education identified a barrier to its obligation pursuant to the Individuals with Disabilities Education Act (IDEA) and the Maine Unified Special Education Regulation (MUSER) to ensure the provision of a free, appropriate public education (FAPE) to all eligible students including the availability of a continuum of educational placements. The funding structure outlined in Section XVIII.3.C(2) of MUSER for private schools that serve exclusively students with disabilities (referred to throughout as “special purpose private schools”) was causing those schools to limit or cease operations, leaving some of Maine’s most significantly impacted children without the educational placements they are entitled to by law. Further breakdown of this critical component of the continuum of educational placements would leave the State unable to maintain compliance with IDEA and MUSER. This barrier was resolved in 2023 with the emergency rule filing of July 7, 2023. The Department is now making this change permanent.

These are the only changes included in this revision.

EFFECTIVE DATE: Friday, June 26, 2024

AGENCY CONTACT PERSON: Laura Cyr

AGENCY NAME: Maine Department of Education

ADDRESS: 23 State House Station, Augusta, ME 04330

TELEPHONE: 207-446-8791

**AGENCY: 99-346 Maine State Housing Authority**

**CHAPTER NUMBER AND TITLE: Chapter 24, Home Energy Assistance Program**

**ADOPTED RULE NUMBER: 2024-151**

CONCISE SUMMARY:

This replacement rule repeals and replaces in its entirety the current Home Energy Assistance Program Rule. The rule establishes standards for administering fuel assistance, emergency fuel assistance, TANF Fuel Supplemental Benefits, weatherization, heat pumps, and heating system repair and replacement funds to income eligible households in the State of Maine. This replacement rule: removes unnecessary definitions and language from the Rule and places it within the HEAP Handbook and other relevant guidance; clarifies existing definitions; modifies the requirements for Categorical Income Eligibility; reorganizes the sections for a more logical flow; adds additional alternatives to the allowable documentation Applicants must provide to verify citizenship/legal status, identity and social security numbers; establishes a new points system for determining Benefits that will assist with the move to mostly online Applications; and clarifies the limited circumstances in which MaineHousing will allow a waiver of the Rule.

EFFECTIVE DATE: Wednesday, July 3, 2024

AGENCY CONTACT PERSON: Ashley Carson, Chief Counsel

AGENCY NAME: Maine State Housing Authority

ADDRESS: 26 Edison Drive, Augusta, Maine 04330-6046

TELEPHONE: (207) 626-4600 (telephone), or Maine Relay 711

**AGENCY: 99-346 Maine State Housing Authority**

**CHAPTER NUMBER AND TITLE: Chapter 16, Low-Income Housing Tax Credit Rule**

**ADOPTED RULE NUMBER: 2024-152**

CONCISE SUMMARY:

The rule is the qualified allocation plan for allocating and administering the federal low-income housing tax credit in the State of Maine, including without limitation the State’s housing credit ceiling for calendar years 2025 and 2026, as required pursuant to Section 42 of the Internal Revenue Code. The rule repeals and replaces the current Chapter 16, *Low-Income Housing Tax Credit Rule,* regarding the allocating and administering of the credit for calendar years 2023 and 2024.

EFFECTIVE DATE: Wednesday, July 3, 2024

AGENCY CONTACT PERSON: Ashley Carson, Chief Counsel

AGENCY NAME: Maine State Housing Authority

ADDRESS: 26 Edison Drive, Augusta, Maine 04330-6046

TELEPHONE: (207) 626-4600 (telephone), or Maine Relay 711

**AGENCY: 10-144 Department of Health and Human Services, MaineCare Services**

**CHAPTER NUMBER AND TITLE: 10-144 C.M.R. Ch. 101 MaineCare Benefits Manual**

**Chapter II, Section 23,** **Developmental and Behavioral Health Services and**

**Chapter III, Section 23, Allowances for Developmental and Behavioral Evaluation Services**

**ADOPTED RULE NUMBER: 2024-153, -154**

CONCISE SUMMARY:

The Department of Health and Human Services finally adopts these rule changes in 10-144 C.M.R. Ch. 101, MaineCare Benefits Manual, Chapter II, Section 23, Developmental and Behavioral Health Services, and Chapter III, Section 23, Developmental and Behavioral Evaluation Clinic Services.

