**State of Maine: Notice of Agency Rulemaking – July 6, 2022**

**PROPOSALS**

AGENCY: **94-457 - Finance Authority of Maine (FAME)**

CHAPTER NUMBER AND TITLE: **Ch. 601**, The Maine State Grant Program (MSGP), *Amendment 12*

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2022-P121**

BRIEF SUMMARY: This proposed rule conforms the governing program rule with statutory changes made by the 129th Legislature with respect to adult learners. The proposed rule defines “adult learner” and extends from ten semesters to twelve semesters the length of time during which an adult learner may avail themselves of the grant. It also makes certain technical changes with respect to punctuation and spacing in the current rule.

PUBLIC HEARING: None

COMMENT DEADLINE: August 6, 2022

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FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None.

STATUTORY AUTHORITY FOR THIS RULE: 20-A MRS §11616(2); PL 2019 c. 343, 654

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

FAMEMAINE WEBSITE: [www.famemaine.com](http://www.famemaine.com).

FAMEMAINE RULEMAKING LIAISON: [croney@famemaine.com](mailto:croney@famemaine.com).

**ADOPTIONS**

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 25**, Dental Services *(repeal)*

**Ch. III Section 25**, Allowances for Dental Services *(repeal)*

**Ch. II Section 25**, Dental Services and Reimbursement Methodology *(this rule replaces the two repealed rules)*

ADOPTED RULE NUMBER: **2022-125**

CONCISE SUMMARY: The Department adopts this emergency rule, which repeals Ch. II and Ch. III Section 25, and replaces them with a new Ch. II rule, “Dental Services and Reimbursement Methodology.”

**Emergency Rulemaking Authority for Dental Services**: Pursuant to PL 2021 Ch. 398 (eff. July 1, 2021), Sec. A-17, *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, 2021, June 30, 2022 and June 30, 2023,* (the “Budget”) Part CCC Sec. CCC-1 of the Budget enacted changes to the MaineCare dental statute – 22 MRS §3174-F(1)(Coverage for Adult Dental Services), by adding subsection G, which provides: “Other comprehensive preventive, diagnostic and restorative dental services to maintain good oral health and overall health in accordance with rules adopted by the department.” Section CCC-2 of the Budget required the Department to adopt emergency rules by July 1, 2022, to implement the new provisions of 22 MRS §3174-F(1), which expanded covered services for members 21 and older (adults), after consideration of recommendations by the dental subcommittee of the MaineCare Advisory Committee (“MAC”).

Between August 2021 and May 2022, the Department met with the dental subcommittee of the MAC ten times and with the full MAC once. The Department also held two stakeholder forums to receive input on the benefit design and reimbursement methodology. Stakeholders included MaineCare dental providers and various oral health advocates, including representatives from Maine Equal Justice, Maine Primary Care Association, and Children’s Oral Health Network of Maine. This rule incorporates recommendations from this stakeholder engagement, invests $45 million to increase rates and expand the adult dental benefit, as well as fully integrate the children and adult benefits and rates into a single rule. The emergency rule adds a comprehensive array of dental services for adult members, per 22 MRS §3174-F(1).

**Emergency Rulemaking Authority for Dental Services Reimbursement Methodology:** Part GGGG Section GGGG-1 of the Budget authorized the Department to amend the rule on an emergency basis “to implement recommendations of the MaineCare comprehensive rate system evaluation report for dental rates.” The Department’s Comprehensive Rate System Evaluation, conducted by the firm Myers and Stauffer, showed that MaineCare rates for preventive, diagnostic, and endodontic services are lower than rates for state Medicaid agencies in Connecticut, New Hampshire, Vermont, North Carolina, and Montana. Through this emergency rulemaking, the Department repeals the current Ch. III Section 25, and implements a new reimbursement methodology in the emergency Ch. II Section 25. The new Section 25 dental reimbursement rates will be posted on a website, and those rates will be set based on either the “Commercial Median Benchmark” or the “All-States Medicaid Average Benchmark,” as defined by the emergency rule. The dental codes shall undergo annual updates, per the methodology included in the emergency rule. On average, the reimbursement rates for dental services are increasing by 74%. Since April 11, 2022, the Department has conferred multiple times with providers and the MAC regarding this new reimbursement methodology.