**MaineCare Benefits Manual, Chapter III, Section 23, Developmental and Behavioral Evaluation Clinic Services**

The Department repeals this regulation.

**MaineCare Benefits Manual, Chapter II, Section 23, Developmental and Behavioral Evaluation Clinic Services**

Sec. 23.02-2 (Eligibility for Care). This rule lists out two separate categories of children, defining which Sec. 23 services the children are eligible for:

(1) Members from birth through age 20 are eligible for the Developmental and Behavioral Evaluations and also Child Abuse Evaluations; and

(2) Children in the care and custody of the Department are eligible for Developmental and Behavioral Evaluations, Child Abuse Evaluations, and a Foster Care Comprehensive Health Assessment (CHA).

Sec. 23.04-2 (Child Abuse Evaluation). The rule eliminates the limit of eleven units per evaluation.

Sec. 23.04-3 (Foster Care Comprehensive Health Assessment). The rule adds CHAs as a new covered service in accordance with 22 MRSA §4063-A(3). The new service will provide timely, comprehensive evaluations for children in foster care that align with the Child Welfare League of America (CWLA) and the American Academy of Pediatrics Standards for Health Care Services for Children in Out of Home Care.

This service includes an initial comprehensive assessment that includes a medical exam, a psychosocial evaluation, and a final report that is submitted to the Department. The service also includes a six (6) to eight (8) month follow-up comprised of another medical evaluation and a psychosocial evaluation. Providers who meet the criteria to provide the CHA do not have to hold a Developmental and Behavioral Evaluation Clinic contract with the Department.

Sec. 23.07 (Reimbursement). The now-repealed Ch. III rate table has been moved to Ch. II. Changes to the rate table include adding two new covered services for the CHA assessment/evaluation. In a change from the proposed rule, the rate table in the adopted rule includes the July 3, 2024, effective date for the rates. The rule also adds a cost-of-living-adjustment (COLA) provision in accordance with 22 MRSA §3137-J (2)(D)(3). The Department will apply a COLA to the rates annually every July 1, unless the rate has been adjusted during the previous twelve months. The Department will not do rulemaking to reflect the new rates every year, but, rather, new rates will be listed on the MaineCare Provider Fee Schedule, posted on the Department’s website, in accordance with 22 M.R.S. Sec. 3173-J(7).

The 7/3/24 rate for the Developmental and Behavioral Evaluation services was increased from the proposed rate, reflecting the 7/1/24 COLA adjustment. The Child Abuse Evaluation services rate does not reflect a 7/1/24 COLA adjustment as this rate was adjusted in the past twelve months.

23.08(B) (Billing Instructions). This rule adds three provisions – the CHA Initial Assessment Bundled Payment; the CHA Follow-Up Evaluation Bundled Payment and the CHA Psychosocial Evaluation Component Reimbursement. Each provision details what services are reimbursed.

Note that for the CHA Psychosocial Evaluation Component Reimbursement, CHA providers deliver and bill for the services that make up the psychosocial component of the CHA in accordance with the applicable section of the MaineCare Benefits Manual.

This rulemaking complies with 22 M.R.S. §3173-J. For the CHA, the Department issued a Rate Determination Initiation Notice on October 14, 2022. The Department held a public rate forum on November 23, 2022, to collect stakeholder input and comments to inform the Rate Determination process and accepted written comments through December 2, 2022.

**Other Changes Made to the Adopted rule:**

As described in the List of Changes to the Final Rule at the end of the Summary of Comments and Responses document, the Department made the following changes in the adopted rule:

* 1. As a result of comment 1, the Department clarified in Section 23.04-3(B)(1)(b) that the appointment must occur within fourteen (14) “calendar” days of the referral “unless there are unforeseen and uncontrollable circumstances, such as inclement weather or illness, that prevent the appointment from occurring. If the appointment occurs after fourteen calendar days from the referral, the provider must document the justification for the delay in the member’s record.”
	2. As a result of comment 2,the Department has added to Section 23.04-3(B)(3)(a)(i) that “The provider may conduct the psychosocial evaluation virtually if it is for the benefit of the child, and providers must document the justification in the member’s record. Providers cannot conduct a virtual psychosocial evaluation for their own benefit or convenience.”
	3. As a result of comment 2, the Department added to Section 23.04-3(B)(5) that “the follow-up medical examination may only be conducted virtually if the findings from the initial examination indicate that a virtual follow-up is appropriate.”
	4. As a result of comment 2, the Department has removed “face-to-face” from Section 23.04-3(B)(5)(a).
	5. As a result of comments 6 and 8, the Department corrected the final rate for the CHA to $1,462.48 in Section 23.07.
	6. As a result of comment 9, the Department increased the rate for child abuse evaluations in Section 23.07; removed the larger, inaccurate list of providers who may conduct child abuse evaluations and replaced it with the team of three providers that conduct the evaluations together in Section 23.04-2: child abuse pediatricians, nurse practitioners, and licensed clinical social workers; expanded the list of components included in the evaluation in Section 23.04-2; and removed the unnecessary 11-hour service limit in Section 23.04-2.
	7. As a result of comment 10, the Department clarified the CHA provider must submit the final report no later than 21 “calendar” days after CHA is complete.
1. As a result of the OAG legal review, the Department deleted the definition of trauma-informed care in Section 23.01-3 because the Sec. 23 services are evaluation services, and not medical services.
2. As a result of the OAG legal review, the Department removed Section 23.04-3(B)(3)(b)(iv) (which stated that the psychosocial evaluation may include “other services as medically necessary”) because the psychosocial evaluation is an evaluation service. Other MaineCare services that are identified as medically necessary for a child are delivered and billed in accordance with the applicable section of the MaineCare Benefits Manual.
3. As a result of the OAG legal review, the Department removed “Providers that determine that additional services are required to complete the services described in this Section must deliver or coordinate the additional services with appropriately licensed providers acting within the scope of their licensure or qualifications, as appropriate” in Section 23.06-2 because it is duplicative of another provision and is not particularly clear in this provision. The Department revised the provision to its original intent to clarify that “Developmental and Behavioral Evaluation, Child Abuse Evaluation, and CHAs are reimbursable services when provided by appropriately licensed providers acting within the scope of their licensure.”
4. As a result of the OAG legal review, the Department deleted Section 23.06-3 CHA Providers because the provision was duplicative of the CHA requirements set forth in Section 23.04-3(B).
5. As a result of the OAG legal review, the Department added the effective date of the rates to the rate table in Section 23.07(A).
6. With the approval of the OAG legal review, the Department updated the cost-of-living-adjustment language in Section 23.07(B).
7. As a result of the OAG legal review, the Department edited the headers and language in Section 23.08(B) to clarify precisely what the three different types of CHA payments are.
8. As a result of the OAG legal review, the Department removed “Other services delivered as part of the CHA, but not included in the bundled payments, must be delivered and billed in accordance with the applicable Section of the MBM” in Section 23.08(B)(3) because the first sentence states clearly that services which make up the psychosocial component of the CHA are delivered and billed in accordance with the applicable section of the MaineCare Benefits Manual.

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

EFFECTIVE DATE: Wednesday, July 3, 2024

STATUTORY AUTHORITY: 22 M.R.S. §§42, 4063-A, 3137-J, 4063-A(3)

AGENCY CONTACT PERSON: Laurel Noddin

AGENCY NAME: Division of Policy

ADDRESS: 109 Capitol Street, 11 State House Station, Augusta, Maine 04333-0011

EMAIL: laurel.noddin@maine.gov

TELEPHONE: (207)-624 FAX: (207)-624-4019; TTY users call Maine relay 711

**AGENCY: Department of Health and Human Services, Office of MaineCare Services**

**CHAPTER NUMBER AND TITLE: 10-144 C.M.R., Chapter 101, MaineCare Benefits Manual, Chapter II, Section 25, Dental Services and Reimbursement Methodology**

**ADOPTED RULE NUMBER: 2024-155**

CONCISE SUMMARY:

The Department adopts this emergency rule, which amends 10-144 CMR ch 101, MaineCare Benefits Manual (the “MBM”) Chapter II, Section 25 Dental Services and Reimbursement Methodology.

This emergency rulemaking makes the following changes:

* Section 25.06(A)(1)(Commercial Median Benchmark): This benchmark will be “assessed” rather than “updated” every two years;
* Section 25.06(A)(2)(Medicaid State Average Benchmark): This benchmark will be “assessed” rather than “updated” every two years;
* Section 25.06(B)(3)(Temporary Exceptions): These exceptions are being extended from June 30, 2024 to June 30, 2026; and
* Section 25.03 on page 18 has been corrected to: Section 25.06.

Background:

The current rule requires the Department to update the Commercial Median Benchmark and the Medicaid State Average Benchmark every two years, and the updated Benchmarks were to take effect on July 1, 2024. In accordance with 22 M.R.S. §3173-J(2), the Department provided notice of the rate determination for dental services on October 13, 2023, by posting it on the MaineCare Rate System Reform website. The Department conducted a review of data from the Maine Health Data Organization All Payer claims Database as well as utilizing data from other State’s Medicaid dental service rates. The result of this rate determination process for dental services rates was that the rebasing or updating would result in an estimated $2.2 million dollar reduction in total reimbursement to providers of MaineCare dental services. In accordance with Title 22 M.R.S. §3173-J, the Department held an online public meeting to present the results of the benchmark rebasing efforts and draft rates on April 12, 2024, and provided opportunities for stakeholder input and comment. Comments are still under review and the Department has not yet issued a written response to the comments.

Findings of Emergency:

The Department finds that immediate adoption of this rule is necessary to avoid an immediate threat to public health, safety, or general welfare. The Department’s findings with respect to the existence of an emergency are as follows:

* Dental services are critical to the physical well-being of adults and children;
* A decrease in the MaineCare dental reimbursement could lead to a loss in dental providers, which could lead to a loss in access to dental services for MaineCare members;
* Maintaining the current MaineCare reimbursement rates mitigates this emergency; and
* Extending the temporary exceptions in Section 25.06(B)(3) ensures that reimbursement rates for those excepted services will not be reduced.

Pursuant to 5 M.R.S §8054, this emergency rule may be effective for up to ninety (90) days. The Department shall proceed with routine technical rulemaking to permanently adopt these rule changes.

[**http://www.maine.gov/dhhs/oms/rules/index.shtml**](http://www.maine.gov/dhhs/oms/rules/index.shtml) for rules and related rulemaking documents.

EFFECTIVE DATE: Friday, June 28, 2024

AGENCY CONTACT PERSON: Catherine Coolidge, Comprehensive Health Planner

AGENCY NAME: MaineCare Services

ADDRESS: 109 Capitol Street, 11 State House Station, Augusta, Maine 04333-0011

TELEPHONE: (207)-624-4082 FAX: (207) 287-6106; TTY users call Maine relay 711

**AGENCY: 10-148 Department of Health and Human Services**

**CHAPTER NUMBER AND TITLE: 10-148 C.M.R. ch. 6, Child Care Affordability Program Rules**

**(currently Child Care Subsidy Program Rules)**

**ADOPTED RULE NUMBER: 2024-156**

CONCISE SUMMARY:

This emergency repeal and replace rulemaking is necessary to comply with Maine statute. P.L. 2023, ch. 412, pt. VVV and P.L. 2024, ch. 643, pt. SS and TT, which made multiple amendments to the statutory authority for what was formerly known as the Child Care Subsidy Program, including:

* Changing the name of the program to “Child Care Affordability Program,”
* Changing the timeline for eligibility determinations for 30 to 15 days,
* Requiring the Department to inform child care providers within 2 business days of when a recipient’s eligibility changes,
* Requiring the Department to reimburse providers within 15 days of receipt of a complete and accurate invoice,
* Requiring the Department to provide retroactive reimbursement to a child care program that provided tuition assistance to an applicant during the application period, and
* Increasing eligibility for child care subsidies from 85% of State Median Income (SMI) to 125% SMI.

The Department has also revised language to clarify parent eligibility determinations and the requirements for a child care provider to qualify to receive CCAP payments.

**EFFECTIVE DATE**: Monday, July 1, 2024

**AGENCY CONTACT PERSON:** Tara Williams

**AGENCY NAME:** Department of Health and Human Services

**ADDRESS:** Office of Child and Family Services, 2 Anthony Avenue, Augusta, ME 04330