**Differences Between the Repealed Rules and the Emergency Rule:**

The Department finds that the holistic approach of including coverage of both children’s and adult services as well as the reimbursement methodology in a single rule is a more efficient and streamlined approach for the dental rule.

Accordingly, the emergency rulemaking repeals and replaces 10-144 CMR Ch. 101, *MaineCare Benefits Manual* (the “MBM”), Ch. II and III Section 25, “Dental Services”, and replaces those rules with one Ch. II Section 25, rule.

The differences between the emergency and the former Ch. II and III Section 25 rules include the following:

**1. Section 25.06 (Reimbursement Methodology). The rule replaces specified rates with a reimbursement methodology**. Whereas the former Ch. II Section 25, rule stated rates would be the amount listed in Ch. III Section 25, the emergency rule implements a reimbursement methodology that increases overall reimbursement consistent with recommendations from the comprehensive rate setting evaluation.

The reimbursement methodology sets rates for diagnostic, endodontic, periodontic, and preventative services based on 67% of the Commercial Median Benchmark or 133% of the Medicaid State Average Benchmark, if the Commercial Median Benchmark rate is unavailable or unreliable.

The reimbursement methodology sets rates for adjunctive, oral and maxillofacial surgery, orthodontics, prosthodontics, and restorative services based on 50% of the Commercial Median Benchmark or 100% of the Medicaid State Average Benchmark if the Commercial Median Benchmark rate is unavailable or unreliable.

**2. In addition, the rule eliminates inconsistent payment for services billed as medical versus dental services**. To ensure that there is not a rate disparity between CDT and CPT codes that represent the same service, the emergency rule removes coverage of some oral and maxillofacial surgery and maxillofacial prosthetic services so that they are solely covered under Section 90, “Physician Services”. The Department removes services from the proposed rule that have a CPT code equivalent, that are medical in nature, and are primarily delivered by oral surgeons who already bill the services under Section 90, “Physician Services”.

**3. Replaces emergency-only adult dental coverage with comprehensive adult dental coverage**. To implement the new comprehensive adult dental benefit, the emergency rule adds coverage for adults for diagnostic, preventive, restorative, endodontic, periodontic, prosthodontic, oral and maxillofacial surgery, and adjunctive services. To enable this comprehensive adult coverage, the emergency rule removes the Section 25.04 requirement that adult dental care be limited to acute surgical care directly related to an accident; oral medical procedures not involving the dentition and gingiva; extraction of teeth that are severely decayed and pose a serious threat of infection during cardiovascular surgery; or treatment necessary to relive pain, eliminate infection, or prevent imminent tooth loss.

**4. Replaces separate adult and child coverage provisions with a single covered services description generally applicable to all members**. As a result of removing the restrictions on adult dental coverage, the emergency rule contains one “Covered Services” provision, which includes the services, limits, and other requirements for all members, regardless of age, unless otherwise specified. Some services will continue to be age-limited, and they are noted as such in the rule.

**5. In addition to adding broad coverage for adult dental services, the emergency rule adds or increases coverage for many existing services, including the following**:

**a.** Comprehensive periodontal evaluations

**b.** Counseling for the control and prevention of adverse oral, behavioral, and systemic health effects associated with high-risk substance use

**c.** Removable unilateral space maintainers

**d.** Multiple types of crowns

**e.** Prefabricated crowns

**f.** Apicoectomies

**g.** Immediate partial dentures

**h.** Complete denture repairs

**i.** Partial denture relines

**j.** Multiple types of pontics and prosthodontic retainers

**k.** Re-cement or re-bond and repairs of fixed partial dentures

**l.** Dental case management

**m**. Single bitewings

**n.** Panoramic radiographs

**o.** Topical fluoride

**p.** Denture adjustments

**6. Aligns limits and prior authorization requirements with other state Medicaid agencies, commercial payers, and stakeholder recommendations**. Because of the limited scope of the adult dental benefit in the current rule, the emergency rule makes changes to align the covered services and limits with typical comprehensive dental coverage. Specifically:

**a.** The emergency rule removes the requirement that adults have a qualifying medical condition to receive removable prosthodontics (dentures).

**b.** The emergency rule establishes medically appropriate limitations where none previously existed, based on recommendations from clinical consultation and alignment with other comprehensive dental coverage (commercial payers and other Medicaid agencies).

**c.** The emergency rule adds and removes prior authorizations to align with other payors and based on recommendations from clinical consultation and provider feedback.

**d.** The emergency rule removes the “more than once every 150 days” requirement for detailed and extensive and periodic oral evaluations and prophylaxis treatments.

**7. Removes unnecessary and overly detailed provisions**. The emergency rule removes the following from the rule:

**a.** Unnecessary and unused definitions.

**b.** Reference to coverage for members residing in an “Intermediate Care Facility for Persons with Mental Retardation (ICF-IID)” because these members will now receive the services covered for members 21 and over (adults).

**c.** Requirements that address the covered services certain provider types can provide under their scope of practices because providers’ scope of practices are already defined in 32 MRS Ch. 147.

**d.** Prescriptive descriptions of services that are overly detailed for the rule.

**e.** Section 25.03-9, “Temporomandibular Joint Services”, because it is not clear what specific services this provision encompasses and because services that are related to the temporomandibular joint are listed in the new covered services Section.

**f.** Section 25.06-1, “Member’s Records”, because Ch. I Section 1.03-8(M) and Board rule 02-313 CMR Ch. 12 both contain member/patient record requirements.

**g.** Section 25.06-2, The Division of Program Integrity, because it only refers providers to Ch. I, which already applies to all providers.

**h.** Requirements and instructions in Section 25.06-3, “Prior Authorization of Dental Services”, because they either exist in Ch. I of the MBM or in *MaineCare’s Prior Authorization Manual* on the HealthPAS Portal.

**i.** Section 25.06-5, “Case Management”, because it describes standard health care provider practices and because the emergency rule adds coverage for a dental case management service.

**j.** Sections 25.07-4, “Denturist Services”, and 25.07-5, “Dental Hygienist Services”, because it is unnecessary to include the services that these providers can deliver under their scopes of practice, which are defined in 32 MRS Ch. 147. Section 25.07-5 also includes outdated guidance.

**k.** Section 25.07-6, “Independent Practice Dental Hygienist (IPDH) Services”, because IPDHs must comply with their scope of practice, as defined in 32 MRS Ch. 143 §18375, and it is redundant to list services that IPDHs can deliver in rule. In addition, the requirements for IPDHs delivering temporary fillings no longer have a basis in Board rules and have been a roadblock to delivering this service. The requirements for processing and exposing radiographs are also no longer in effect.

**l.** The appendix because the forms either exist on the HealthPAS Portal or will no longer be required.

The Department will propose a routine technical rule to permanently repeal Ch. II and III Section 25, and replace them with the single Ch. II Section 25 rule.

The Department shall seek approval from the Centers for Medicare and Medicaid Services (CMS) of state plan amendments (SPAs) for the changes in this rulemaking. Additionally, on or before July 1, 2022, the Department will publish a notice of change in reimbursement methodology pursuant to 42 CFR §447.205.

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

EFFECTIVE DATE: July 1, 2022

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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. 80**, Lotto America Game Rules

ADOPTED RULE NUMBER: **2022-126**

CONCISE SUMMARY: This amendment updates the existing rules governing the jackpot draw game Lotto America. 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 80.0 of Adopted Rules. “These rules shall become effective for drawings beginning July 18, 2022.”

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